

10 Pitfalls when Hiring Non-EU Nationals in Germany

Employees who are not citizens of an EU-country, the European Economic Area or Switzerland (so-called „third-country-nationals“) generally require a work permit to work within Germany. Hiring of these employees is becoming more and more important for German companies in a globalized world and economy. The German government has realized that it is also a necessity to overcome the shortage of skilled workers on the German market. Therefore, rules have been introduced to make hiring easier. Nevertheless, there are some pitfalls to avoid.

1 Employment before obtaining a visa

Employees who are nationals of Australia, Israel, Japan, Canada, South Korea, New Zealand, the UK or the USA are privileged under German immigration law. They may enter Germany visa-free and apply for a residence permit in Germany directly with the competent immigration authority instead of having to apply with the German embassy / consulate in their home country. However, that does not mean that these privileged nationals are allowed to start working before they have received the residence permit for the anticipated role. It may take some weeks until a residence permit is issued by the immigration authority and until the employee is allowed to work. Employing the employee without a residence permit would be an administrative offence. The employer as well as the employee may be fined and such violation could have an impact on future applications for a visa / residence permit. In addition, exclusions from public contracts and subsidies may also be imposed on the employer.

2 Visa / residence permit with limitations

Many visas / residence permits are limited to a certain employer and role. The permit (including the usually issued additional green leaflet „Zusatzblatt“) needs to be checked in detail before the third-country-national starts to work. If the visa / residence permit does not allow the employee to work in a particular role, an amendment of the permit has to be obtained before he/she is permitted to commence work. The immigration authority will check whether the requirements for the permit are (still) met and – if needed – obtain approval by the Federal Employment Agency („Bundesagentur für Arbeit“).

3 Visa-free business trips

Certain nationals may enter Germany without the need for a visa and may stay for up to 90 days (in a rolling period of 180 days) in Germany. Although employment is not allowed until a visa / residence permit explicitly allows the third-country-national to work, there are certain activities that are not considered as "work" under German immigration law and thus do not require a visa / residence permit. Business trips are among these activities not considered "work", i.e. an employee of a foreign employer can perform business trip-related tasks in Germany without the need for a visa. However, the definition of what falls under business trip-related tasks is rather restrictive: The employee would only be allowed to attend meetings or negotiations in Germany, prepare contract offers, sign contracts or supervise the performance of a contract on behalf of the employer located abroad. The employee would also be allowed to establish, supervise or control a part of a company in Germany for an employer with its registered office abroad. Any other activity would as a general rule require a visa / residence permit. It is therefore recommended to seek professional advice, if the intended activities seem to fall within a grey area.

4 Notification after ending employment

Employer and employee are required to notify the immigration authority after ending the employment relationship. The immigration authority will then decide whether it shortens the duration of the visa / residence permit. The notification has to be made by the employer no later than four weeks after the employer becomes aware of the upcoming end of the employment relationship (e.g. after signing a separation agreement or issuing a termination letter). For the employee this deadline ends two weeks after becoming aware of the end of employment. Failure to comply with the notification obligation may result in a fine for the employer and the employee.

5 Minimum remuneration requirements

Some visa / residence permits require a certain annual minimum gross remuneration, e.g. the EU Blue Card or visa / residence permits that require approval by the Federal Employment Agency. The minimum requirements need to be met for the full duration of the visa / residence permit. It should be noted that only the guaranteed remuneration will count towards the remuneration thresholds. Therefore, variable payments which are not guaranteed do not count and will result in the visa / residence permit being denied or their duration being shortened.

6 Automatic expiry of residence permits

Residence permits can automatically expire by law if the third-country-national has left Germany and has not re-entered within six months. The return period can be longer than six months for certain residence permits, e.g. for EU Blue Card holders or in case a longer return period was applied for and granted by the immigration authority before the return period was exceeded. In the event a residence permit has expired, the employee will need to apply for a new permit.

7 EU Blue Cards issued by German authorities

Even though the name would suggest otherwise, the holder of an EU Blue Card is only allowed to work in the country of issuance; i.e. the employee with an EU Blue Card issued by the German authorities is allowed to travel to other countries of the EU but is not allowed to carry out work there. To be able to carry out work the employee must apply for another residence permit for the country in question. An exception to this rule applies if the employee enjoys the status of a long-term resident and is seconded by his/her employer in an EU-country to another EU-country to carry out services for a maximum of three months within a year.

8 Temp-Working

Temp-work is comparably strictly regulated in Germany. A visa / residence permit application for employees who are supposed to work as temp-workers will be denied for every visa / residence permit that requires approval by the Federal Employment Agency. This means that obtaining a visa / residence permit for temp-workers will only be possible if the employee can apply for a visa / residence permit that does not require approval by the Federal Employment Agency, as is the case with an EU Blue Card with a certain annual minimum salary (2022: EUR 56.400 gross), or if the employee has already received a residence permit in the past which allows him / her to work without any limitations, e.g. if the employee was issued a settlement permit.

9 Schengen visas for other Schengen states

A Schengen visa which was issued for one Schengen state allows the holder to also travel visa-free to other Schengen states, e.g. to Germany. However, in case the travel plans change and the Schengen state for which the visa was issued will no longer be a destination, the employee will need to apply for a Schengen visa for Germany. It is therefore not possible to apply for a Schengen visa for one country and simply travel directly to another Schengen country. A violation of this rule can have the result that the individual is stopped at border control and is sanctioned with a fine.

10 Visa / residence permit for digital nomads

Under German immigration law, many visa / residence permit applications by third-country-nationals living in Germany who want to work for a foreign entity with no registered seat or branch in Germany will be denied. While it is generally possible for foreign companies to hire employees in Germany without the requirement of a local presence, German immigration law in most cases requires that an employer has a physical presence in Germany. This should be considered before / during the job interview or before making an offer of employment. Working as a digital nomad will only be possible in limited situations, e.g. if the employee is a privileged national (national of Australia, Israel, Japan, Canada, South Korea, New Zealand, the UK or the US) and meets the requirements of the visa / residence permit for privileged nationals or if the employee is already allowed to work for any employer on the basis of a settlement permit.

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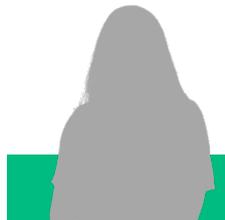


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