

Labour Inspection Country Profile: Federal Republic of Germany

Labour Inspection Structure and Organization

Name of institution that manages work issues

Federal level: the [Federal Ministry of Labour and Social Affairs](#) manages labour issues. This covers industrial relations, social security, employment and vocational training, occupational safety and health and labour standards.

State level ("Land"): The **ministries entrusted with a labour/social affairs portfolio** are entrusted with the implementation/ enforcement of federal laws and policies in the field of labour at State level.

Department(s)/ structure responsible for Labour Inspection

Germany is a federal State: The enforcement and implementation of federal laws, including labour and OSH laws falls within the ambit of the **sixteen federated States** ("Länder"- see art. 83, German Constitution) whereas the federal level is entrusted with legislative and policy competencies in the field of labour law, including occupational safety and health (art. 74, para 1 Nr. 12, German Constitution).

At federal level, the **Department of Labour Law and Labour Protection** (department III) within the Federal Ministry of Labour and Social Affairs is responsible for the preparation of labour and occupational safety and health legislation and for the development of a national policy in this field. It furthermore collects and publishes labour related statistics.

The federated States ("Länder") are responsible for the implementation of federal laws, including federal social and labour laws. They are free to choose the administrative structure of their enforcement systems. The organisational set up of labour inspection varies therefore from one federated State to another.

Currently, labour inspection services are either part of the general administrative structure of a "Land" or set up as an independent agency. They operate under the supervision of the competent Ministry within the "Länder" as central authority, which is mostly the Ministry entrusted with a labour and social affairs portfolio.

In addition, the supervisory services of the **accident insurance bodies** also monitor labour protection.

Accident insurance bodies are self-governed, financially and administratively independent statutory insurance bodies subject to State supervision: According to the Social Code (book 7), the accident insurance bodies are responsible for preventing accidents and occupational diseases. This responsibility includes also the right to enact prevention and protection bylaws with which the employers have to comply. Employers are by law held to affiliate and to pay contributions. The accident insurance bodies are organised in three main groups, and each group is associated in an umbrella association which fulfils a coordination and support function: Industry is covered by the industrial employers' liability insurance associations and the public sector by the public sector accident insurance bodies. Both are part of the umbrella association "German Social Accident Insurance" ("Deutsche Gesetzliche Unfallversicherung"-<http://www.dguv.de>). Agriculture is covered by the agricultural employers' liability insurance associations, which are part of the "[Agricultural Social Accident Insurance](#)" ("landwirtschaftliche Sozialversicherung").

The insurance bodies have supervisory staff in order to enforce and implement the mentioned prevention activities and rules. It advises employers and employees, carries out labour inspection and performs labour protection activities in companies. This staff disposes of the same rights, duties and functions as State labour inspectors.

In some cases, "Länder" have delegated their enforcement powers to the accident insurance bodies entrusting them with the enforcement of the federal labour protection law in specific sectors. This means that those insurance bodies enforce those laws in addition to performing their own competencies and monitoring their own prevention bylaws. Such a delegation of enforcement powers took for instance place as workplaces in the agricultural sector are concerned.

The Federal Ministry of Labour and Social Affairs at federal level supervises the accident insurance bodies and its umbrella organisations.

Within the States ("Länder") supervision of labour inspection services is ensured by the respective Ministries with a labour and social affairs portfolio. In some States the responsibility for human resources resides with a Ministry distinct from that ensuring the technical supervision, and in these cases it is that Ministry which supervises labour inspection services in relation to human resources questions. Moreover, the Ministries with a labour portfolio at State level also coordinate the work with the regional accident insurance bodies and ensure the supervision of the accident insurance bodies at State level.

Law that covers organization and functional composition

Social Code, Seventh Book – Accident Insurance, as amended up to 2011 ("Sozialgesetzbuch VII"), Labour Protection Act of 7 August 1996 and its ordinances ("Arbeitsschutzgesetz"),

Act on the Federal Civil Service of 5 February 2009, as amended up to 2011 ("Bundesbeamtengesetz"), Acts on Civil Service at State level ("Landesbeamtengesetze").

Scope of labour inspection

Labour inspection in Germany at State level generally covers enforcement of occupational safety and health laws in relation to work places in the private and public sector. This also includes the control of OSH organisation in enterprises and the investigation into work related accidents and diseases. In addition, Labour inspectorates control legislation relating to working time, maternity protection, child labour, protection of adolescent workers and home work. Moreover, they control technical safety of machinery and check the safety and health related aspects of new factory premises and installations within licensing procedures. Regularly labour inspection services play a role in consumer protection performing market surveillance in accordance with EU rules. In addition, in some States labour inspection services might also play a role in environmental protection and environmental hazard management.

Labour inspectors do not enforce provisions of collective agreements, and they do not enforce legislation in relation to social security and employment contracts, such as the payment of wages or dismissal.

Railways, nuclear stations, workplaces in the military services and on offshore installations are not subject to the control of the general labour inspection service. There is a particular inspection service for mining.

Workplaces in the public administration are likewise covered by a particular labour inspection service.

Supervisory staff under the accident insurance bodies only enforces occupational safety and health laws and the prevention bylaws of the accident insurance bodies unless further powers have been delegated to them (see above). In addition, they play a strong preventative role. See details below under “preventative activities”.

Local divisions

The “Länder” – federal States- fund, direct, organize and manage their own State labour inspectorates, running them as either independent agencies with a separate field structure or as part of the general State administration, which includes regional and local offices. During the last years, in a lot of States labour inspectorates, which formerly operated as a separate structure, have been reintegrated into the common administrative structure.

In the sixteen “Länder” there are approximately 3600 staff members.

The accident insurance bodies also have a regional structure, consisting of regional accident insurance associations.

Programming and communication

Labour inspection targets and objectives are set at federal level, within the Joint German OSH Strategy, and at the level of each State, in a coordinated manner. Increased cooperation and orchestration of inspection priorities takes also place with the accident insurance bodies.

Joint German OSH Strategy

Ministries of the States with a labour portfolio, representatives of the accident insurance bodies and of the Federal Ministry of Labour and Social Affairs meet yearly in the National Labour Protection Conference in order to coordinate different OSH matters and policies. In 2007, the Conference decided on the implementation of the Joint German OSH Strategy (“gemeinsame deutsche Arbeitsschutzstrategie”), which targets an improved collaboration and coordination between the accident insurance bodies, the federal level, and the States in labour protection matters under participation of social partners: The strategy includes the definition of common labour protection objectives and priority areas of enforcement and their consistent implementation within common five- year work programmes, the evaluation of those objectives and work programmes and the agreement on an orchestrated enforcement strategy between State labour inspectorates and accident insurance bodies.

The National Labour Protection Conference elaborates, implements and evaluates the Joint German OSH Strategy at national level, monitoring the implementation of the work programmes.

In order to allow for experience exchange, an OSH platform is organized on a yearly basis, which has been serving as an advisory council to the National OSH Conference. It comprises representatives of social partners, research institutes and professional associations.

Coordination within LASI

To coordinate day to day activities in the different fields of social policy between the federal States, specified committees were created, such as the Federal States Committee for Occupational Safety and Health (LASI). LASI coordinates labour inspection policies of the States (“Länder”) and discusses all issues of occupational safety and health, occupational medicine and labour law. Labour inspection objectives and targets at the level of the States are mutually communicated and convened within this committee with a two third majority. Common inspection objectives lead to the elaboration of LASI guidelines in order to support and harmonize the objectives jointly set.

LASI also plays a coordination role in relation to the implementation of the objectives which were set within the Joint German OSH strategy.

Within the Joint German OSH Strategy the States are obliged to dedicate approximately ten percent of their personal resources for the implementation of the objectives set within the Strategy. The remaining ninety percent are used for the fulfilment of State specific labour inspection targets.

In order to implement the inspection targets set at the level of the State, which may be either State specific or in relation with the Joint German OSH Strategy, memoranda of understanding or performance agreements may be concluded between the respective central authority in a State, which is in most cases the ministry with a labour portfolio, and the subordinated labour inspection services, which contains inspection objectives and targets to be met. Through reporting obligations the central authority tracks the fulfilment of the memorandum of understanding.

Cooperation between States and accident insurance bodies

In order to implement inspection targets set at the level of the “Land”, the ministries with a labour portfolio of a “Land” conclude written agreements with the accident insurance bodies on the fulfilment of specified inspection objectives and targets. Through reporting the central authority keeps track of the fulfilment of the agreed objectives and targets.

Agreements are also being concluded between the Ministries of Labour of the “Länder” and the regional accident insurance bodies in these States in order to shape common work programmes according to the objectives agreed in the National Labour Protection Conference and to perform a joint evaluation of those programmes, the results of which would be submitted to the National Labour Protection Conference. Moreover, the agreements provide for a mutual obligation of data and information exchange on enterprise data, on dates for planned and conducted visits as well as on their results via a joint computer based data and information system, and the obligation of an immediate mutual information in case of fatal and serious accidents. See below under “registries” for more details.

Current reforms

During the last years, within the restructuration of the administration in a majority of “Länder”, formerly independent labour inspectorates were integrated into the general State administration in order to save staff costs.

This process is being criticized as in some cases staff responsibility is with the Ministry of Internal Affairs of one “Land” whereas the technical supervision is done by the competent Ministry of Labour of a “Land”.

Human Resources and career development

Permanency of inspectors

Labour inspectors are appointed public servants of the “Land” concerned. As German civil servants they enjoy stability of employment. There is no contract staff. The supervisory staff of the State insurance bodies has a similar status.

Career plan and development, human resources strategy might differ from one State to another, as this is part of the State competencies. However, within LASI, a frame training plan for the theoretical education of future labour inspectors was agreed upon between the States. It includes the subjects and number of training hours which each training plan at State level should include, notably EU, administrative and constitutional law, occupational safety and health, dangerous substances, labour protection including vulnerable group of workers and working time; new technologies. Negotiation skills are also part of the training plan, but could be focused more. This framework agreement is not legally binding, but in practice it is followed and implemented. It is concluded for a period of appr. eight years and reviewed afterwards.

The Eastern member States have coordinated their education for labour inspectors in a more closely manner, providing for instance joint training to their future labour inspectors.

Tools of new public management, such as performance agreements or performance pay, have not been introduced into the public service, the labour inspection services included. They are also seen in a critical manner.

Selection process

Each “Land” recruits its own inspectors, appointing them to the posts as civil servant of the “Land”, following its own human resources strategy. Future labour inspectors are, during their initial two years education, either employed or appointed as public servants on probation.

During two years of their education, newly appointed inspectors follow theoretical training, which covers the subjects provided for in the LASI framework agreement, and practical training, accompanying senior colleagues during inspections visits. After one year, they carry out labour inspections alone.

The practical part of the education and the final examination are organized in a free manner by each country, and experience on this subject is shared. Likewise, members of the selection panels are exchanged in order to guarantee objectivity in the selection process. However, the basic lines of the final examination are often similar: After the two years of education, the apprentice labour inspectors have to undergo a written examination, an oral examination in front of a selection panel, and have to carry out a labour inspection visit as a practical component of the final exam. Having passed, apprentice labour inspectors are appointed as public servants to the position of labour inspector.

New labour inspectors start their career in an inspection office, the promotion is possible to the position of the director of a labour inspection office or an inspection branch/ department. It is also possible to continue the career within the Ministry which ensures the supervision of the labour inspection field structure, as the career path in the field ends with the position A 16.

In order to exchange experience, mutual internships are organized between State labour inspectorates and accident insurance bodies. Moreover, sometimes joint vocational training sessions are organized for the supervisory staff of both bodies.

Background required

Future State labour inspectors are, depending on their level of previous education, appointed to the middle grades (A 10/11) (education with a vocational diploma and first professional experience) or the higher grades (university degree in a technical/engineering discipline and first professional experience) (A 13) of the public service. Increasingly, also candidates with a non-technical education profile are recruited, in order to address new topics such as psychological phenomena at the work place.

Visits and functions

Types of visits

Labour inspectors conduct routine visits, they conduct visits within the investigation of occupational accidents and diseases, and complaint based visits. Visits may also be conducted to look into specific aspects of safety and health or areas of high risk, such as safety on construction sites or the protection of young workers.

In the event of fatal or serious accidents, inspection visits are conducted jointly by labour inspectors and accident insurance body inspectors.

Inspection reports are drawn up after every inspection visit, detailing the health and safety situation at the workplace and suggesting points for improvement.

Within LASI, standards for an assessments and guidelines on how to conduct quality labour inspections are being elaborated.

Role of preventive measures

Labour inspectorates are involved in the approval process when new installations and premises are planned and notified to the authorities.

Both, State inspectorates and accident insurance bodies produce advisory and guidance material, and both cooperate to avoid a duplication of work in this regard. Accident insurance bodies issue accident prevention regulations for specific work equipment and hazards and provide for information material on their websites. State insurance bodies offer training for employers, for instance on risk assessment, and conduct specific information campaigns on particular topics. Moreover, State insurance bodies are obliged by law to train personal which is entrusted with OSH functions in an enterprise, such as safety representatives, safety engineers etc.

Programming

Routine inspection visits are scheduled in function of the size of the establishment, its accident record and the type of risks involved. Large establishments are visited once a year, smaller premises receive visits at longer intervals.

Registries and reporting of accidents/diseases at work

In the federal Republic of Germany, most States use the so called "Information System for Industrial Safety" (IFAS). This is a registry which contains information on location and number of enterprises, number of employees. Moreover it includes data on premises, approvals and labour inspection notices issued, which are displayed in function of legal areas concerned. The system is used to back up enforcement activities, to generate statistics for the annual inspection report and to exploit enterprise related statistics for other purposes. Some countries likewise integrate a classification of OSH management in enterprises in order to plan inspection activities in function of the grade attributed.

The system contains in addition specialized module registries on homework, market surveillance and consumer protection.

Within a pilot it had been planned to have a computerized joint data exchange within the cooperation between the labour inspectorates at the level of the "Länder" and the regional State insurance bodies on enterprises and inspection results. Actually, data protection rules only allow for a change of rough data (enterprise details and date of inspection visit). However, in 2011/2012, a new data storing system which complies with data protection rules and which allows for the query of data from everywhere within Germany (specific enterprise related data and data on inspection results) should go into operation. This would allow to eliminate double inspection. It is actually being approved by the ombudsmen for data protection at the level of the States.

Accidents and occupational diseases have to be reported to both the competent accident insurance body at State level (article 193, Social code, Book VII) and the competent labour inspectorate at State level.

Sanction and administrative processes

Labour inspectors may give advice, issue verbal enforcement orders or written warnings:

In case of non-compliance with certain laws relating to OSH, labour inspectors may issue improvement notices, imposing a reasonable delay for the remedial of infringements discovered, or prohibition notices. In

case of an imminent danger to health or safety of workers the labour inspectors may impose measures with immediately executory force. These measures have to be complied with immediately, and an appeal does not have a suspensive effect.

Inspectors may impose administrative fines to the employer in order to urge follow up on measures imposed (article 22, Labour Protection Act in connection with the applicable administrative enforcement law of the "Land" concerned). Those fines are by law meant to induce actions from the side of the employer but do not have a penal character.

Moreover, labour inspectors can order the stoppage of work or the prohibition of the operation of occupational equipment and devices in case of continued non-compliance with measures imposed (art. 22, Labour Protection Act).

Orders and notices of the labour inspectorate are administrative acts and may be appealed as such to the administrative courts, when the administrative internal appeal procedure has been exhausted.

Likewise, the inspectors of the accident insurance bodies are entitled to impose similar measures (article 19, social Code VII): They can order measures, also with immediate executory force in case of an imminent danger for the safety and health of workers (ibidem).

Labour inspectors can impose penalties on employers and employees (range from 5000 EUR to 25 000 EUR) in case of non-compliance with imposed measures which have immediately executory force (art. 25, Labour Protection Act). In case of reiterated non-compliance with notices imposed or of a willfully caused imminent danger for the health and life of workers for instance, the criminal sanction can also include imprisonment (art. 26, Labour Protection Act). This sanction has to be pronounced by a criminal court.

In rare cases, notably when there is a presumption of a criminal offence, the case is passed on to the public prosecutor. However, labour inspectorates are very rarely informed of the follow up given by the latter.

In some "Länder" meetings for information exchange are organized between public prosecution services and labour inspectors.

Social dialogue and labour inspection

State inspectors and insurance inspectors of the accident insurance bodies work with the work councils, involving its members into inspection visits and sending them copies of enforcement notices and inspection reports with the inspection outcome.

Employers are obliged to appoint safety representatives, who also serve as contact persons for labour inspectors and accident insurance inspectors.

As already described above, social partners are represented within the annual OSH conference and have thus a say as to the strategic objectives within the OSH Strategy to be met.

In addition, social partners are represented in the governing bodies of the accident insurance bodies.

There are a couple of advisory committees to the Federal Ministry of Labour and Social Affairs in the field of OSH, in which social partners are represented.

Moreover, specialist committees are set up under the accident insurance bodies, in which insurance inspectors, members the Federal Ministry of Labour and Social Affairs and social partners' representatives take part. Those committees prepare draft bylaws for the prevention of accidents, which are later submitted to the Federal Ministry of Labour and Social Affairs for approval. Moreover, they comment on labour protection questions.

ILO Conventions ratified

The Federal Republic of Germany has ratified ILO Conventions No. 81(14 June 1955) and No. 129 (26 September 1979). It has likewise ratified ILO Convention No. 150 (26 February 1981).