

Info sheet

Payment claims

This leaflet is for general information only and is intended to provide an initial overview. There is no claim to completeness.

In order to be able to successfully bring an action for payment, there must be a due claim to the payment amount, which nothing prevents. The due date results either from statutory regulation or contractual agreement.

If the debtor has inadvertently or intentionally failed to make the payment despite it being due, it is advisable to send an extrajudicial demand letter first. The aim of this letter is to obtain the outstanding sum of money quickly and inexpensively.

Sample letter of demand (Assertion of claim / Geltendmachung):

To company _____

Dear Sir or Madam,

I would like to request payment of my outstanding wages for the period from _____ to _____ in the amount of _____ € gross / net.

Please pay the amount within _____ days to the following account:

Bank institute: _____

Account holder: _____

Account number: _____

If I do not receive payment from you by the above deadline, I will unfortunately be forced to take legal action against you.

Date and signature

ATTENTION: All claims become time-barred or expire!

The German Civil Code (BGB) provides for certain limitation periods. According to these, claims arising from an employment relationship are time-barred if they have not been asserted in court after the expiry of 3 years. The three-year period begins on 31 December of the year the claim arose. Example: Wage claims from May 2012 expire on 31 December 2015.

Labour law claims often expire faster! Almost all collective agreements and some employment contracts contain very short expiry periods. According to these, all claims arising from the employment relationship (i.e. also wage claims - unless they are part of a wage statement) expire if they are not asserted in writing within a certain period. In some cases, preclusion periods also provide for the additional obligation to assert claims in court within a further period. The time limits in collective agreements are usually one month to three months. Exclusion periods of less than three months are not permitted in employment contracts pre-formulated by the employer. In your own interest, you should always assert your claims in due form within the preclusion periods.

If your employer does not fulfil your outstanding claims despite the demand letter, the claims can be asserted by way of dunning proceedings or legal action. In the case of exclusively financial claims arising from the employment relationship, the labour court dunning procedure

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can be used, which is carried out purely in writing with the help of a form available in bookshops and without a court hearing.

Frequently occurring cases (calculation examples):

In principle, it is necessary that the amount of the claim and its composition are evident in the complaint. The following are examples of calculations for the most common cases.

Proportionate monthly remuneration:

If the employment relationship is terminated within one month, the monthly remuneration shall be calculated on a pro rata basis for the month.

For this purpose, the normal monthly remuneration is divided by the number of working days in this month. The resulting daily remuneration multiplied by the number of days worked gives the monthly remuneration.

$$\text{Renumeration} = \frac{\text{EUR (regular monthly pay)}}{\text{(Workdays in last month)}} \times \text{(Workdays untill end of contract)}$$

Compensation for holidays:

If leave can no longer be granted in whole or in part due to the termination of the employment relationship, it must be compensated. Compensation for leave can only be claimed when the employment relationship has also ended; the leave can therefore no longer be granted as paid time off. The calculation of the daily gross remuneration of a day of leave is based on the last three months' remuneration divided by the number of working days in this thirteen-week period. Then the daily gross is multiplied by the outstanding days of leave.

Daily gross for 1 day of holiday =
$$\frac{3 \times \text{monthly pay}}{13 \text{ (Weeks)} \times \text{Workdays per week}}$$
 (Divided by)

Overtime pay (pay for unpaid hours):

In order to file a lawsuit, a detailed list of the overtime hours you have worked must be presented. The court must be shown how the number of overtime hours is made up.

If no hourly remuneration has been agreed, it is calculated by dividing the monthly remuneration by the monthly working hours. If weekly working hours have been agreed, they must be multiplied by 4.33, as in the formula.

Daily gross for 1 hour (Hourly wage) = $\frac{\text{EUR (monthly pay)}}{4.33 \text{ (weeks in month)} \times \text{(workhours per week)}}$