

1. Who needs a work permit?

Any foreigner who is **not** in possession of a residence title that shows an addition to the effect that pursuing a gainful employment has expressly been permitted.

2. Who may obtain a work permit?

Anyone who among other things

- has been in possession of a residence title for specific purposes (Aufenthaltsgestattung) for one year
- has been in possession of an exceptional leave to remain (Duldung) for one year
- during the course of the past year was first in possession of a residence title for specific purposes and then of an exceptional leave to remain
- is in possession of a residence permit according to article 25 section 3 to 5 of German residence act or according to article 23a of German residence act.

3. What do people need a work permit for?

- for any non-independent work in an employment relationship
- for company-based vocational training and traineeships

4. Who will grant a work permit?

The work permit must be **applied for by the foreigner** at the **Aliens Registration Office** (Ausländerbehörde) that is in charge of him. This authority may also determine the duration, the nature of the professional activity and the limitation to one company. In case there are special circumstances (cf. 6b, 7b), those must be mentioned when the application is being made.

5. What will the Aliens Registration Office examine?

If the applicant is in possession of an **exceptional leave to remain**, the Aliens Registration Office will examine,

- whether the foreigner **cannot be deported** for reasons of which he is responsible for, e.g. if he is accused of having stated a false identity or nationality and
- whether the foreigner has entered the country in order to get benefits according to the asylum seekers' benefits act (Asylbewerberleistungsgesetz).

6. Will the Federal Employment Office (Bundesagentur für Arbeit) be involved in the decision making process by the Aliens Registration Office?

a) Rule: consent required

The Aliens Registration Office will forward the application to the Employment Agency (Agentur für Arbeit), in the district in which the place of the applied employment is situated.

They will examine the application and inform the Aliens Registration Office of the result.

The Aliens Registration Office will then either grant the work permit or issue a rejection letter.

b) Exception: no consent required

The Federal Employment Office will not take part in the decision made by the Aliens Registration Office, if

- (1) a work permit is applied for, e.g. for the following activities:
 - traineeships in the framework of the schooling, the studies and programmes funded by the EU
 - activities of highly qualified persons (scientists etc.)
 - activities of family members of the employer who are living with him
 - activities which primarily serve the person's recovery, reintegration or education (diseased or addicted persons, prisoners etc.; but not traumatized refugees, cf. 7b).
- (2) the foreigner has a residence permit and has entered the country as a minor. Employment with an employment contract also requires a school-leaving qualification or the attendance of a vocational preparation course in Germany.

7. What does the Federal Employment Office check?

In all cases, the Federal Employment Office checks whether there are reasons for the rejection and will not grant its approval if the employment contract came into being on the basis of illegal placing or recruitment.

If none of the exceptions listed under 7b) (2), points 2 and 3 apply, the foreigner is also not permitted to be employed as a temporary worker.

a) Rule: priority check and investigation of working conditions

As a rule the Federal Employment Office will investigate the following:

(1) Priority check

- (a) There must not be any negative effects on the labour market because of the employment of foreigners. This can be determined by the individual Employment Agencies on the basis of certain criteria for certain industries, e.g. by the number of unemployed persons compared to the job vacancies

and

- (b) there is no privileged employee available for the available job:

Especially Germans, nationals from EU countries and foreigners, who can pursue a gainful employment

without any legal limitations, shall be privileged. This will be examined in the following way:

The employer must prove his efforts to find a privileged employee. For this purpose he can entrust the competent Employment Agency with a job procurement order. They can propose a privileged employee for the actual job.

The employer can only reject that proposal if he has got special, objective and factually justified reasons, based on the employer's individual business interest in employing a certain foreigner.

or

- (c) apart from the depicted examination of a particular case (cf. (a) and (b)) the Federal Employment Office may determine **individual workal groups and economic sectors**, in which the employment of foreigners is generally possible without an **examination of the individual case**.

(2) Investigation of working conditions

The foreigner must not be employed under **working conditions** which are worse than those of a comparable German employee. In the process special attention will be paid on whether the legal regulations (laws on protection of employees etc.) are being observed and whether the offered wage corresponds to the standard or local wage.

b) Exception:

- (1) The Federal Employment Office is not obliged to carry out a **priority check** in the following cases:
- **Hardship provision:**
Here, the overall circumstances of the individual case shall be decisive. In case of traumatized persons the intended employment has to be part of the therapy. A case of hardship can also be assumed as a consequence of special family circumstances or because of a reduction in earning capacity.
 - continuation of an employment after one year with the same employer.
 - Victims of criminal offences who were granted a residence permit pursuant to article 25 section 4a of German residence act.
- (2) The Federal Employment Office does not carry out a **priority check or an investigation of working conditions** in the following cases; in case the general permission is given by the Employment Agency, its intervention will be renounced.
- The foreigner now has an **exceptional leave to remain** and has been residing in Germany continuously **for four years** with a residence title for specific purposes, an exceptional leave to remain or a residence permit. If the foreigner applies for a work permit for in-company vocational training, the present length of stay of one year will be sufficient.
 - The foreigner now has a **residence permit** and
 - * has carried out work liable to compulsory insurance deductions in Germany for two years or
 - * has been residing in Germany continuously for three years with a residence title for specific purposes, an exceptional leave to remain or a residence permit.

8. What can be done if the Aliens Registration Office rejects the application?

At first an objection can be made against this. If this fails to succeed legal action can be taken at the competent administrative court. In some Federal States there won't be any objection procedure, there legal action can be taken immediately. If it can be assumed that the employer would give the offered job to a different person before long, the action can be accompanied by an emergency application. This emergency application will have to be decided upon very soon by the administrative court without any hearing in court. Details on this matter (objection or legal action, deadlines) can be taken from the instructions about a person's right to appeal (Rechtsmittelbelehrung) which will be annexed to the notice of rejection.

Please note:

According to the new legal situation as of 01-01-09, foreigners with an exceptional leave to remain can, with certain conditions, obtain a residence permit, if they have acquired a vocational training qualification or a university degree and exercise an occupation that is adequate to this qualification.

* For reasons of legibility and understandability of this text we have renounced on mentioning the female form of the words.

Please note:

The content of this flyer reflects the author's legal opinion.

Caritasverband für die Stadt und den Landkreis Osnabrück
Projekt Netzwerk Integration-NetwIn
Dr. Barbara Weiser
Johannisstr. 91
49074 Osnabrück



Herausgegeben vom
Caritasverband für die
Diözese Osnabrück e.V.
Knappsbrink 58
49080 Osnabrück

Netzwerk
Integration **NetwIn**



**INFORMATION
ON LABOUR LAW (I)
RECHTLICHE INFORMATIONEN ZUM AR-
BEITSMARKTZUGANG (I)***

How do I get a work permit?

Brief description of the preconditions and of the procedure.

(englisch)



Subsidised by funds of the:
ESF-Bundesprogramm zur arbeitsmarktlichen Unter-
stützung für Bleibeberechtigte und Flüchtlinge mit
Zugang zum Arbeitsmarkt.
This flyer is an updated version of a product created
within the EQUAL project SAGA.

Updated: Jan. 2009