



## Employment of foreigners in Austria

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” (Freizügigkeitsbestätigung), the residence title “Red-White-Red Card plus” or “long-term resident EU” (Daueraufenthalt-EU), 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 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> enjoying freedom of movement for workers according to the EU Directive on Free Movement<sup>3</sup>.
- Foreign nationals who have been admitted for asylum (convention refugee) or who have been granted subsidiary protection status.
- Persons on the basis of 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 Croatia.
- 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 Act Governing the Employment of Foreign Nationals and, therefore, do not require any permit when taking up employment. With the exception of notifiable occupations, 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.

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#### 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 28 EU states but also to Iceland, Liechtenstein, Norway and Switzerland. For Croatia the transition rules remain unchanged and in force. In general workers from Croatia 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<sup>4</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:

- “settlement permit – unrestricted” (Niederlassungsbewilligung – unbeschränkt)
- “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.

As of 1 January 2014 generally<sup>5</sup> exemption certificates or work permits are therefore no longer issued and these persons are no longer granted employment permits (Beschäftigungsbewilligungen). Already issued exemption certificates, work permits and employment permits remain valid. Nevertheless we recommend changing your residence title to “Red-White-Red Card plus” as soon as possible and as long as the mentioned prerequisites are still met.

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#### **Notes:**

- (4) Relatives of Austrians with a residence title „family member“ or „long-term resident – EU“ are exempt from the Employment of Foreign Nationals Act. The employment right included in these two residence titles only applies if the exemption does no longer exist due to the cessation of this status
- (5) 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);
- new EU citizens and their family members who are subject to the transition rules (§ 32a) and do not yet hold a “confirmation of free movement” (Freizügigkeitsbestätigung);
- 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 is bound to a workplace and ceases to be valid if the employment does no longer exist.

## Seasonal workers and harvesters

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 these permits (seasonal permits) within the scope of these quotas are only granted for tourism, agriculture and forestry as well as for harvesters.

In general, seasonal permits are granted for a maximum of 6 months. It is possible to issue the permit for the same person up to a maximum of 9 within 12 months. For seasonal workers from Croatia the permit can be issued up to 12 months within 14 months. If the seasonal worker applied for has been employed in agriculture and forestry in the previous 3 years, a seasonal permit in this sector can be granted up to maximum of 9 months. Permits for harvesters are granted for a maximum of 6 weeks.




Seasonal workers, who are already employed within the quota, may be granted additional permits (outside the quota). Foreigners who already hold a residence title or have been employed as seasonal or harvest workers at least once in the last five years are preferred in the granting process. For regular seasonal workers registered at the Public Employment Service till 30.04.2012 a labour market test (Arbeitsmarktprüfung) is not necessary.

When soliciting the application, in addition to all regular requirements the employer has to certify the existence of an appropriate accommodation for the employee, the rent cannot automatically be deducted from the salary.

Persons who are not entitled to stay in Austria need a visa before starting their employment (visa C or D). The visa is issued by the Austrian embassy after the employment permit has been granted.

**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**

<b>Männer und Frauen:</b> 1010 Wien, Hoher Markt 8/4/2 Tel: 712 56 04	<b>Frauen:</b> 1010 Wien, Marc Aurel Straße 2a/6/2/10 Tel: 982 33 08	
<a href="http://www.migrant.at">http://www.migrant.at</a> E-Mail: <a href="mailto:migrant@migrant.at">migrant@migrant.at</a>	<a href="http://www.migrant.at">http://www.migrant.at</a> E-Mail: <a href="mailto:migrantin@migrant.at">migrantin@migrant.at</a>	
<b>Gefördert aus den Mitteln des Arbeitsmarktservice Wien, Europäischen Sozialfonds und der Magistratsabteilung 17</b>		
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