

Application of the Minimum Wage Act (MiLoG) in the Cooperation Between Universities of Applied Sciences and Employers

Information for Universities of Applied Sciences

April 2015

The Universities of Applied Sciences regard it as one of their core missions to support their students in acquiring practical knowledge and experience. To that end, the universities cooperate closely with future employers and help students and graduates with organizing internships and getting their careers off the ground. To give students the opportunity to gain firsthand practical experience early on, most Bachelor's programs include at least one compulsory internship semester. Some degree programs even require at least three months of internship experience to be admitted in the first place or, if it is not compulsory, applicants with internship experience are given extra points during the selection process. Students are also strongly encouraged to write their scientific papers or final theses in cooperation with partners outside of the higher education sector.

According to the Minimum Wage Act from 11 August 2014 (*Mindestlohngesetz*, short MiLoG, Federal Law Gazette, BGBl., p. 1348 et seqq.), as of 1 January 2015, employers are obligated to pay a gross minimum wage of 8.50 euros per hour. According to section 22 subsection 1 MiLoG, interns¹ are regarded as workers within the meaning of the MiLoG, unless the employer provides proof of an exception. Since students can pursue different types of internships and projects at companies/institutions, the Association of Universities of Applied Sciences (HAW-BW) has put together this information sheet, providing information about when the Minimum Wage Act and section 2 subsection 1a of the Act on the Obligation to Inform Employees of the Employment Conditions (NachwG) apply to the most common types of internships and cooperation projects between students and employers.

The information provided in this information sheet was carefully selected and checked. However, it does not constitute legal advice and cannot be a substitute for expert advice for individual cases. The Federal Ministry of Labor and Social Affairs has established a telephone hotline that provides non-legally binding information on the Minimum Wage Act: +49 (0) 30 60280028 (Monday through Thursday).

¹ Within the meaning of the Minimum Wage Act, an intern shall be deemed to be anyone who, in accordance with the actual arrangement and implementation of the contractual relationship, is undergoing a specific activity in a business enterprise for a fixed period of time in order to acquire practical knowledge and experience in preparation for an occupational activity, although this does not constitute vocational training within the meaning of the Vocational Training Act (BBiG) or practical training of a comparable nature (section 22 subsection 1 sentence 2). In contrast to the contractual agreement between workers and employers, the contractual agreement between interns and employers is made predominantly for educational purposes, see Insam/Hinrichs/Tacou, NZA-RR2014,569 (571); Picker/Sausmikat, NZA 2014,942 (945); ErfK/Franzen MiLoG § 22 Rn. 6; Siebert/Klagges, ArbRAktuell 2014,577 (578) mwN.

I. Exceptions to the Minimum Wage Act

According to information published by the German Parliament and in legal journals, the Minimum Wage Act does not apply to the following:

1. Mandatory internships according to the current study and examination regulations (StuPO) of the study program

According to section 22 subsection 1 no. 1, the Minimum Wage Act does not apply to interns who are completing a mandatory internship according to the current study and examination regulations (*Studien- und Prüfungsordnung*, short StuPO) of the study program (or according to another relevant provision). The duration of the internship is determined in the study and examination regulations. In case of mandatory internships, employers are obligated to provide respective proof. Students are advised to inform potential employers of this fact in their application, to enclose the relevant excerpt from the study and examination regulations and to include the link of the online version of the study and examination regulations.

2. Internships of no more than three months completed prior to taking up a study program

According to section 22 subsection 1 no. 2, the Minimum Wage Act does not apply to interns who are completing an internship of no more than three months and prior to taking up a study program. Universities cannot be involved in this type of internship. Employers have to conclude according agreements with the interns and assess and document their motivation for completing the internship, for example, by requiring the interns to hand in a letter of motivation or keeping a record of the interview.

3. A voluntary internship of no more than three months, which accompanies vocational training or tertiary education, unless such an internship relationship existed with the same trainee prior thereto

According to section 22 subsection 1 number 3, the Minimum Wage Act does not apply to interns who are completing a voluntary internship of no more than three months, which accompanies vocational training or tertiary education. This exception only applies if it is the first voluntary internship within the meaning of no. 3 of the intern with the employer. Voluntary internships are not required by the universities; therefore, universities cannot issue any documents for the employer to be used as proof of the internship purpose. Employers may, for example, ask interns to submit a valid enrollment certificate or a copy of the student ID card to make sure the internship accompanies tertiary education.

Students may complete the voluntary internship within the meaning of section 22 subsection 1 no. 3 MiLoG with the same employer with which they completed the mandatory internship according to no. 1.

4. Topics for Student Projects/Papers/Theses and Permission to Use Resources of Employers

According to section 1 subsection 1 MiLoG, workers are entitled to wages. Interns are regarded as workers within the meaning of section 22 subsection 1 MiLoG. Students who are completing their Bachelor's or Master's thesis at a company/institution are neither regarded as workers nor as interns if the activities they pursue are connected with the completion of their thesis, are independent in terms of content, and if students are not subject to attendance obligations or obligations to take on other tasks. As long as students are privately pursuing their thesis and are not carrying out work for the company/institution, this regulation remains unaffected by the circumstance that students integrate in regular working time schedules and observe relevant occupational safety regulations.² Thesis topics have to be approved by the university. Students receive the letter of approval of their thesis topic via email or mail. Employers may, for example, ask students to submit a copy of the letter of approval.

If the employer plans to hire the student as an intern, the obligation to pay minimum wage may not apply on the basis of section 22 subsection 1 no. 3 MiLoG. This exception applies if the following conditions are met: It is an internship as determined in section 22 subsection 1 sentence 2 MiLoG, the intern did not complete a voluntary internship as determined in section 22 subsection 1 no. 3 MiLoG with the employer, and the internship agreement is limited to three months at the longest.

II. Application of the Minimum Wage Act

Students are entitled to minimum wage if they work at the company/institution parallel to completing their thesis. Apart from the possibility of paying minimum wage for full-time employment, part-time employment is also an option. If students use employer facilities for the purposes of completing their thesis outside of their working time, they are not entitled to wages for these hours. It is important that working time is documented correctly and as required. If it is possible to distinguish clearly between working time and time spent for the completion of the thesis and if this is documented clearly, students have to be paid only for the actual working time.

III. Other Tasks and Projects at a Company/Institution

The regulations explained above also apply in case of other tasks and projects students carry out for an employer.

Published by Hochschulen für Angewandte Wissenschaften Baden-Württemberg e. V., Willi-Bleicher-Str. 19, 70174 Stuttgart, www.haw-bw.de.

² Picker/Sausmikat, NZA 2014, 942 (947). Referencing the jurisdiction of the labor courts, the Communications Center of the Federal Ministry of Labor and Social Affairs stated that in many cases the Minimum Wage Act does not apply to work at a company/institution that is pursued for the completion of a Bachelor's or Master's thesis (email from 5 November 2015).

Annex: Excerpt from the Minimum Wage Act (Mindestlohngesetz)

(The translation of the Minimum Wage Act is provided by the Federal Ministry of Justice and Consumer Protection and is available at www.gesetze-im-internet.de. It is provided as a convenience to the non-German-reading public and is not legally binding.)

Section 22 – Personal scope

(1) This Act applies to workers. Interns within the meaning of section 26 of the Vocational Training Act (*Berufsbildungsgesetz*, BBiG) shall be regarded as workers within the meaning of this Act, unless they are doing

1. an internship which is mandatory pursuant to a provision under education law in respect of schools, vocational training regulations, a provision under education law in respect of tertiary education or as part of vocational training at a vocational academy regulated by law,
2. an internship of no more than three months as a period of vocational orientation or prior to commencing a higher education course,
3. an internship of no more than three months which accompanies vocational training or tertiary education, unless such an internship relationship existed with the same trainee prior thereto, or
4. introductory training in accordance with section 54a of the Third Book of the Social Code (*Drittes Buch Sozialgesetzbuch*, SGB III) or preparation for vocational training in accordance with sections 68 to 70 of the Vocational Training Act.

Without regard to the designation of the legal relationship, an intern shall be deemed to be anyone who, in accordance with the actual arrangement and implementation of the contractual relationship, is undergoing a specific activity in a business enterprise for a fixed period of time in order to acquire practical knowledge and experience in preparation for an occupational activity, although this does not constitute vocational training within the meaning of the Vocational Training Act or practical training of a comparable nature.

(2) Those persons referred to in section 2 (1) and (2) of the Youth Employment Protection Act (*Jugendarbeitsschutzgesetz*, JArbSchG) who have not completed any vocational training shall not be regarded as workers within the meaning of this Act.

(3) Remuneration paid to those employed for the purposes of their vocational training and to voluntary workers shall not be regulated by this Act.

(4) In the first six months of their employment the minimum wage shall not apply to the employment relationships of workers who were classed as long-term unemployed within the meaning of section 18 (1) of the Third Book of the Social Code immediately prior to beginning their employment. On 1 June 2016 the Federal Government shall report to the legislative bodies as regards the extent to which the rule set out in the first sentence has promoted the reintegration of the long-term unemployed into the labor market and shall give an assessment regarding whether the rule should continue to apply.