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UNDERSTANDING TEMPORARY EMPLOYMENT AND PROFESSIONAL EMPLOYER ORGANIZATIONS (PEOS) IN GERMANY

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In Germany, temporary employment — known as Arbeitnehmerüberlassung or Zeitarbeit — plays a pivotal role in the labor market. For U.S. Professional Employer Organizations (PEOs) and corporations looking to expand their footprint in Europe, understanding the intricacies of this employee leasing model is essential. By embracing compliance, transparency, and fair labor practices, PEOs can effectively leverage temporary employment as a powerful tool for growth. In an era of evolving labor dynamics, proactive engagement with the regulatory landscape will not only empower U.S. corporations to thrive in Germany but also set a benchmark for best practices on a global scale. Here's what you need to know.

Clarifying Employment Definitions: U.S. vs. Germany

In the U.S., there is a clear distinction between temporary agencies and Professional Employer Organizations (PEOs). Temporary agencies tend to be viewed as suppliers of short-term labor. PEOs do not supply labor at all. They assume a co-employer position with respect to all or most of their customers' employees, which allows PEOs to provide benefits, insurance, human resources, and payroll services for a customer's workforce without supplying employees or becoming the sole employer of workers. The co-employment concept (formerly known as employee leasing) is unique to the U.S. Importantly, U.S. PEOs do not hire or

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provide temporary workers, as licensing laws classify them as entities that do not engage in temporary employment.

In contrast, German legislation defines leased employees (Leiharbeiter) in a distinct manner. Employers, acting as lenders, provide their own employees to other companies (clients) for work purposes for a legally specified duration. Employees are considered leased when they are integrated into the client's work environment and adhere to their instructions. The transfer of employees as leased workers is only permitted if there is a formal employment relationship between the lender and the leased worker. In this arrangement, the client does not act as a co-employer. Both the lender and the client must clearly state in their contract that the arrangement is for leasing employees before transferring or utilizing the leased worker. Additionally, they must identify the specific leased employee in the contract prior to the transfer.

In summary, while the U.S. maintains a clear separation of short-term labor suppliers and long-term human resources outsourcing types, where co-employment allows the client to handle operations and the agency manages HR and payroll, Germany's approach consolidates these roles under broader legal definitions.

The Landscape of Temporary Employment in Germany

This employee leasing model involves three main parties: the PEO (the lessor), the temporary employee, and the client company (the lessee). As of December 2022, Germany boasted around **47,000 temporary staffing agencies**, with approximately **11,000** specifically focused on employee leasing. This framework allows companies to respond rapidly to changing market demands and economic conditions. Temporary employment is not merely a tool for operational flexibility — it also serves as a barometer of economic health. For example, following a period of growth, the sector began to decline in 2018 — a trend exacerbated by the COVID-19 pandemic. By the end of 2022, temporary workers numbered about **796,000**, representing only **2%** of the total workforce in 2023. Most of the workers (over 90%) employed by staffing organizations are low skilled workers or helpers.

Despite its significance, temporary employment often suffers from a negative stigma, particularly due to scandals that have revealed exploitative practices in sectors like meat

processing. However, strict regulations under the **Arbeitnehmerüberlassungsgesetz (AÜG)** ensure that most agencies operate lawfully and prioritize fair treatment. This article explores the complexities of employee leasing, its legal framework, and the associated benefits and challenges for U.S. PEOs.

The AÜG Framework: Governing Temporary Employment

The AÜG lays down the legal framework governing temporary employment in Germany, highlighting essential principles that every PEO must understand to ensure compliance and mitigate risks.

Key Principles of the AÜG:

- **Equal Treatment Principle:** Temporary employees should receive similar working conditions and pay as comparable permanent employees after a certain period, with some exceptions for collective agreements.
- **Minimum Threshold:** Temporary workers are entitled to a wage that exceeds the statutory minimum wage. **From October 1, 2024**, the minimum threshold is at **€14.00** per hour (Collective agreement in the 2024 temporary employment wage round, Pay Group 1, lowest pay group). **From March 1, 2025: €14.53** per hour (Collective agreement in the 2024 temporary employment wage round, Pay Group 1). Higher hourly rates apply for other pay groups.
- **Minimum Wage:** Where no threshold has been set, the general minimum wage must apply. Since **January 1, 2024**, the statutory minimum wage is **€12.41** gross per hour. Starting from 2025, it will increase to **€12.82**.
- **Maximum Duration:** Temporary assignments to a single company are limited to 18 months, though exceptions can apply.

The Economic Context. The fluctuating landscape of temporary employment reflects broader economic trends. In 2023, the proportion of larger staffing agencies diminished significantly, comprising only **33%** of the market. By the end of December 2023, **78%** of temporary workers were employed by agencies primarily focused on employee leasing. For PEOs, understanding these dynamics is crucial

for navigating the complex landscape of temporary employment and aligning operational strategies accordingly.

The Evolution of Temporary Employment Regulations in Germany. The AÜG has undergone several modifications since its enactment in **1972** to adapt to the evolving needs of the labor market. Key legislative changes include:

- **Maximum Assignment Durations:** Initially, the law permitted a maximum assignment duration of **three months**. This was extended to **six months** in **1985**, **nine months** in **1994**, and **12 months** by **1997**.
- **Equal Treatment Legislation:** The **Job-AQTIV-Act** of **2002** mandated that temporary workers should receive similar working conditions and remuneration as permanent employees after **24 months**.
- **Hartz-IV Reforms:** Implemented between **2004-2005**, these reforms allowed for unlimited assignment durations under specific conditions, thereby increasing the flexibility of temporary employment.
- **EU Directive:** The **2008 Directive 2008/104/EC**, updated in **2021**, aimed to enhance conditions for temporary agency workers, ensuring they receive treatment comparable to permanent employees.
- **Recent Amendments:** The **2017 amendment** to the AÜG capped temporary employment at **18 months** within the same host company, emphasizing the importance of integrating temporary workers into the permanent workforce.

These regulations reflect a balance between employer flexibility and employee protections, marking significant milestones in the evolution of temporary employment in Germany. As a CEO of a PEO, grasping these changes can enhance strategic planning and compliance.

Securing Permission for Employee Leasing

For companies aiming to lease employees to a third party, acquiring permission for employee leasing is essential for legal compliance and employee protection.

The Application Process. To initiate the leasing process, the lessor (the employer) must submit an application to the

relevant employment agency. Various entities eligible to apply include:

- **Individuals**
- **Legal entities** (e.g., GmbH, AG)
- **Partnerships** (e.g., GbR, OHG, KG)
- **Foreign entities** with operations in Germany (note that merely being registered with a German address is insufficient).

Validity of the Permit. Initially, the leasing permit is granted for **one year**. PEOs must apply for an extension at least **three months** before the expiration of the permit. After **three consecutive years** of compliant leasing, a permanent permit can be requested.

Exceptions to the Permit Requirement. In specific cases, a permit is not necessary, such as:

- Leasing within the same industry to avoid short-time work or layoffs, if covered by a collective agreement.
- Assignments to a joint venture for project completion.
- Intra-group leasing, provided the employee isn't specifically hired for leasing.
- Occasional leasing between employers if not intended for that purpose.
- Public sector personnel assignments, as stipulated by a collective agreement.
- Leasing between legal entities under public law, provided applicable collective agreements are in force.
- International leasing to a German-foreign joint venture established under international agreements.

Provisions for EEA and Non-EEA Nationals:

- **EEA Nationals:** Citizens from countries in the European Economic Area (EEA) or other countries in the EEA agreement can obtain a permission just like German citizens. This also applies to companies based in these countries if they have their main offices or headquarters there. If a company is registered in one of these countries

but doesn't have its main office there, it can still qualify for permission if its business activities are closely linked to the economy of an EEA country.

- **Non-EEA Nationals:** Citizens from countries that are not in the EEA can get permission to lease employees in Germany if they move there based on an international agreement. They must be treated the same as German citizens when it comes to their work. This rule also applies to companies set up in those countries.

Other Applicable Employment Laws

Beyond the AÜG, various laws and regulations govern employment relationships and working conditions. Some notable ones include:

German Part-Time and Fixed-Term Employment Act (TzBfG). This act regulates the rights of employees concerning part-time work and fixed-term contracts, ensuring they are not treated less favorably than full-time employees. Key Provisions include:

- **Part-Time Employment:** Defined as working fewer than **30 hours** per week.
- **Fixed-Term Contracts:** Contracts with a specified duration.
- **Comparable Employees:** Distinctions between part-time and full-time employees are outlined.

The German Evidence Act (Nachweisgesetz). This act mandates employers to provide written documentation of essential employment contract information to enhance transparency and security for employees. Employers must deliver written information within specified time limits, including:

- Names and addresses of the contracting parties
- Salary and working hours
- Start date of employment
- Contractual details, such as fixed terms and job responsibilities

Works Constitution Act (Betriebsverfassungsgesetz – BetrVG). According to Section 87 (1), works councils have specific co-determination rights concerning the organization and design of working life, which applies equally to temporary agency workers. Employers must obtain the consent of the works council before employing a temporary worker. If consent is denied, the employer can seek a court order to proceed.

The Dangers of Hidden Employee Leasing

Hidden employee leasing refers to an illegal practice where an employment relationship is misrepresented as a service or works contract while exhibiting characteristics of temporary work. In this situation, employers send employees to clients to perform tasks under the client's direction, effectively integrating them into the organization as permanent staff.

Legal Implications of Hidden Employee Leasing. This practice violates various legal requirements, including:

- **Works Council Approval:** Section 99 mandates works council approval for employing temporary workers.
- **Equal Pay Principle:** Workers misclassified under hidden leasing arrangements are entitled to the same wages as permanent employees.

The **2017 revision** to the AÜG explicitly rendered hidden employee leasing illegal. Contracts must now clearly delineate temporary leasing before it occurs, ensuring compliance with legal standards to avoid severe consequences.

Consequences of Violating Equal Pay. Agreements that violate the principle of equal pay are considered invalid. Both lessors and borrowers must understand the implications of breaching these regulations:

- **Partial Invalidity of Compensation Agreements:** According to Section 8 of the AÜG, equal pay must be granted from the first minute of a temporary employee's assignment, barring collective agreements that specify otherwise. Deviations from this principle result in partial invalidity of compensation arrangements, leaving the employment contract between the lessor and employee intact.

- **Liability to Social Security and Tax Authorities:** As the employer, the PEO is responsible for remitting social security contributions and income taxes. The borrower may also be liable as a joint guarantor, meaning that a delay in payment can lead to claims from social security authorities.

Administrative Offenses and Criminal Liability. Violations of equal pay can incur fines of up to **€500,000** for lessors and may lead to denial or revocation of their leasing permits. Criminal liability may also arise for withholding social security contributions related to discrepancies in equal pay. In these cases, intent to enrich is not necessary for prosecution, as long as there is evidence of negligence or misconduct.

Exploring Alternatives to Temporary Employment

While temporary employment offers flexibility, other avenues such as **contracting** and **works contracts** may provide solutions for companies seeking specialized skills without the complexities of employee leasing. However, there are pitfalls that must be avoided.

Contracting: Engaging Highly Skilled Workers. In the **context of PEO services**, contracting refers to the temporary deployment of freelancers and interim managers. The PEO would enter into a **contractor agreement** with the **expert** and a **project agreement** with the **client**.

Contracting highly skilled temporary workers, often referred to as **freelancers** or **contractors**, involves specific regulations and practices:

- **Legal Framework:** Contractors operating independently are not governed by the AÜG.
- **Types of Contracts:** Contractors are typically engaged through fixed-term contracts or service agreements, specifying tasks, duration, remuneration, and terms.
- **Social Security and Tax Obligations:** Contractors are responsible for their own taxes and social security contributions, along with providing proof of qualifications and insurance.

A service contract requires the contractor (which can be an individual or a company) to deliver a specific, delineated service for the client (e.g., modifying a software application).

While service contractors may deploy their employees at the client's location, they determine the nature and process of the work independently, unlike temporary workers who are integrated into the client's operations.

Unlike temporary employment, the authority over the workers in the client's premises remains with the contractor, who also assumes business risks and liability. Employment conditions are dictated by collective agreements (if they exist) within the service provider, and client agreements do not apply. Service contracts are governed by the German Civil Code (BGB).

Works Contracts: Delivering Specific Outcomes. A works contract involves a contractor agreeing to deliver a defined outcome for a client (e.g., programming an application). Key aspects include:

- **Retention of Control:** Contractors maintain control over the work process, unlike temporary employees who integrate into the client's operations.
- **Business Risks:** Contractors assume business risks and liability, governed by individual employment contracts or collective agreements with their respective employers.

Differentiating Between Temporary Employment and Works Contracts. Identifying instances where a works or service contract is misrepresented as temporary employment is crucial for compliance. Several criteria should be evaluated, including:

- **Authority and Integration:** Who directs the work and schedules? How embedded is the worker in the client's operations?
- **Ownership of Equipment:** Who owns the tools and equipment used? This helps clarify whether the arrangement resembles employee leasing or a genuine contractor relationship.
- **Existence of a Business Structure:** Does the contractor have a functional organization to manage service delivery?

Understanding these distinctions is vital for both PEOs and client companies to safeguard against legal repercussions and to ensure compliance with employment laws.

Conclusion

For U.S. PEOs and corporations eyeing opportunities in Germany, understanding the legal landscape surrounding temporary employment is not just about compliance — it's also a strategic necessity. The regulations governing temporary employment, including the AÜG, serve to protect workers while providing businesses with the flexibility needed in a dynamic economic environment.

Understanding these complexities and ensuring adherence to German employment laws can enhance operational effectiveness, strengthen workforce management, and improve the reputation of U.S. companies in the European market.

We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [International Practice Group](#) or [PEO and Staffing Team](#).