

7 Work

7.1 Working in the partner's business

Family members and cohabitants often work in the partner's business. In the absence of a clear agreement, it is often unclear whether an employment relationship exists or whether the rules of simple partnership apply. If one partner works in the other's business free of charge and both partners work towards the goal of economic success, company law is applicable, which states, that the collaborating partner will be entitled to a share of the profits.

However, it is also possible that the collaborating partner is both a partner and an employee at the same time, so that there would be claims to compensation according to the employment contract and to a share of the profits.

In any case, it should be clarified in advance whether an employment relationship (subject to social security contributions) or another legal relationship (dormant partnership, employment contract, freelance contract, etc.) is being established, to avoid coming away completely empty-handed in the event of separation.

7.2 Household work for the partner

Basically, there is no entitlement to compensation for services in the partner's household. It can be assumed that the partner living in the other's household who exclusively manages the household and mainly receives benefits in kind (board, lodging, possibly household allowance) for this, is not considered employed under social security law, since the benefits received are not considered wages. No payment is expected and the relationship of instruction and subordination, typical of employment relationships, is lacking, an employment contract is generally not to be assumed.

The situation is different, if both partners clearly agree that the services in the partner's household are work services and are to be paid accordingly.

If one partner forgoes any employment in favor of household management and childcare, if necessary, and the other partner provides for the full subsistence of the partner running the household (and the child) for the duration of the cohabitation, then both partners have contributed to the economic success of the community and were dependent on the contribution of the other. This means that whoever has contributed to the other partner's income and wealth creation through their work should share in the community's gain. That domestic and care work should be treated the same as work in the partner's business, is required for reasons of legal equality.