

Chapter 9a
Legal consequences of unlawful employment

Section 98a
Remuneration

(1) An employer is required to pay the agreed remuneration to a foreigner whom he or she has employed and who lacks the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required under section 4a (5). For the purpose of remuneration, it is assumed that the foreigner has been employed by the employer for three months.

(2) The agreed remuneration is considered to be the usual remuneration unless the employer agreed a lower or higher remuneration with the foreigner on a permissible basis.

(3) A contractor who has commissioned another contractor to perform work or render services is liable for fulfilling the obligation of the latter contractor under subsection (1) in the same way as a surety which has waived the defence of unexhausted remedies.

(4) Subsection (3) applies accordingly to the prime contractor and all intermediate contractors without a direct contractual relationship to the employer unless the prime contractor or the intermediate contractor was not aware that the employer employed foreigners who lack the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4 (5).

(5) The liability under subsections (3) and (4) does not apply if the contractor provides evidence that he or she was able to assume on the basis of due diligence that the employer did not employ any foreigner who lacks the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4 (5).

(6) A foreigner who has been employed within the scope of application of this Act without the authorisation for employment required under section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4a (5) may institute legal proceedings for fulfilment of

payment obligations under subsections (3) and (4) also before a German court for labour matters.

(7) The provisions of the Posted Workers Act remain unaffected.

Section 98b

Exclusion from subsidies

(1) The competent authority may deny applications for subsidies in full or in part in line with section 264 of the Criminal Code if the applicant or his or her representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under section 404 (2) no.3 of Book Three of the Social Code or

2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under sections 10, 10a or 11 of the Act to Combat Clandestine Employment.

Denials under sentence 1 may be issued up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection 1 does not apply if

1. a legal entitlement to the subsidy applied for exists,

2. the applicant is a natural person and the employment which caused the offence pursuant to subsection (1) sentence 1 was for his or her private purposes or

3. the offence referred to in subsection (1) sentence 1 consisted in the unlawful employment of an EU citizen.

Section 98c

Exclusion from the award of public contracts

(1) Public contracting entities under section 99 of the Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) may exclude a candidate or tenderer from competing for a supply, construction or service contract if the candidate or tenderer or his or her representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under section 404 (2) no.3 of Book Three of the Social Code or

2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under sections 10, 10a or 11 of the Act to

Combat Clandestine Employment.

Until there is proof of restoration of reliability, the candidate or tenderer may be excluded under sentence 1 for up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection (1) does not apply if the offence pursuant to subsection (1) sentence 1 consisted in the unlawful employment of an EU citizen.

(3) Section 21 (2) to (5) of the Posted Workers Act applies accordingly where a public contracting entity makes use of the possibility referred to in subsection (1).