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Ordinance on the Employment of Foreigners (Beschäftigungsverordnung - BeschV)

Employment Ordinance of 6 June 2013 (Federal Law Gazette I, p. 1499), last amended by Article 3 of the Ordinance of 30 August 2023 (Federal Law Gazette 2023 I No. 233)

Part 1 General provisions

Section 1 Scope of application of the Ordinance

(1) The Ordinance controls the immigration of foreign workers and lays down the conditions under which they and foreigners already living in Germany may be admitted to the labour market. It stipulates in which cases

1. a residence title that allows a foreigner to engage in employment may be issued without the approval of the Federal Employment Agency under section 39 (1), sentence 1, of the German Residence Act,
2. the Federal Employment Agency may, in accordance with section 39 (1), sentence 2, of the Residence Act, give its approval to a residence title that allows a foreigner to engage in employment,
3. a foreigner whose deportation has been temporarily suspended (*Duldung*) or other foreigners who do not hold a residence title may be permitted to engage in employment under section 4a (4) of the Residence Act with or without the approval of the Federal Employment Agency, and
4. the approval of the Federal Employment Agency may be granted in derogation of section 39 (3) of the Residence Act.

(2) For the Federal Employment Agency to grant its approval for the first time, a salary of at least 55 per cent of the annual contribution assessment ceiling (*Beitragsbemessungsgrenze*) of the general pension scheme is required in cases under section 24a and section 26 (2) wherever a foreigner takes up employment after reaching the age of 45 unless the foreigner can provide evidence of adequate old-age provision. The requirements laid down in Sentence 1 may only be waived in justified cases of exception where there is a public, in particular a regional, economic or labour-market-policy interest in the employment of the foreigner. The Federal Ministry of the Interior, Building and Community announces the minimum salary in the Federal Law Gazette for each calendar year by 31 December for the following year.

Part 2 Skilled employment

Section 2 Placement agreements

(1) For a temporary residence permit to be granted in accordance with section 16d (4) no. 1 of the Residence Act, foreigners may be granted approval to engage in employment whose requirements are closely connected to the specialist skills needed for the profession exercised following the recognition procedure if

1. they have been provided with a placement for a concrete job offer for skilled employment in a profession in the health or long-term care sector to be recognised after entry into the country,
2. wherever necessary, authorisation to practise the profession has been granted for this employment, and
3. they declare that, after entering Germany, they will carry out the procedure to establish the equivalence of their foreign professional qualification and, if necessary, the procedure to be granted authorisation to practise their profession with the body responsible for professional recognition in accordance with the regulations of the Federation or the *Länder*.

In the cases of section 16d (4) no. 2 of the Residence Act, sentence 1 also applies to other professions regulated in Germany.

(2) For a temporary residence permit to be granted in the case of non-regulated professions under section 16d (4) no. 2 of the Residence Act, foreigners may be granted approval to engage in skilled employment in their profession, for which they are to secure recognition, if they declare that after entering the country they will carry out the procedure to establish the equivalence of their professional qualification in Germany with the body responsible for professional recognition in accordance with the regulations of the Federation or *Länder*.

(3) Approval as laid down in subsections 1 and 2 is granted for one year. Renewed approval may only be granted if the procedure for establishing the equivalence of the foreign professional qualification or, wherever required, for granting authorisation to practise the profession is being pursued with the body responsible for professional recognition in accordance with the regulations of the Federation or *Länder*. The procedure includes participation in skills development measures, including subsequent examinations which are required to establish equivalence or to grant authorisation to practise the profession.

Section 3 Executive staff, managers and specialists

Approval may be granted for

1. executive staff,
2. members of a body of a legal entity who are entitled to act as its legal representative, or
3. persons who possess particular, above all company-specific, specialist knowledge pertinent to engaging in skilled employment in Germany.

Section 4 (repealed)

Section 5 Academics, research and development

No approval is required to grant a residence title to

1. academic staff at higher education institutions as well as research and development institutions who do not already come under the scope of application of sections 18d and 18f of the Residence Act,
2. visiting academic personnel at higher education institutions or research institutions under public law or which are predominantly funded by public resources or run as a public enterprise in a private legal form who do not already come under the scope of application of sections 18d and 18f of the Residence Act,
3. engineers and technicians working in the capacity of technical staff on the research team of visiting academic personnel,
4. teachers at state schools or state-approved private alternative schools or recognised private complementary schools, or
5. language teaching staff at higher education institutions.

Section 6

Employment in selected professions with extensive practical work experience

Approval may be granted to foreigners for skilled employment in professions in the field of information and communication technology irrespective of a qualification as a skilled worker if the foreigner proves commensurate skills through at least three years of professional experience acquired in the last seven years, the amount of the salary is at least 60 per cent of the annual contribution assessment ceiling of the general pension scheme and the foreigner possesses sufficient German language skills. Section 9 (1) does not apply. In justified individual cases, proof of German language skills may be waived. The Federal Ministry of the Interior, Building and Community announces the minimum salary defined in sentence 1 in the Federal Law Gazette for each calendar year by 31 December for the following year.

Section 7 (repealed)

Section 8

Initial and continuing in-company vocational training; recognition of foreign professional qualifications

- (1) Approval may be granted subject to a labour market test (*Vorrangprüfung*) for the issuance of a residence title pursuant to section 16a (1) of the Residence Act.
- (2) Approval may be granted for the issuance of a temporary residence permit pursuant to section 16d (1), sentence 2, no. 3 and subsections 2 and 3 of the Residence Act.
- (3) If the following are required for skilled employment:
 1. determination of equivalence of a professional qualification acquired abroad within the meaning of section 18a of the Residence Act, or
 2. authorisation to practise the profession for a profession regulated in Germany, and if prior temporary practical work in Germany is required for this, the issuance of a residence title to engage in this temporary employment may be approved.

Section 9

Employment in the case of previous periods of employment or lengthier periods of previous residence

- (1) No approval is required for employment of foreigners who hold a temporary residence permit and who
 1. have been legally employed subject to compulsory social insurance in the territory of the Federal Republic of Germany for two years, or

2. have been residing in the territory of the Federal Republic of Germany for three years without interruption either by virtue of holding a temporary residence or permanent settlement permit, by virtue of their deportation having been suspended or by holding permission to remain pending the asylum decision (*Aufenthaltsgestattung*); periods of interruption being taken into account in accordance with section 51 (1) no. 7 of the Residence Act.

(2) The following periods are taken into account in determining the period of employment under subsection 1 no. 1

1. period of employment prior to the date on which the foreigner left the country giving up his or her habitual residence,
2. temporary employment in accordance with the Residence Act or this Ordinance, and
3. employment for which the foreigner was exempt from the requirement of approval of employment on the basis of an intergovernmental agreement.

(3) Only half of the periods of residence pursuant to section 16b of the Residence Act are counted in determining the period of residence pursuant to subsection 1 no. 2, and only up to two years. Periods of temporary employment pursuant to the Residence Act or this Ordinance are taken into account in determining the period of residence if the foreigner is granted a residence title for a purpose other than employment.

Part 3 Temporary employment

Section 10 International exchange of staff, projects abroad

(1) Approval may be granted to engage in employment of up to three years for

1. foreigners who have a higher education degree or comparable qualification in the context of the exchange of staff within an internationally operating company or group,
2. for employees of an internationally operating group or company who are employed abroad in the German part - of the group or company if the activity is absolutely necessary to prepare foreign projects, the employee will be working abroad during the implementation of the project and has skills commensurate with those of German skilled workers and, in addition, possesses particular, especially company-specific, specialist knowledge.

(2) In the cases of subsection 1, sentence 1, no. 2 approval may also be granted for employees of the customer of the foreign project if they are temporarily employed by the contractor in connection with the preparatory work, the contract contains an obligation for the contractor to this effect and such employment is necessary for subsequent activity upon completion of the project. Sentence 1 also applies if the contractor has neither a branch nor an establishment abroad.

Section 10a Intra-corporate transferees

Approval of the issuance of an ICT Card pursuant to section 19 of the Residence Act and of the issuance of a Mobile ICT Card pursuant to section 19b of the Residence Act may be granted if

1. employment at the host branch is in the capacity of a manager, specialist or trainee,
2. remuneration is not less favourable than that of comparable German employees, and

3. the employment does not take place under less favourable working conditions than those of comparable posted employees.

Section 11

Language teachers, speciality cooks

- (1) Approval may be granted for teachers to provide mother-tongue teaching in schools under the supervision of the career consular post responsible in the respective case for a period of up to five years.
- (2) Approval may be granted subject to a labour market test for speciality cooks to engage in full-time employment in speciality restaurants for a period of up to four years. The initial approval is granted for a maximum of one year.
- (3) For renewed employment under subsections 1 and 2, approval may not be granted prior to the passage of three years after the expiration of the previous residence title.

Section 12

Au pair employment

Approval may be granted for persons with a basic knowledge of the German language who are under 27 years of age and are employed as an au pair for up to one year in a family in which German is spoken as a mother tongue. If German is spoken as the family language in the family, approval may be granted if the employee does not come from a home country of the host parents.

Section 13

Domestic workers of posted persons

Approval to engage in employment as a domestic worker in the case of persons who

1. are temporarily working in Germany for their employer or on behalf of a company seated abroad, or
2. have employed the domestic worker on the basis of the Vienna Conventions on Diplomatic Relations or on Consular Relations,

may be granted if these persons have employed the domestic worker in their household for at least one year prior to their entry into the country to care for a child under the age of 16 or a household member in need of care. Approval is granted for the duration of the stay of the person employing the domestic worker, but for a maximum of five years.

Section 14

Other types of employment

(1) No approval is required for the issuance of a residence title to

1. persons employed within the framework of voluntary service regulated by law or based on a programme of the European Union, or
2. persons employed predominantly for charitable reasons.

(1a) No approval is required for the issuance of a residence title to persons employed predominantly for religious reasons who have sufficient knowledge of the German language. If, due to the special circumstances of the individual case, it is not possible or not reasonable for the person employed for religious reasons to undertake efforts to acquire sufficient knowledge of the German language prior to entering the country, or if, in consideration of the overall circumstances, the requirement to demonstrate proficiency in the language would constitute a particular hardship in the individual case, the first-time issuance of a residence title does not require approval despite the lack of basic knowledge of the German language. In the case of sentence 2, sufficient German language skills must be demonstrated within a period of less than one year after entry into the country. Persons employed for predominantly religious reasons who, based on their nationality, may enter and stay in the territory of the

Federal Republic of Germany without a visa for a period beyond a short stay are exempt from the requirement to possess language skills.

(2) No approval is required for the issuance of a residence title to students and pupils of foreign institutions of higher education and technical colleges for the purpose of engaging in holiday employment of up to 90 days within a period of twelve months which has been arranged by the Federal Employment Agency.

Section 15

Internships for continuing education and training purposes

No approval is required for the issuance of a residence title for an internship

1. under section 16e of the Residence Act,
2. during a stay for the purpose of school education or higher education studies which is a prescribed part of the education or which is demonstrably necessary to achieve the educational objective,
3. within the scope of a programme receiving funding from the European Union or bilateral development cooperation,
4. with a duration of up to one year as part of an international exchange programme at associations, public-law institutions or student organisations for students or graduates of foreign higher education institutions by mutual agreement with the Federal Employment Agency,
5. of skilled workers and executives receiving a scholarship from German public funds, European Union funds or the funds of international intergovernmental organisations,
6. with a duration of up to one year by mutual agreement with the Federal Employment Agency during a course of study at a foreign higher education institution after the fourth semester that relates to the degree subject, or
7. of pupils of German schools abroad with a duration of up to six weeks.

Section 15a

Seasonal employment

(1) The Federal Employment Agency may authorise foreigners who have been placed on the basis of an agreement between the Federal Employment Agency and the public employment services of their country of origin governing the procedure and selection for the purpose of seasonal employment in accordance with Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers (OJ. L 94, 28 March 2014, p. 375) to engage in seasonal employment regularly amounting to at least 30 hours a week in agriculture, forestry, horticulture, hotels and restaurants, fruit and vegetable processing and sawmills

1. by issuing a work permit for a period of up to 90 days per period of 180 days subject to a labour market test if they are nationals of a country listed in Annex II to Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and countries whose nationals are exempt from such requirement (OJ L 303, 28 November 2018, p. 39), as amended by Regulation (EU) 2019/592 (OJ L 103 I, 12 April 2019, p. 1), or
2. by granting approval subject to a labour market test if
 - a) the duration of the stay exceeds 90 days per period of 180 days, or

- b) the foreigners are nationals of a country listed in Annex I to Regulation (EU) 2018/1806.

The seasonal employment of a foreigner may not exceed six months within a period of twelve months. The duration of the seasonal employment may not exceed the period of validity of the travel document. In the case of section 39 no. 11 of the Residence Ordinance, approval is deemed to have been granted until a decision has been taken on it. Foreigners who have been employed as seasonal workers in the territory of the Federal Republic of Germany at least once in the last five years are to be given preferential consideration within the scope of the number of work permits and approvals set by the Federal Employment Agency. The period for which a single establishment is allowed to employ seasonal workers is limited to eight months within a period of twelve months. Sentence 5 does not apply to fruit, vegetable, wine, hop and tobacco-growing establishments.

(2) The granting of a work permit or approval is subject to the requirement that

1. proof of sufficient health insurance coverage is provided,
2. the seasonal employee has access to adequate accommodation; and
3. there is a concrete job offer or a valid employment contract detailing in particular the following:
 - a) the place and nature of the work,
 - b) the length of employment,
 - c) the remuneration,
 - d) the working time per week or month,
 - e) the amount of paid holiday,
 - f) other relevant working conditions if applicable; and
 - g) if possible, the date employment commences.

If the employer provides accommodation for the seasonal employee, the rent must be reasonable and may not be withheld from wages. In this case, the seasonal employee must be provided with a rental contract specifying the rental conditions. The employer must notify the Federal Employment Agency without undue delay of any change of accommodation for the seasonal employee.

(3) The work permit or approval must be refused or withdrawn if

1. the foreigner is already in the territory of the Federal Republic of Germany, unless the foreigner entered the country to take up seasonal employment or the work permit or approval is being applied for with a view to further seasonal employment following initial seasonal employment,
2. the seasonal worker has submitted an application pursuant to Article 16a of the Basic Law or is applying for international protection pursuant to Directive 2011/95/EU; this is without prejudice to section 55 (2) of the Asylum Act,
3. the seasonal employee has not fulfilled obligations arising from a previous decision on admission to seasonal employment,
4. insolvency proceedings have been opened against the employer's company with a view to liquidating the company and winding up its business operations,
5. the employer's company has been liquidated in the course of insolvency proceedings and the business operations have been wound up,

6. the opening of insolvency proceedings on the assets of the employer's company has been rejected due to insufficiency of assets and business operations have been discontinued, or

7. the employer's company is not engaged in any business activity.

The work permit or approval must be denied if the number of work permits and approvals set by the Federal Employment Agency for the relevant period has been reached. This is without prejudice to section 39 (3) of the Residence Act.

(4) The employer must apply for the work permit at the Federal Employment Agency.

(5) If the employment relationship with the same or another employer is extended one or more times, an additional work permit may be issued provided that the maximum duration specified in subsection 1, sentence 1, no. 1 is not exceeded.

(6) The work permit and approval are granted without being subject to a labour market test to the extent that the Federal Employment Agency has stipulated a number of admissions based on demand in accordance with section 39 (6), sentence 3, of the Residence Act.

Section 15b

Fairground helpers

Approval of a residence title for engaging in employment in the fairground trade may be granted for up to a total of nine months in a calendar year subject to a labour market test if the persons concerned have been placed on the basis of an agreement governing the procedure and selection between the Federal Employment Agency and the public employment service of the country of origin.

Section 15c

Domestic helpers

Approval of a residence title to engage in full-time employment subject to compulsory social insurance for up to three years for domestic work and necessary everyday care assistance in households with persons in need of care within the meaning of the Eleventh Book of the Social Code may be granted subject to a labour market test if the persons concerned have been placed on the basis of an agreement governing the procedure and selection between the Federal Employment Agency and the public employment service of the country of origin. Within the three-year period of admission to the labour market, approval may be granted for a change of employer. For renewed employment after leaving the country, approval pursuant to Sentence 1 may only be granted if the person concerned has stayed abroad after leaving the country for at least as long as he or she was previously employed in Germany.

Part 4

Posted employees

Section 16

Business travellers

No approval is required for the issuance of a residence title to persons who

1. are employed abroad in the commercial sector by an employer seated in Germany,
2. conduct meetings or negotiations in Germany for an employer seated abroad, draw up contractual offers, conclude contracts or monitor the performance of a contractual agreement, or
3. establish, supervise or manage a German part of a company for an employer seated abroad,

and who, in the course of their employment, while maintaining their habitual residence abroad, do not stay in Germany for a total of more than 90 days within a period of 180 days.

Section 17

In-company continuing education and training

No approval is required for the issuance of a residence title to skilled workers employed abroad by an internationally operating group or company for the purpose of in-company continuing education and training in the German part of the group or company for up to 90 days within a period of twelve months.

Section 18

Journalists

No approval is required for the issuance of a residence title to employees of an employer seated abroad

1. whose activity is recognised by the Press and Information Office of the German Federal Government, or
2. who, while maintaining their habitual residence abroad, work as a journalist in Germany if the duration of the activity does not exceed 90 days within a period of twelve months.

Section 19

Contracts for work and materials (*Werklieferungsverträge*)

(1) No approval is required for the issuance of a residence title to persons who are posted to Germany by their employer seated abroad for up to 90 days within a period of twelve months in order to

1. install and assemble, maintain or repair machines, equipment and programmes for electronic data processing which serve commercial purposes and which have been ordered from the employer, or to instruct other persons in the operation of these machines, equipment and programmes,
2. accept machines, equipment and other items acquired or to be instructed in their operation,
3. dismantle used equipment acquired for the purpose of reinstalling such in the employer's country of registration,
4. install, dismantle and attend to the company's own trade fair stands or trade fair stands for a foreign company established in the country in which the employer has its seat, or
5. complete an in-house training course in the context of export and licence agreements.

In the cases of sentence 1 no. 1 and 3, exemption from approval is subject to the employer notifying the Federal Employment Agency of such employment before it commences.

(2) Approval may be granted for persons who are posted to Germany for more than 90 days and up to a period of three years by their employer seated abroad in order to

1. install and assemble, maintain or repair machines, equipment and programmes for electronic data processing which serve commercial purposes and which have been ordered from the employer, or to instruct persons in the operation of these machines, equipment and programmes,
2. accept machines, equipment and other items acquired or to be instructed in their operation, or
3. dismantle used equipment acquired for the purpose of reassembly in the country where the employer is seated.

Section 20

International road and rail transport

(1) No approval is required for the issuance of a residence title to transport personnel who

1. in the carriage of goods by road for an employer seated
 - a) in the territory of another Member State of the European Union or of another contracting party of the Agreement on the European Economic Area, perform international carriage operations as defined in Article 2 (2) or cabotage operations as referred to in Article 8 (2) of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14 September 2009, p. 72) and for which the employer has been issued with a driver attestation,
 - b) perform international road haulage operations outside the territory of a Member State of the European Union or of another contracting party of the Agreement on the European Economic Area with a vehicle registered in the country in which the employer has its seat for a stay of no more than 90 days within a period of twelve months, or transfer a vehicle registered in Germany to a country outside this territory,
2. in the international carriage of passengers by road perform cross-border journeys for an employer seated abroad with a vehicle registered in the country in which the employer has its seat. This also applies in the case of regular cross-border coach services even if the vehicle is registered in Germany.

(2) No approval is required for the issuance of a residence title to personnel employed in international rail transport if the transport company has its seat abroad.

Section 21

Rendering of services

No approval is required for the issuance of a residence title to persons who are duly employed by a company seated in a Member State of the European Union or a contracting party of the Agreement on the European Economic Area in the country in which the company is seated and who are temporarily posted to the territory of the Federal Republic of Germany to render a service.

Part 5

Special groups

Section 22

Special professional groups

No approval is required for the issuance of a residence title to

1. persons, including their support staff, who, while retaining their habitual residence abroad, engage in lectures or in performances of special academic or artistic value or in performances of a sporting nature in Germany if the duration of the activity does not exceed 90 days within a period of twelve months,
2. persons employed in the context of festivals or music and cultural events or posted in the context of guest performances or foreign film and television productions if the duration of the activity does not exceed 90 days within a period of twelve months,
3. persons performing in one-day shows or events for up to 15 days a year,
4. professional athletes or professional trainers designated to work at German sports clubs or comparable sporting institutions participating in competitive sport if they

- a) have reached the age of 16,
 - b) the sports club or institution pays a gross salary that is at least 50 per cent of the contribution assessment ceiling of the statutory pension scheme, and
 - c) the German national federation responsible for the sport, in agreement with the German Olympic Sports Confederation, confirms the person's eligibility as a professional athlete or professional aptitude as a trainer,
5. persons who professionally practise eSports in the form of competition between persons and who are designated to work at German clubs or comparable eSports facilities participating in competitions if they
- a) have reached the age of 16,
 - b) the sports club or institution pays a gross salary that is at least 50 per cent of the contribution assessment ceiling of the statutory pension scheme, and
 - c) the German national federation responsible for eSports confirms the professional performance of eSports and the form of eSports performed is of considerable national or international importance,
6. photo models, advertising models, fashion models,
7. tour guides who, while maintaining their habitual residence abroad, accompany foreign tourist groups into Germany if the duration of the activity does not exceed 90 days within a period of twelve months,
8. interpreters who, while maintaining their habitual residence abroad, take part in meetings or negotiations in Germany for a company seated abroad if the duration of the activity does not exceed 90 days within a period of twelve months, or
9. domestic workers who, while retaining their habitual residence abroad, accompany their employer or their employer's family members with habitual residence abroad to Germany for a period of up to 90 days within a period of twelve months.

Section 23 **International sporting events**

No approval is required for the issuance of a temporary residence permit to persons who are accredited by the respective organising committee for the preparation, participation in, implementation and follow-up of international sporting events insofar as the German Federal Government has assumed implementation guarantees; these are in particular the following persons:

1. representatives, staff members and agents of federations or organisations, including referees and assistant referees,
2. athletes and paid staff of the participating teams,
3. representatives of official federation partners and official licence partners,
4. representatives of the media including technical staff and staff of media partners.

Section 24 **Shipping and air transport**

No approval is required for the issuance of a residence title to

1. members of the crews of seagoing vessels engaging in international traffic,

2. persons authorised to perform sea pilotage services in accordance with the Sea Pilotage Act (*Seelotsgesetz*),
3. technical personnel on inland waterway vessels and, in cross-border traffic, operating and service personnel on passenger ships required for the care of guests, or
4. crews of aircraft with the exception of pilots, flight engineers and flight navigators in the case of companies which have their seat in Germany.

Section 24a Professional drivers

- (1) Approval may be granted to foreigners for employment in Germany as a professional driver for the carriage of goods by road or the carriage of passengers by coach or bus.
- (2) Approval may be granted to foreigners for employment with an employer in Germany if
1. the employment contract requires the foreigner to participate in measures to obtain the means necessary for practicing the profession of a professional driver for the carriage of goods by road or the carriage of passengers by coach or bus,
 2. working conditions for the period of the measures are such that the driving licence and qualifications required under no. 1, including issue of the necessary documents, can be obtained within 15 months,
 3. for the period after obtaining the driving licence and qualifications there is a concrete job offer for employment in Germany as a professional driver for the carriage of goods by road or the carriage of passengers by coach or bus with the same employer, and
 4. proof is provided that such persons possess the relevant driving licence in their country of origin for employment as a professional driver.

Approval is granted for up to 15 months. In justified individual cases, approval may be granted for up to a further six months.

- (3) Section 9 does not apply to persons holding a temporary residence permit for the purpose of employment in accordance with subsections 1 or 2.

Section 24b Offshore wind turbines and offshore connections

No approval is required for the issuance of a temporary residence permit to foreign nationals employed in German territorial sea to carry out activities aimed at installing and maintaining offshore wind turbines and offshore connections, including loading and unloading in ports and other activities by the other crew members working on the vessels deployed for these purposes. Exemption from approval is possible for a period of up to 24 months. Section 9 does not apply.

Section 25 Culture and entertainment

Approval may be granted subject to a labour market test for persons who

1. are engaged in employment as an artist or performer or in employment as support staff required for the performance; or
2. are posted for more than 90 days in connection with guest performances or foreign film or television productions.

Section 26 Employment of certain nationals

- (1) For nationals of Andorra, Australia, Canada, Israel, Japan, the Republic of Korea, Monaco, New Zealand, San Marino, the United Kingdom of Great Britain and Northern

Ireland as defined by section 1 (2) no. 6 of the Freedom of Movement Act/EU as well as the United States of America, approval subject to a labour market test may be granted to engage in any employment irrespective of where the employer is seated.

(2) For nationals of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia, approvals subject to a labour market test may be granted to engage in any employment. Initial approval may only be granted if the application for a residence title has been submitted to the respective competent German mission abroad in one of the countries listed in sentence 1. The number of approvals for cases under sentence 2 is limited to a maximum of 25,000 for each calendar year. Approval must not be granted if the applicant has received benefits under the Asylum Seekers Benefits Act in the 24 months preceding the application. Section 9 does not apply unless approval in accordance with section 26 (2) was granted pursuant to the version applicable until its expiry on 31 December 2020.

Section 27

Employment of frontier workers

For the issuance of a permit for frontier workers (*Grenzgänger*) pursuant to section 12 (1) of the Residence Ordinance, approval may be granted subject to a labour market test.

Section 28

Ethnic Germans

Ethnic Germans (*deutsche Volkszugehörige*) who have received an admission notice pursuant to the Federal Expellees Act may be granted approval for a residence title subject to a labour market test for the purpose of engaging in temporary employment.

Part 6

Other provisions

Section 29

International agreements

(1) Approval may be granted for employment within the scope of agreements on contract workers (*Werkvertragsarbeitnehmerabkommen*) with the countries of Turkey, Serbia, Bosnia and Herzegovina and North Macedonia. This also applies for a period of up to four years to managerial or administrative staff having company-specific knowledge required to carry out the contract for work and services. The Federal Ministry of Labour and Social Affairs may limit the number of approvals for construction workers granted by the Federal Employment Agency in connection with contracts for work and services in relation to the employed professional workers of the company established in Germany. In this regard, care must be taken to ensure that small and medium-sized companies established in Germany are also given appropriate consideration.

(2) Approval to engage in employment of up to 18 months may be granted if the persons concerned are employed on the basis of an intergovernmental agreement on the employment of workers for vocational and language training (*Gastarbeitnehmer-Vereinbarung*) with the country they are nationals of.

(3) No approval is required for employment under intergovernmental agreements that stipulate that a person does not need a work authorisation or work permit for employment. Approval may be granted for employment under agreements that stipulate that a work authorisation or work permit may be issued.

(4) For specialist or world exhibitions registered under the Convention relating to International Exhibitions signed in Paris on 22 November 1928, approval subject to a labour market test may be granted to nationals of the exhibiting countries if they are working on behalf of the exhibiting country in the preparation, execution or completion of the national exhibition contribution.

(5) Approval may be granted for persons who are duly employed by a company seated abroad and who are temporarily posted to the territory of the Federal Republic of Germany

on the basis of the Agreement establishing the World Trade Organization of 15 April 1994 (Federal Law Gazette 1994 II pp. 1438, 1441) or other free trade agreements of the European Union or of the European Union and its Member States that are binding for the Federal Republic of Germany under international law. No approval is required for employment based on agreements specified in sentence 1 that stipulate that a person does not need a work authorisation or work permit for employment.

Section 30

Stays of employment without a residence title

The following is not deemed to constitute employment within the meaning of the Residence Act:

1. activities under section 3, no. 1 and 2, including without approval, under sections 16 and 29 (5), sentence 2, which are performed for up to 90 days within a period of 180 days,
2. activities under sections 5, 14, 15, 17, 18, 19 (1) and sections 20, 22, 23 and 24b performed for up to 90 days within a period of twelve months,
3. activities under section 21 performed for up to 90 days within a period of twelve months by foreigners who hold long-term resident status in another Member State of the European Union, and
4. activities by persons who are exempt from the requirement of a residence title pursuant to sections 23 to 30 of the Residence Ordinance.

Part 7

Employment in the case of residence for reasons of international law, on humanitarian or political grounds as well as of persons whose deportation has been temporarily suspended and of asylum-seekers

Section 31

Employment in the case of residence for reasons of international law or on humanitarian or political grounds

The granting of permission to engage in employment to foreigners with a temporary residence permit issued in accordance with part 5 of the Residence Act does not require the approval of the Federal Employment Agency.

Section 32

Employment of persons whose deportation has been temporarily suspended or with temporary permission to remain pending the asylum decision

(1) Foreigners whose deportation has been temporarily suspended (*Duldung*) may be granted approval to engage in employment if they have been residing in the territory of the Federal Republic of Germany for three months either by virtue of holding a temporary residence or permanent settlement permit, by virtue of their deportation having been suspended or by holding permission to remain pending the asylum decision (*Aufenthaltsgestattung*). Sections 39 and 40 (1) no. 1 and subsection 2 as well as section 41 of the Residence Act apply *mutatis mutandis*.

(2) No approval is required for the issuance of a permit to engage in

1. an internship in accordance with section 22 (1), sentence 2, no. 1 to 4 of the Minimum Wage Act,
2. vocational training in a state-recognised or commensurately regulated vocational training occupation,

3. employment in accordance with section 18c (3) and section 18g (1), sentence 1, of the Residence Act, section 5 and section 14 (1) and (1a) and section 15 no. 2 and section 22 no. 3 to 6 and section 23,

4. employment of spouses, life partners, first-degree relatives and in-laws of an employer in the employer's establishment if the employer lives with them in the same household, or

5. any employment after uninterrupted four-year residence in the territory of the Federal Republic of Germany either by virtue of holding a temporary residence or permanent settlement permit, by virtue of a deportation having been suspended or by holding permission to remain pending the asylum decision.

(3) Subsection 2 also applies to foreigners with temporary permission to remain pending the asylum decision.

Section 33 (repealed)

Part 8 Procedural provisions

Section 34 Limitation of approval

(1) The Federal Employment Agency may limit approval to engage in employment with regard to

1. the period of validity,
2. the establishment,
3. the professional activity,
4. the employer,
5. the region in which the employment can be engaged in, and
6. the location and distribution of working hours.

(2) Approval is granted for a maximum of four years.

(3) In the case of employment for the purpose of initial and continuing vocational training pursuant to section 16a (1) and Section 16d (1), sentence 2, no. 3 of the Residence Act, approval is to be granted as follows:

1. in the case of initial vocational training, for the duration of the training as specified in the training regulations (*Ausbildungsordnung*), and
2. in the case of continuing vocational training, for the time required to achieve the continuing vocational training objective as evidenced by a continuing vocational training plan that has been reviewed by the Federal Employment Agency.

Section 35 Scope of approval

(1) Approval to engage in employment is granted in conjunction with a specific residence title in each case.

(2) If approval has been granted in conjunction with a residence title, the approval continues to apply to any further residence title within its time limit.

(3) Subsections 1 and 2 apply mutatis mutandis to approval to engage in employment for persons holding temporary permission to remain pending the asylum decision or whose deportation has been temporarily suspended.

(4) If approval has been granted for a specific employment relationship, it expires upon termination of such employment relationship. This does not apply if the employer changes due to a transfer of undertakings pursuant to section 613a of the Civil Code or adopts a different legal form.

(5) Approval to engage in employment may be granted without being subject to a labour market test if the employment is continued with the same employer after the expiration of the period of validity of an approval granted for at least one year. This does not apply to employment that is limited in time under this Ordinance or under an intergovernmental agreement.

Section 36 Granting of approval

(1) The Federal Employment Agency notifies the competent body of approval of the issuance of a residence title pursuant to section 39 of the Residence Act or a permit for frontier workers, its denial of such pursuant to section 40 of the Residence Act, its revocation pursuant to section 41 of the Residence Act and withdrawal of approval.

(2) Approval to engage in employment is deemed to have been granted if the Federal Employment Agency does not inform the competent body within two weeks of submission of the request for approval that the information submitted is not sufficient for the decision on approval or that the employer has not provided the required information or has not provided such in due time. In the cases of section 18g (4) and 81 (a) of the Residence Act, the period pursuant to sentence 1 is reduced to one week.

(3) The Federal Employment Agency is to already approve the employment vis-à-vis the competent body prior to the transmission of the request for approval or check whether labour market-related prerequisites for subsequent approval are met if the employer has provided the information required for this purpose and this accelerates the procedure.

Section 37 Hardship clause

Foreigners may be granted approval to engage in employment without being subject to a labour market test if denial of such employment would mean particular hardship.

Part 9 Recruitment and employment placement from abroad

Section 38 Recruitment and placement

Recruitment in and placement from countries listed in the Annex to this Ordinance for employment in health and long-term care professions may only be carried out by the Federal Employment Agency.

Section 39 Administrative offences

Any person who intentionally or negligently renders recruitment or employment placement services in contravention of section 38 is deemed to commit an administrative offence within the meaning of section 404 (2) no. 9 of the Third Book of the Social Code.

Annex (to Section 32) (repealed)

Annex (to Section 38)

(Source: Federal Law Gazette part I 2023, No. 353)

1. Afghanistan (Islamic Republic of Afghanistan),
2. Angola (Republic of),
3. Bangladesh (People's Republic of),

4. Benin (Republic of),
5. Burkina Faso,
6. Burundi (Republic of),
7. Cameroon (Republic of),
8. Central African Republic,
9. Chad (Republic of),
10. Comoros (Union of the Comoros),
11. Congo (Democratic Republic of),
12. Congo (Republic of),
13. Côte d'Ivoire (Republic of),
14. Djibouti (Republic of),
15. Equatorial Guinea (Republic of),
16. Eritrea,
17. Ethiopia (Federal Democratic Republic of),
18. Gabon (Gabonese Republic),
19. Gambia (Republic of the),
20. Ghana (Republic of),
21. Guinea (Republic of),
22. Guinea-Bissau (Republic of),
23. Haiti (Republic of),
24. Kiribati (Republic of),
25. Lao People's Democratic Republic,
26. Lesotho (Kingdom of Lesotho),
27. Liberia (Republic of),
28. Madagascar (Republic of),
29. Malawi (Republic of),
30. Mali (Republic of),
31. Mauritania (Islamic Republic of Mauritania),
32. Micronesia (Federated States of Micronesia),
33. Mozambique (Republic of),
34. Nepal,
35. Niger (Republic of),
36. Nigeria (Federal Republic of),

37. Pakistan (Islamic Republic of Pakistan),
38. Papua New Guinea (Independent State of Papua New Guinea),
39. Rwanda (Republic of),
40. Samoa (Independent State of Samoa),
41. Senegal (Republic of),
42. Sierra Leone (Republic of),
43. Solomon Islands,
44. Somalia (Federal Republic of),
45. South Sudan (Republic of),
46. Sudan (Republic of the),
47. Tanzania (United Republic of Tanzania),
48. Timor-Leste (Democratic Republic of Timor-Leste),
49. Togo (Togolese Republic),
50. Tuvalu,
51. Uganda (Republic of),
52. Vanuatu (Republic of),
53. Yemen (Republic of),
54. Zambia (Republic of),
55. Zimbabwe (Republic of).