



HANDBOOK FOR AT-EMPLOYEES

Information and Tips about Your
Working Relationships

PREFACE

The number of AT-Employees found in the typical workplace is on the rise. In the company hierarchy they generally rank between employees covered by collective agreements and those at the executive level, meaning their income generally has to sit above the highest pay grade defined in the respective collective agreements. They are often executive employees in middle management but could also be non-executive employees with specialist skills or qualifications.

During recent years, more and more employees who are covered by collective agreements have been offered contracts outside those agreements, which – at first glance – appear favourable because, for many, such a contract implies a step up the career ladder.

However, closer inspection reveals that these contracts are quite often used to impose a flat rate of pay for all working hours including overtime, and avoiding regulations set in the collective agreements. It could be worth checking your contract to see if this is the case for you. This “Handbook for AT-Employees” will help you find answers to the most important questions about your employment relationship, and where to find support should you need it.

Your IG Metall

Who Is Regarded as an AT-Employee?

There can be quite different definitions of AT-Employees depending on, for example, the sector and region they work in. This is because of differing particularities across various collective agreements.

Basically, one can say that an employee is an AT-Employee when:

- ▶ s/he continually works on tasks that require higher qualifications than those specified for the highest pay grade, as regulated in the respective collective agreement and/or
- ▶ s/he has an income which is above the highest pay grade in the respective collective agreement (sometimes there is a minimum margin defined).*
- ▶ s/he has an individual employment contract outside the respective collective agreement
- ▶ if your employer is part of a collective agreement.

* This is different in Baden-Wuerttemberg, where the collective agreements IG Metall has negotiated in the metal and electrical industry do not discriminate between employees and AT-Employees. This means, in practical terms, that all collective agreement regulations – including payrate increases and working time regulations – are valid for all employees in Baden-Wuerttemberg. That said, it is still possible to find working contracts that ensure an income above the highest pay grade in Baden-Wuerttemberg. This does not, however, interfere with the principal validity of the collective agreements.



Are AT-Employees Automatically Executive Managers?

No. AT-Employees are not necessarily executive managers. It is usually only a small proportion of a company's AT-Employees who have an executive function. An executive employee is legally defined as someone who can independently hire and dismiss employees, who has procuration (i.e. the authority to act as director), or can significantly influence managerial decisions. Executive employees take on employer functions, and as a consequence operate under a different regulatory framework. For example, the Betriebsverfassungsgesetz (BetrVG) [Industrial Constitution Act] is not applicable to executives, and there is limited protection against dismissal according to §14 Kündigungsschutzgesetz (KSchG) [Protection against Dismissal Act].

Is the Works Council Authorized to Act for AT-Employees?

Yes. The Betriebsverfassungsgesetz (BetrVG) [Industrial Constitution Act] states that the works council is elected by employees who are inside or outside collective agreements, to act in their interests. Only executive employees are exempt from this rule. The works council knows the company and has a good overview of the applicable laws, collective agreements and company agreements. Regarding company agreements, the works council can set binding regulations in favour of AT-Employees concerning working time, pay structures, holiday entitlement and bonuses in discussion with the employer.

Important: AT-Employees are entitled to vote in the works council election and can also run for election.

What Can the Works Council Do for AT-Employees?

The works council

- ▶ can give **competent counsel** concerning income, working time, further training, part-time and parental leave, transfer, warning and dismissal.
- ▶ **negotiates company agreements** concerning working conditions (also for AT-Employees).
- ▶ has a right to codetermination concerning the pay structure for AT-Employees.
- ▶ **makes sure that company agreements and collective agreements are kept.**
- ▶ **is entitled to access information and the right of codetermination** concerning AT-Employees, for example concerning gross pay and salary payrolls, transfers, further training, target agreements, and other issues.
- ▶ **has a right of initiative** to improve working conditions for AT-Employees.
- ▶ **works closely with the trade union.**



IG Metall Representation of Interest – Hand-in-Hand with the Works Council

IG Metall

- ▶ sets through collective agreements the benchmark and the minimum level for AT-employees.
- ▶ **provides information and support** through personal local contact, via the internet and in publications and brochures.
- ▶ offers its members competent **legal protection and free legal advice** on labour and social law (such as transfer, labour and social security benefits, dismissal, etc.).
- ▶ **improves working conditions** through binding collective agreements, and gives employees political representation.
- ▶ **gives counsel, qualifies and supports the works council**, and offers a platform to generate networks.
- ▶ **offers extensive training** for members.
- ▶ **has an impact on economic decisions** and regional and sectorial sustainability, thereby contributing towards secure employment.

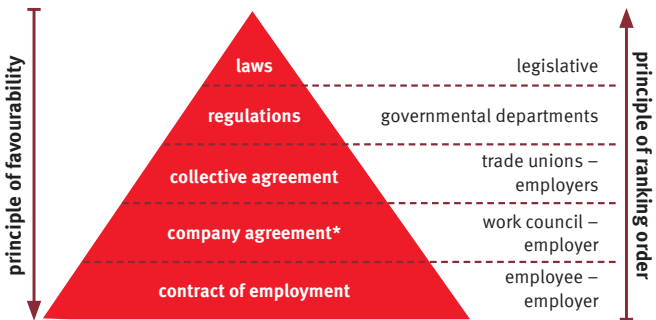
Please see the chart on pages 10 and 11.

Contract of Employment, Company Agreements, Collective Agreements, Laws

Regulations concerning working time, income, holidays etc. can be found:

- ▶ in laws
- ▶ in collective agreements
- ▶ in company agreements
- ▶ in contracts of employment

These sources are listed in a hierarchical order. At the lowest level stands the individual contract of employment. At a higher level are the collective agreements and on a superior level regulations and laws. The respectively higher level sets minimum standards for the level below (Rangprinzip) [principle of ranking order]. No regulation is allowed to contravene the level directly above it. If such a situation arises, it is the regulation most in favour of the employee which applies.



* Exception: Company agreements must not regulate issues which are regulated in collective agreements except when the collective agreement explicitly allows this.

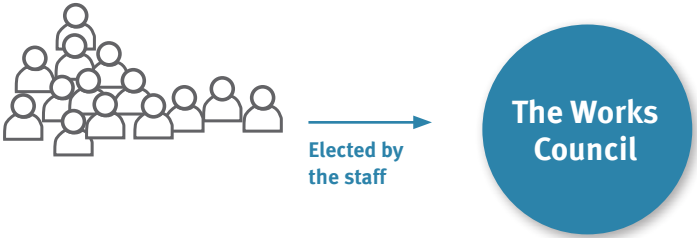
What Should Be Included in My Contract of Employment?

- ▶ Name and address of the contracted parties
(important in case of a lawsuit)
- ▶ When the working relationship begins
(important for many deadlines)
- ▶ Job description
(basis for income classification according to collective agreement)
- ▶ Place of work
(if this is left out, a transfer is made more easy)
- ▶ Optional information
(duration of probationary period – by law: maximum of 6 months)
- ▶ Remuneration and, if applicable, AT-remuneration group, respectively annual remuneration
- ▶ Working time, including payment or compensation for overtime work and travel times
- ▶ Exact structure and remuneration level including surcharges, bonuses, premiums and special payments
- ▶ Period of notice
- ▶ Holiday entitlement

Your works council or your colleagues in the local IG Metall branch office offer competent advice and answer any questions you have about your employment contract. They can also give helpful advice in the event of any revisions being made to your employment contract.



WHO REPRESENTS



The Works Council

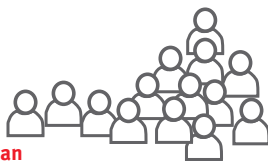
- ▶ Negotiates company agreements about your working conditions. For example: income classification according to collective agreement; individual working hours, breaks and company holidays; or health and safety protection.
- ▶ Has codetermination rights concerning the pay system for AT-Employees.
- ▶ Supports and advises employees, asserting their interests and making sure that collective agreements, company agreements and the law are adhered to.
- ▶ Has codetermination rights. For example: regarding staffing issues such as hiring, classification, transfer or dismissal, as well as a right of initiative concerning further training and entitlement to information.
- ▶ Is elected every four years by the employees, who are allowed to call on the works council anytime during working hours without having to give a reason.
- ▶ Works closely with the trade union.

Over 45,000 works council members are members of IG Metall – 72 % in the industrial sectors organized by IG Metall.

YOUR INTERESTS?



←
**Only members can
make a difference!**



IG Metall

- ▶ Negotiates collective agreements with employer associations about, for instance, your pay, working times and holidays. By way of example, IG Metall's collective agreement on holiday entitlement is 30 days (Monday to Friday) whereas the requirement by law is only 24 days (Monday to Saturday).
- ▶ Sets minimum standards for working conditions through collective agreements – also for AT-Employees.
- ▶ Gives advice concerning your employment contract and other legal issues.
- ▶ Gives advice and qualifications to works council members, and supports them in conflicts with their employer.
- ▶ Offers supracompany networks for professional and sectorwide exchange between works council members.
- ▶ Speaks in decisionmaking and advisory bodies in regional and federal politics for the employees of the metal, IT and electrical industries.

Co-Determination inside the Company

Supervisory Boards

Employees elect representatives from the workforce and IG Metall to act as inspectors in the supervisory board. These representatives codetermine the company's corporate strategy. It is the shareholders who hold the majority in the supervisory board (the exception being the coal and steel industry). The royalties gained by representatives of IG Metall for their work in the supervisory board go to the non-profit Hans-Böckler-Foundation.

What Are the Advantages of a Collective Agreement for AT-Employees?

AT-Employees only exist in a situation where there is a collective agreement in place, since they are defined as being paid more than the highest pay grade within a collective agreement. So although AT-Employees theoretically sit outside collective agreements, they benefit from successful bargaining within collective agreements. For example, in the Lower Saxony metal industry, the minimum income of AT-employees is pegged to ensure it remains a fixed margin above the highest pay grade of employees covered by the collective agreement. This is also true for most other collective agreements. Collective agreements form the lower limit for the AT salary, which means that AT-Employees also profit from successful collective bargaining. You can find out more about which regulations apply for you from your works council or in your local IG Metall branch office.

Do Company Agreements Also Apply to AT-Employees?

An individual company agreement always states to which employees it applies. Company agreements which, for example, regulate dining hall bonuses, further training and



holiday planning, apply to all employees including AT-Employees. There are, however, some company agreements which apply only to AT-Employees. If you are unsure about which parts of the company agreement apply to you, get in touch with your works council.

Company Agreements – Who Regulates What?

Company agreements are arranged between an employer and the appropriate works council. They are an important means of collective protection for AT-Employees. They may contain details on:

- ▶ how annual income is determined
- ▶ income progression
- ▶ the payment of bonuses
- ▶ working time arrangements and overtime
- ▶ company pension schemes
- ▶ other

Which Working Time Regulations Apply to AT-Employees?

The working times of AT-Employees are stated in the contract of employment and in the applicable legislation. The organisation of working time, however, may be subject to a number of allowances found in the company agreement. If there are company agreements concerning working hours, flexitime or working time accounts without limitations, AT-Employees also benefit from this. Any agreements or contractual arrangements must not contravene the Arbeitszeitgesetz [Working Time Law], which defines a working day as being 8 hours and a working week as a maximum of 48 hours. This includes a compulsory 30 or 45-minute break and a minimum of 11 hours between two working days. If, within 6 calendar months, working time per day does not exceed 8 hours on average, a single working day may be prolonged to last up to a maximum of 10 hours.

Tip: For AT-Employees, overtime and additional work is often covered through the monthly salary. It is worth checking, therefore, whether the salary lies sufficiently high above the highest pay grade such that longer working hours are adequately paid for. The pay grades in the collective agreements in the metal and electrical industry are based on a 35 hour week in the West, and a 38 hour week in the East.

AT-Contract or Working Time Flat Rate?

Many employees see the signing of an AT-contract as beneficial, but this might not always be the case. For instance, practical experience has shown that employers quite often use the term “AT” in order to include all additional overtime work in the salary. This means that in contrast to employees covered by the collective agreement’s pay grades, there is no separate financial compensation for overtime work – and there is also no compensatory time off!

Watch out! The clause “Mehrarbeit ist mit dem Gehalt abgegolten” [Additional work is included in the salary] is not permissible by law! It does not conform to the Transparenzgebot [obligation of transparency] (§ 307 section 1 sentence 2 BGB) and violates the basic principle that compensation is due for all work done (§ 611 BGB).

A clause regarding overtime in the work contract must be phrased in such a way as to have a clear de facto meaning to the employee, including the maximum necessary tasks to be undertaken for the agreed pay.

As an AT-Employee Do I Have the Right to Reduce my Working Time?

A clear yes. The right to work part-time also applies to AT-Employees. According to § 8 of the Teilzeitbefristungsgesetz [Part-Time Work and Fixed-Term Employment Act] you are entitled to part-time work when:

- ▶ You have been employed for longer than six months.
- ▶ You are 1 of 16 or more regular employees (not including trainees/apprentices) at your company.
- ▶ You submit your request to work part-time three months before you wish to begin working part-time, and give the precise date you would like to start working part-time.
- ▶ You state which days in the working week you wish to work part-time, what you would like your hours to be, and when you would like the parttime working period to begin.
- ▶ You have not claimed your right to part-time work within the last two years.
- ▶ There is no important company-specific reason which will act as an obstacle to part-time working.

Also AT-Employees can claim Brückenteilzeit [which literally translates as “bridging part-time” and states that you can reduce your working time for up to five years before reverting to your former working time].



How Many Holidays Am I Entitled to as an AT-Employee?

Every employee is entitled to a minimum leave of four weeks per year, which is regulated by law in the Bundesurlaubsgesetz (BUrlG) [Federal Leave Act]. Company practice shows, however, that many employers apply the holiday entitlement regulated by the collective agreement to AT-Employees' contracts. This means there is an average holiday entitlement of 6 weeks per year (30 days/5-day-week).

AT-Employees are also entitled to education leave*, though the possibilities and regulations concerning education leave differ in each federal state. For more detailed information, get in touch with your works council.

* There are laws on education leave in: Baden-Wuerttemberg, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony-Anhalt, Schleswig-Holstein and Thuringia.



A Question of Strength: Income, Working Time, Working Conditions

IG Metall and works councils are competent partners and support the interests of all employees, including AT-Employees. However, in collective bargaining and negotiations between works council and management, IG Metall and works councils do not get very far with convincing arguments alone; success depends on how strong they are and how much pressure they can exert. IG Metall draws its negotiating strength from the number of employees it represents – the more members there are, the stronger IG Metall becomes. So join the 2.1 million members of IG Metall – 45,000 of whom are working as works council members – who have already placed their trust in a strong union.

www.igmetall.de/beitreten

How Much Is Membership?

The membership fee is one per cent of your gross income. IG Metall is financed entirely by membership fees and uses those to improve the working and living conditions of employees. Good to know: You can claim your membership fee as income-related expenses in your individual tax return. By joining IG Metall you contribute towards this aim – competence and effective solidarity may seem expensive, but they're ultimately priceless!



www.igmetall.de/beitreten

USEFUL WEBSITES

www.igmetall.de

Here you will find the contact details of your local IG Metall branch office, as well as information about labour policies & similar topics. There you will also find the current flyers for typical salaries of engineers in the IG Metall collective bargaining districts.

IG Metall's collective agreements database

Do you want to compare your AT-contract with the benefits included in collective agreements? Here you find IG Metall's most important collective agreements:

www.igmetall.de —> Tarif —> Tariftabellen

www.itk-entgeltanalyse.igmetall.de

Annual income analysis for the IT and telecommunications sector, from young professionals to executive managers. Serves as orientation for salary negotiations and gives valuable information about jobs and income opportunities in the ITK sector.

www.lohnspiegel.de

Free wage and salary check – offers information relating to 300 professions.

www.ergo-online.de

Information and tips about project work, self-management, mobile working, stress reduction, etc.

Imprint

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The German version of this booklet is the legally binding form.
In this handbook we have translated the German term AT-Beschäftigte into English as AT-Employees. We are aware, however, that there is no direct equivalent of AT-Beschäftigte in the English-speaking world, so have provided a more detailed explanation regarding who belongs to this particular group of employees on page 4.

