



## Employment of foreigners in Austria

The gainful employment of foreigners in Austria is regulated under the Employment of Foreign Nationals Act.

In principle an employer may only employ foreigners if they themselves do not require a permit, if they hold an appropriate right of access to the labour market (e.g. "work permit" (Arbeitserlaubnis), "exemption certificate" (Befreiungsschein), "confirmation of free movement" (Freizügigkeitsbestätigung), residence title "Red-White-Red Card plus" or "long-term resident EC" (Daueraufenthalt-EG, etc.) or if a permit for the intended occupation has been granted by the Public Employment Service Austria (AMS).

### **Who is excluded from the Employment of Foreign Nationals Act?**

- Spouses<sup>1</sup> and minor, unmarried children (including adopted children and stepchildren) of Austrians, if they are entitled to settle in Austria.
- EEA citizens / Swiss citizens and their family members<sup>2</sup> enjoying freedom of movement for workers according to the Directive on Free Movement.
- Persons who were granted the status of being eligible to asylum (convention refugee) or who hold the status of being eligible to subsidiary protection.
- Persons due to their occupation as scientists and researchers or as special executives as well as their spouses<sup>1</sup> and children.
- Other special occupational groups (e.g. diplomats, correspondents of foreign media, spiritual advisers of acknowledged religious communities, etc.)
- Certain occupations requiring full compulsory social insurance (e.g. nurses in private homes, distributors of advertising material and deliverers of daily newspapers or periodical publications), if they are performed by citizens from Bulgaria or Romania.
- Certain notifiable, temporary occupations which are primarily performed by young people (voluntary work, summer internships, au-pair jobs, etc.)

The above mentioned groups of persons or occupations are exempt from the Employment of Foreign Nationals Act and, therefore, do not require any permit when taking up employment. With the exception of notifiable occupations, the AMS can issue a confirmation of exception (Ausnahmebestätigung) on demand. Although this confirmation is not necessary for taking up employment, we recommend to apply for it as many employers ask for it at the moment of recruitment.

#### **Notes:**

1. The provisions on spouses in this law also apply to registered partners.
2. Family members (regardless of their nationality) are spouses (also registered partners), legitimate or illegitimate children (including stepchildren and adopted children) if they have not yet reached the age of 21 or if they are still provided maintenance as well as parents and parents-in-law as long as they are provided maintenance.
3. The Directive on Free Movement does not only apply to all 27 EU states but also to Iceland, Liechtenstein, Norway and Switzerland. For Bulgaria and Romania the transition rules remain unchanged and in force. In general workers from these states may, therefore, not yet be employed without permit, if they are not family members of EEA-citizens / Swiss citizens or Austrian citizens.

Also Austrians can benefit from the Directive for their family members if they themselves lived in one of those countries for more than three months in accordance with the Directive and then returned to Austria.

## Which residence titles grant free access to the labour market?

Foreigners who possess a residence title

- “long-term resident – EC” (Daueraufenthalt-EG) or
- “Red-White-Red Card plus”

are entitled to take up gainful employment within the entire federal territory and do not need any additional permit.

The following residence titles which have been issued up to now and are still valid also grant free access to the labour market:

- “settlement permit – unrestricted” (Niederlassungsbewilligung – unbeschränkt) or
- “proof of settlement” (Niederlassungsnachweis) or
- any unlimited residence title

## Who has a right to an “exemption certificate” (Befreiungsschein) ?

(validity period 5 years, employment is possible throughout Austria)

Preconditions:

Legal settlement in Austria AND

1. 5 years of legal employment during the past 8 years OR
2. Completion of the last full school year prior to the end of compulsory education in Austria, if at least one settled parent has been employed for at least 3 years during the past 5 years (In the event of death the 3-year occupation is not necessary) OR
3. Nationals of third countries who were among others up to now excluded from the Employment of Foreign Nationals Act as family members of an Austrian or EEA citizen and who have lost their capacity as family members for various reasons (e.g. divorce, majority, falling away of subsistence etc.) OR
4. Spouses<sup>4</sup> or unmarried, minor children of a person who is entitled to an exemption certificate if they have been settled for at least twelve months.

Exemption certificates are renewed if the foreigner is settled and may prove 2½ years of employment during the past 5 years or if he/she continues to fulfil the above mentioned preconditions.

## Who has a right to a “work permit” (Arbeitserlaubnis)?

(validity period 2 years, employment only possible in a certain federal state)

Preconditions:

Legal settlement in Austria AND

1. 12 months of legal employment during the past 14 months OR
2. Spouse<sup>4</sup> or unmarried, minor children of a person entitled to a work permit who have been settled for at least twelve months.

Work permits are renewed if the foreigner is settled and may prove 18 months of employment during the past 24 months or if he/she continues to fulfil the above mentioned preconditions.

## **For whom may an employer obtain an “employment permit” (Beschäftigungsbewilligung)?**

(validity period maximum 1 year, only valid for a certain company/occupation)

If the foreigners themselves are not entitled to access the labour market, the employer may apply for an employment permit for the respective person at the regional office of the Public Employment Service.

The foreigner has to hold a residence right appropriate for taking up employment. Wage and working conditions as well as the provisions of social insurance laws have to be complied with. In the course of the application older employees must not be dismissed or refused during the recruitment process. There must not be any repeated offences due to illegal employment during the previous twelve months, either.

If the application for an employment permit is filed at the Public Employment Service (AMS), it has to be examined first whether the job vacancy which is to be occupied might be occupied by another suitable unemployed person. If the AMS itself has an appropriate person for the respective vacancy, who is receiving benefits, the placement of this person will be given priority. In such cases an employment permit can only be granted if the AMS can not find an appropriate person for the respective vacancy. Due to this labour market test, many applications for employment permits are rejected. This labour market test, however, is not necessary for certain groups of persons (e.g. foreigners enjoying special protection, pupils and students for an occupation up to a certain number of weekly working hours, registered foreigners with limited employment, artists, etc.)

Only a certain number of employment permits may be granted per year. The following persons are preferred in the granting process:

- legally settled foreigners who are affected by violence in the family, if they can no longer reasonably be expected to live together and certain preconditions are at hand;
- foreigners enjoying special protection according to § 69a NAG;
- foreigners who are integrated in an advanced way;
- pupils and students for an occupation up to a certain number of weekly working hours;
- legally settled foreign teenagers;
- skilled workers from Bulgaria and Romania for employment in the health care and nursing sector or for occupations listed in the exceeding regulations for skilled workers (Fachkräfteüberziehungsverordnung);
- foreigners who are to be employed in a limited way (quota permit);
- gainfully employed artists;
- job-rotation workers (Rotationskräfte);
- employees on secondment (Betriebsentsandte);
- etc.

The employment permit is extended if the employer has filed an application for extension in due time and the preconditions for granting the same still exist. This permit is bound to a workplace and ceases to be valid if the employment does no longer exist.

**Contingencies for foreigners that are employed for a short time**  
(validity period maximum 9 months, only valid for a certain company/occupation)

In order to meet a temporary, additional demand in manpower, the **Federal Ministry of Labour, Social Affairs and Consumer Protection** may permit the short-term employment of foreign workers **in certain economic sectors, certain occupations or regions** by means of an ordinance. At present the permits (quota permits) within the scope of these contingencies are only granted for tourism, agriculture and forestry as well as for harvesters.

In general these permits (quota permits) are granted for a maximum of 6 months. Quota permits for harvesters are granted for a maximum of 6 weeks. If the person applied for comes from the new EU states and has been employed in this quota for the 3 previous years, a quota permit in agriculture and forestry of a maximum of 9 months can be granted in any case. Per foreigner, employment permits of a total period of only 12 months may be granted within a period of 14 months.

Employment permits for foreigners who are for the first time recruited for such occupation from abroad, may only be granted with the explicit approval of the regional advisory board (Regionalbeirat). Foreigners who already hold a residence title are preferred in the granting process.

Foreigners who were employed in a limited way, in the scope of contingencies, in the years 2006 to 2010 in the same economic sector for at least four months each may register for this economic sector at the AMS until 30.4.2012. For these registered persons permits may be granted for a maximum of 6 months but only for a total period of ten months per calendar year. When granting such quota permits, a labour market test is not necessary.

Persons who are not entitled to stay in Austria need a visa of residence and entry (visa D), if a visa is obligatory for them. They may apply for this entry permit using a confirmation of guaranteed work (Sicherungsbescheinigung), which is issued by the Employment Service to an employer, at Austrian representative authorities abroad. Persons who are allowed to enter Austria without a visa only require a no-objection certificate (Unbedenklichkeitsbescheinigung) from the aliens' police authorities.

**ATTENTION:**

Since the provisions at hand have been presented in a very abridged version, we kindly ask you to obtain detailed information from the Employment Service (AMS) or us – Beratungszentrum für Migranten und Migrantinnen. We refer to the fact that in spite of careful examination mistakes can happen therefore no guarantee for details contained in this information can be assumed.

You will also find further information on this topic in the following information sheets:

- **EU Enlargement – Labour Market Access and Right of Residence**
- **Criteria-guided immigration of qualified workers**

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