

OCCUPATIONAL SAFETY AND HEALTH

Temporary agency work and occupational safety and health



TEMPORARY AGENCY WORK

TEMPORARY AGENCY WORK exists where workers are made available to work for third parties under their supervision.

A TEMPORARY WORK AGENCY is an employer who obligates workers to perform work for third parties (e.g. a personnel leasing or secondment undertaking).

A USER UNDERTAKING is a party that deploys those workers to perform work.

IMPORTANT

User undertakings are considered to be employers as referred to in the Health and Safety at work Act (ArbeitnehmerInnenschutzgesetz, ASchG) for the duration of temporary agency work.

This similarly applies to temporary agency work in the context of commissioning plants and systems, or within a joint venture, a company group/group of companies/corporation or a training association (Ausbildungsverbund) as defined in the Vocational Training Act (Berufsausbildungsgesetz). It does not depend on whether the case falls under the Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz, AÜG).

DUTIES OF USER UNDERTAKINGS

USER UNDERTAKINGS have all duties of employers in technical and hygiene matters related to occupational safety and health, e.g. risk prevention, providing information and training, risk assessment as well as providing advice by preventive services (occupational health services, safety services), protective measures and personal protective equipment.

USER UNDERTAKINGS are required, prior to the temporary work and prior to any change of worker deployment, to demonstrably INFORM the temporary work agency in writing of the following:

- the qualifications and the specialist skills required for the work;
- the special features of the job position to be filled;
- the level of medical fitness required for the job position to be filled or the work planned.

USER UNDERTAKINGS must demonstrably submit to the temporary work agency the SAFETY AND HEALTH DOCUMENTS relevant to the position or the planned work and must inform the agency of any change.

DUTIES OF TEMPORARY WORK AGENCIES

TEMPORARY WORK AGENCIES are required, prior to the temporary work and prior to any change of worker deployment, to demonstrably INFORM the worker in writing of the following:

- the risks to which the worker will be potentially exposed while at the job position to be filled;
- the qualifications or the specialist skills required for the job position or the work;
- the necessity of a suitability testing and follow-up testing.

SUITABILITY TESTING AND FOLLOW-UP TESTING

TEMPORARY WORK AGENCIES are allowed to hire out workers for jobs requiring suitability testing and follow-up testing only where such testings are carried out and no official decision ascertaining the worker's medical unfitness is issued.

USER UNDERTAKINGS must demonstrably make sure that the testings were performed and no official decision ascertaining the worker's medical unfitness was issued. The records related to suitability testing and follow-up testing must be maintained by temporary work agencies, while user undertakings must provide the temporary work agency with the information and documents required for this purpose.

PREVENTIVE SERVICES

Temporary agency workers are in general counted as belonging to their particular user undertaking for the duration of temporary agency work. This applies, for example, to the key ratio and when determining the minimum amount of time safety experts and occupational physicians are on duty.

RESPONSIBILITIES OF TEMPORARY WORK AGENCIES PURSUANT TO THE AÜG

Temporary work agencies retain responsibility for workers' personal health and safety at work, in particular for ensuring compliance with working time regulations and protection of certain groups of persons such as mothers and youth; this applies inasmuch as agencies are required to draw the user undertakings' attention to all circumstances relevant to compliance with such protection provisions.

Temporary work agencies must immediately terminate the temporary work arrangement when they learn or should have learned of user undertakings' failure to comply with provisions on occupational safety and health or welfare, despite being called on to do so.

DISTINCTION FROM CONTRACTS FOR WORK (WERKVERTRÄGE)

Under certain conditions, temporary agency work may also exist with CONTRACTS FOR WORK:

- workers manufacture products or provide services that are fundamentally the same as those manufactured or provided by the undertaking contracting them;
- or the workers mostly use the undertaking's materials or tools;
- or they are integrated in the undertaking's business and are subject to supervision by the undertaking in work and professional matters;
- or the contractor is not liable for successful completion of the work.

In such cases, the undertaking contracting the work is a user undertaking and the contractor is a temporary work agency.

MATERNITY PROTECTION

The temporary work agency is obligated to report a worker's pregnancy to the Labour Inspectorate. The agency must also report whenever a pregnant worker changes user undertakings or frequently changes among user undertakings on short notice.

LEGAL FRAMEWORK

Section 9 of the Health and Safety at work Act (ArbeitnehmerInnenschutzgesetz, ASchG)

Sections 4 and 6 of the Temporary Agency Work Act (Arbeitskräfteüberlassungsgesetz, AÜG)

Section 3 Paras. 6 and 7 of the Maternity Protection Act (Mutterschutzgesetz, MSchG)

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The competent Labour Inspectorate will be happy to advise you

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