

Free Movement of Workers in the European Union

Community law applies in all the member states of the European Union (EU) which also includes the free movement of workers. Every worker is permitted to do the following without the need for a special work permit:

- to apply for jobs in any member state of the EU;
- to visit any country of the EU to seek work there;
- to live in any country of the EU to work there.

At the moment, in the case of Germany, the only **restriction** in this context applies to the member countries of 2007 – **Romania and Bulgaria**, as every "old" EU member state was able to limit the free movement of workers from the new member states in terms of a **transition period** lasting a maximum of 7 years. This transition period **comes to an end** on **31.12.2013**. Until that date, employees from both countries require an **EU work permit** to be able to undertake an employment contract in Germany.

The German Federal Agency for Employment issues newly arriving Bulgarian or Romanian employees with an EU work permit (initially limited to 12 months) for all jobs which require a qualification

that is based on professional training. Special provisions apply to approval by the Federal Agency of Employment for jobs that do not require any professional training. (please see leaflet 7 of the Federal Agency of Employment)



Free, temporally unlimited access to the German labour market applies to all other EU countries since May 2011. The same conditions of employment that apply to German employees apply, in other words, for an employee from the EU, **German employment and social security law applies** to jobs in Germany. The corresponding level of protection offered by German employment law must not go unmet. In specific terms, this means that the **minimum requirements that apply in Germany** have to be complied with for the following:

- Minimum wages,
- Minimum annual holiday,
- Maximum working hours and minimum rest periods,
- Payment for overtime and
- Health and safety at work, etc.

In the Free State of Saxony, **binding wage agreements** apply for trades:

- **with** legal minimum wages for the following sectors:
 - The building trade
 - The roofing trade
 - The electrician trade
 - The painting and decorating trade
 - Persons employed as cleaners in buildings
 - The hairdressing trade
- **without** legal minimum wages for the following sectors:
 - The scaffolding trade
 - The stone mason and stone sculpting trade
 - The baking trade

The obligation for legal health, pension and unemployment insurance applies to all employees from the first day of their employment in Germany. In this context, foreign employees also have the right to claim the following benefits:

- the right to claim unemployment benefits after a minimum of 12 months of employment
- the right to German pension payments after a minimum of 60 months of employment in Germany
- if applicable, the right to claim child benefit (a decision on this matter by the European Court is currently pending).

Even if their primary residence remains located abroad, foreign employees pay **income taxes** on earnings from their German contract of employment in Germany. The rate of tax depends on their overall level of income (if they earn income in their home country, e.g. through property or similar, then the rate of tax goes up). The double taxation of their German income will not take place, however, as Germany generally maintains a double taxation agreement with all EU member states. If you have individual tax related questions, please ask your tax advisor.

When a foreign employee begins a job in Germany – even if no residence or work permits are necessary – it is necessary for the employee to register at the corresponding foreign residents' bureau.

An alternative legal scenario, however, is that of a **secondment**, which occurs when an employee is sent to work abroad by a domestic employer. In this case, the German Law on Seconded Employees (*Arbeitnehmerentsendegesetz*) applies which contains alternate regulations. These are not covered in this pamphlet, however.

At the point in time of the creation of this pamphlet, the question of the recognition of foreign professional qualifications by the lawmaker has not yet been definitively finalised. The German law on the determination of professional qualifications (*Berufsqualifikationsfeststellungsgesetz*) is set to be finalised at the end of 2011.

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