



## Employment of foreigners in Austria<sup>1</sup>

Dependent employment of foreigners in Austria is regulated under the Act Governing the Employment of Foreign Nationals (Ausländerbeschäftigungsgesetz).

In principle an employer may only employ foreigners if for the employees themselves there is no permit required, if they hold an appropriate right of access to the labour market (e.g. “confirmation of free movement” (residence title “Red-White-Red Card plus” or “Daueraufenthalt-EU”, etc.) or if a permit or a confirmation of notification (Anzeigebestätigung) for the intended occupation has been received by the Public Employment Service Austria (AMS).

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

- Spouses and unmarried children minor of age (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> who enjoy freedom of movement under a legal act of the European Union<sup>3</sup>.
- British citizens<sup>4</sup> and their family members, who have the legal residency according to the Union law until the 31.12.2020 and who have the permission to stay in Austria (even reunified family members who immigrate after the 31.12.2020 and also later adopted children and children who are born after this date).
- Foreign nationals who have been admitted for asylum (convention refugee) or who have been granted subsidiary protection status.
- Foreign nationals regarding their scientific work in research and teaching (including the teaching of art), as well as their spouses and children.
- Teachers in certain international schools, language teachers and assistants, students or graduates within the scope of international agreements and exchange programs.
- Other special occupational groups (e.g. diplomats, correspondents of foreign media, spiritual advisers of acknowledged religious communities, etc.)
- Asylum seekers, whose asylum procedure has been approved since at least 3 months, regarding simple services in private households according to § 1.1 Supply of Services Act (Dienstleistungsgesetz)
- Displaced persons according to § 62 AsylG which have an identity card for displaced persons.

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

#### Notes:

- (1) Because of the shortness of the information sheet, only the most common permission types and groups of people are explained. 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 “EU- Arbeitnehmerfreizügigkeit” does apply to all EU states and also to Iceland, Liechtenstein, Norway and Switzerland. As well Austrians can benefit for their family members if they have been lived in one of those countries for more than three months in accordance with the guideline and has returned to Austria.
- (4) In the future British citizens and their family members (mentioned above and in Point 2) need a special settlement permit “Art. 50 EUV” for their legal right to stay.

## **Which residence titles<sup>5</sup> grant free access to the labour market?**

Foreigners who possess a residence title

- “long-term resident – EU” (Daueraufenthalt-EU) or
- “Red-White-Red Card plus” (Rot-Weiß-Rot Karte Plus) or
- “family member“ (Familienangehöriger) or
- “residence permit plus” (Aufenthaltsberechtigung 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:

- “long-term resident – EC” (Daueraufenthalt-EG)
- “long-term resident - family member” (Daueraufenthalt – Familienangehöriger)
- “proof of settlement” (Niederlassungsnachweis)
- any unlimited residence title

### **New regulations on labour market access for holders of settlement permits**

Persons holding a “settlement permit” (Niederlassungsbewilligung) or a “settlement permit - relative” „Niederlassungsbewilligung – Angehöriger“ may obtain a residence title “Red-White-Red Card plus” by means of proceedings to change the purpose of stay (Zweckänderungsverfahren) if they

1. have legally settled in the federal territory for 2 years and are integrated in an advanced way or
2. hold a valid work permit or a valid exemption certificate (Befreiungsschein)
3. are the spouse, registered partner or minor, unmarried child (including step- or adopted child) of a foreigner according to point 1 or 2 and have already settled legally in the federal territory for twelve months.

Particularly reunified family members are considered “persons who are integrated in an advanced way” who have completed Module I of the Integration Agreement. Victims of violence in the family do not require a 2-years’ period of legal settlement if they have to take up employment in order to secure an independent life.

After the 1.1.2014 basically<sup>6</sup> no working allowance, exemption certificate or employment permit is issued to this certain group of people. Because of this reason it is recommended to switch to the residence permit Red-White-Red card plus as long you fulfil the certain granting prerequisites.

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#### **Notes:**

- (5) Certain family members with the residence title “Red-White-Red Card plus”, “family member” or “long-term resident – EU” are exempt from the Employment of Foreign Nationals Act. The access to employment included in these residence titles only applies if the exemption does no longer exist due to the end of family relation.
- (6) The “exemption certificate” (Befreiungsschein) or “employment permit” (Beschäftigungsbewilligung) for Turkish workers under the Association Agreement according to § 4c continues to exist. Work permits however are no longer issued.

## **How to obtain an “employment permit” (Beschäftigungsbewilligung) as an employer?**

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 cannot 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 20 working hours weekly, registered foreigners with limited employment, artists, etc.)

The amendment of the Employment of Foreign Nationals Act (as of 2014) significantly limits the group of people who may obtain an employment permit. Basically an employment permit can now only be granted to the following persons:

- pupils and students;
- foreigners who are to be employed temporarily (seasonal permit);
- posted workers (Betriebsentsandte § 18 AuslBG);
- holders of a “limited leave to remain for family members” (Aufenthaltsbewilligung - Familiengemeinschaft)
- temporarily employed artists (employment up to 6 months);
- asylum seekers with an appropriate residence permit for Austria;
- holders of a residence permit or a “residence permit - special protection” (Aufenthaltsberechtigung besonderer Schutz) (§ 54 Sec. 1 points 2 and 3 AsylG 2005);
- people formerly eligible for asylum or subsidiary protection with a “tolerated stay status” (Karte für Geduldete);
- Turkish workers under the Association Agreement according to § 4c
- etc.

The employment permit is valid up to 1 year and issued for a certain company/occupation. It can be extended if the employer has filed an application for extension in due time and the preconditions for granting the same still exist. This permit ceases to be valid if the employment does not start within 6 weeks after the permit is issued or the employment does no longer exist.

## Important occupations that demand a notification

The Employment of foreign nationals as voluntary trainees, summer trainees or interns according to the EU-directive (2016/801), does not require a working permit, but only a confirmation of notification (*Anzeigebestätigung*).

Voluntary trainees are people who are employed for up to three month within a calendar year, exclusively for the purpose of upgrading and applying knowledge to acquire skills for practise without the obligation to work and without any entitlement to pay. Foreign nationals who do unskilled work or work on construction sites are not considered voluntary trainees.

Summer traineeships or internships are only jobs required of students attending some regular training or study course at an officially recognised domestic educational establishment (vocational training school, university of applied science, university). Many of these institutions require traineeships in addition to the theoretical formation that cannot be completed in summertime. The traineeships have to be attended during or immediately following the education.

‘Trainee’ according to the EU –directive (2016/801) means a third-country national who is pursuing a course of study in a third country that leads to a higher education degree, has accomplished a degree of higher education within the last two years and who is admitted to the territory of a Member State for a training programme for the duration of 91 to 180 days for the purpose of gaining knowledge, practice and experience in a professional environment;

Employment of these persons has to be notified by the owner of the company, not later than three weeks prior to job take-up, to the competent regional office of the public employment service (AMS) and the competent fiscal authority. The AMS hast to issue a confirmation of notification (*Anzeigebestätigung*) within two weeks. Upon expiry of this period, however, such a job may be taken up even if no confirmation has been issued by then. If after expiry of this period the AMS refuses to issue a confirmation of notification, the job already taken up hast to be discontinued without delay, however not later than one week after service of refusal.

Volunteers and trainees require a visa according to § 24 Federal Police Act (*Fremdenpolizeigesetz*) before starting the employment, in case they do not already have a residence permit.

**ATTENTION:** Since the provisions at hand have been presented in a very abridged version, we kindly ask you to obtain detailed information from competent authorities or advice centres. In spite of careful examination mistakes can happen, therefore no guarantee for details contained in this information can be assumed.

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