

Self-disclosure of Torsten Weigel regarding Entrepreneurship

Status of service provider	Criteria	Review process	Legal basis	Jurisdiction	Possible consequences	Self-disclosure Torsten Weigel
Self-employed entrepreneur ✓	<ul style="list-style-type: none"> - Entrepreneurial market presence and business premises. - Offers knowledge for a certain period of time. - Has freely negotiated financial conditions. - Can refuse customer service requests and conditions. - Determines the time and place of service provision. - No time recording at the customer. - No involvement in organizational processes and structure at the customer. - Not entitled in employee discounts. - Used own capital for required investments. - Has own employees. - Faces entrepreneurial risk. - Finances own training courses and certifications. - Maintains contacts to various clients in the market. - Has a higher rate compared to an employee. 					<p>I have been working as an external consultant, project manager and business expert for my customers since 1993. The mentioned characteristics of the self-employed entrepreneur completely apply.</p> <p>The services are provided without being integrated into the organizational and process structure of the respective client. Agreed consulting services are provided free of instructions and are based on the current state of science and technology.</p> <p>The place of performance is determined by me as the service provider, taking into account legitimate client and project interests.</p>
Employee-like self-employed ("Arbeitnehmerähnlicher Selbständiger")	<p>The German Federal Pension Insurance (DRB = Deutsche Rentenversicherung Bund) determines, that a self-employed person is required to have pension insurance if the following two requirements are met:</p> <ul style="list-style-type: none"> - more than 5/6 of the annual turnover is realized with only one customer and - the self-employed does not regularly employ an employee with subject to social insurance 	<p>Examination and determination of the status of employee-like self-employed is carried out by the German Federal Pension Insurance (DRB), the tax auditors or, if necessary, by the German customs.</p>	<p>§2 Sentence 1 Nr. 9 SGB VI</p>	<p>Social Courts</p>	<p>There is compulsory pension insurance for the self-employed for a retroactive period of up to 4 years (max. 30 TEUR).</p> <p>Affected from the risk of such additional payment to the German Federal Pension Insurance (DRB) is always the "Employee-like self-employed" himself, but not the customer.</p>	<p>I'm not an employee-like self-employed person, because for commercial and administrative activities in the company I have an employee with subject to social security contributions since many years.</p> <p>Furthermore I pay as entrepreneur on a voluntary basis the maximum contributions to the statutory pension insurance.</p>
Temporary employment (ANÜ = Arbeitnehmerüberlassung)	<p>Temporary employment (ANÜ) is another term for temporary work or agency work. With this form of employment there is a temporary employment relationship.</p> <p>The employment contract and the provision of the work are different:</p> <ul style="list-style-type: none"> - The employment contract exists with the lender, but the work is performed by the employee for the borrower (end customer). - The employer (temporary employment agency) is the lender and, on the basis of his temporary employment agency, leaves the employee to the hirer. Such a contract must be declared as temporary employment right from the start. The leasing company needs a valid license for temporary employment. - The employee is integrated into the organization of the hirer and receives his work instructions there. 	<p>A distinction is made between concealed and unauthorized temporary employment:</p> <ul style="list-style-type: none"> - concealed means that there is a license for temporary employment, but the loan has not been declared as such in the contract - In the case of unauthorized temporary employment, the lender does not have a valid license for temporary employment. <p>A concealed or unauthorized temporary employment can be determined retrospectively if the person who performs the work (contractor) files a status suit with the labor court. Alternatively, the works council can initiate a decision procedure at the labor court.</p>	<p>§611 and 611a BGB</p>	<p>Labor and Civil Courts</p>	<p>After 9 months, the employee is entitled to the same payment as a permanent employee of the hirer within the framework of the temporary employment agreement.</p> <p>The maximum allowed loan period is 18 months. If this maximum duration is exceeded, an unlimited employment relationship is automatically created with the borrower.</p> <p>If the provision of the service has not been agreed as temporary employment, both freelancers and self-employed persons as well as permanent employees of consulting companies who are subject to social security contributions can submit an ANÜ status declaratory action for concealed or unauthorized temporary employment to the labor court. As a result, this can lead to an employment contract with the end customer. The decisive factor is the judge's assessment of whether the plaintiff is involved in the operational process and organizational structure of the end customer and performs typical activities of an employee who is bound by instructions.</p>	<p>Basically I do not take any project assignments on a temporary employment basis (ANÜ).</p> <p>The services are provided without being integrated into the organizational and process structure of the respective client. Agreed consulting services are provided free of instructions and are based on the current state of science and technology.</p> <p>There is absolutely no risk of an ANÜ status declaratory action for my customers triggered by me, because in such event my self-employment would be reversed, and I would have to reimburse the difference between the normal market salary of a comparable permanent employee and the invoiced amounts I have billed back to the client (in accordance with §§ 812 ff.BGB).</p> <p>As you can see, this would be a very expensive option for me that does not make sense.</p>
Pseudo self-employed ("Scheinselbständiger")	<ul style="list-style-type: none"> - The self-employed person has no corporate market presence or business premises. - No recognizable entrepreneurial activity on the market. - Unusually low fee compared to the market. - Binding of instructions and integration into the operational process and organizational structure of the client. - Fixed place of work and working hours on the client's premises. - Fixed vacation regulations specified by the client. - Approval requirements for activities with other clients. - No own capital investments. - No own employees. - No entrepreneurial risk. - The client bears the costs for trainings and certifications. - The client has employees with a comparable knowledge, experience and job description as the service provider. - The self-employed person previously worked for the client as his employee. 	<p>Examination and determination of pseudo self-employment will be carried out by the German Federal Pension Insurance (DRB).</p> <p>It is an order-related status determination procedure:</p> <ul style="list-style-type: none"> - Formular V0027: Determination of the social security status - Formular C0031: Description of the contractual relationship <p>As an alternative to the German Federal Pension Insurance, the status determination procedure can also be initiated by an tax auditor or German customs.</p>	<p>§7 and 7a SGB IV</p>	<p>Social Courts</p>	<p>If pseudo self-employment is determined, there is retroactive social security obligation for the respective contractual relationship.</p> <p>In this case, the client (direct contractual partner of the self-employed) pays the entire social security contributions retrospectively for up to 4 years. In the case of intent, this period can be extended to up to 30 years.</p> <p>There is no automatic mechanism that in this case the self-employed also becomes an employee.</p>	<p>Commissioning my services as a consultant, project manager and specialist in customer projects does not involve any risk of pseudo self-employment for my clients. I demonstrably meet all relevant entrepreneurial characteristics and have been running my business in the present form since 1993.</p> <p>I regularly receive project inquiries from the financial industry and have an established network of project brokers, end customers and consulting companies in the financial industry.</p>