

WORKING IN GERMANY AS AN AMERICAN—WORK PERMITS AND MORE

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Your company—a non-German company—has just completed an acquisition or joint venture in Germany, or maybe, after having relied on sales representatives or distributors over the past few years, you decided to enter the German market directly with your own subsidiary. Whichever of these actions you recently took, you now decide that you want to transfer some of your personnel to work at your new German facility.

This article is a quick how-to for some of the hurdles (often seen as bureaucratic) that the non-German employee will face in order to work in Germany. A quick peek will also be taken at whether the employee needs a German driver's license and, if so, how he can obtain it.

■ LOCAL REGISTRATION

The first step after arriving in Germany is to register with the local resident registration office (*Einwohnermeldeamt*). Under German law, everybody living in Germany must register with the resident registration office; this applies regardless of whether the individual is a German citizen, a citizen of another EU member



state, or from outside the EU. To complete the registration (a simple procedure), the applicant must (i) appear personally at the local registration office, (ii) fill out a short form (essentially setting forth his name, local address (this may initially be a hotel; the address of the place of work is generally not used, since it will not be in a residential area), marital status, religion, etc.), and (iii) present an acceptable form of identification (generally a passport).

■ RESIDENCE PERMIT/WORK PERMIT

Except for citizens of EU member states (not including certain eastern and southern European countries that became member states only as of 2004 or 2007, *e.g.*, Bulgaria, Hungary, Latvia, Poland, and Romania), foreigners who wish to work in Germany must obtain a residence and work permit. Citizens from a few “privileged” countries (*e.g.*, the United States, Canada, Japan, and Australia) may apply for the residence and work permit only *after* entering Germany (although they cannot commence working until the work permit has been issued), but most applicants must apply for the permits *prior* to entering Germany by filing an application with the respective German embassy in the applicant’s country of residence. This article will focus only on Americans wishing to work in Germany.

For those working in the corporate world, there are essentially two types of resident permits that permit the applicant to work in Germany—a residence permit to engage in work (*Aufenthaltserlaubnis zur Ausübung einer Beschäftigung*) or a settlement permit (*Niederlassungserlaubnis*).

Because Germans and citizens from other EU member states take priority over Americans in filling jobs in Germany, the local labor office will review whether there is an individual from these countries who can fill the job the American wishes to take.

A residence permit to engage in work—a temporary permit (generally for one to three years with the possibility of extension)—is issued in conjunction with the Foreigners’ Office and the local labor office. Because Germans and citizens from other EU member states take priority over Americans in filling jobs in Germany, the local labor office will review whether there is an individual from these countries who can fill the job the American wishes to take.

The employer will need to provide the local labor office with information about the open position, the pay, and the general working conditions. If the labor office should conclude that hiring an American will actually be taking a job away from an EU citizen, the labor office can reject the work permit application. The local labor agency will generally look for a suitable EU candidate for six weeks to three months; during this period, the work permit application will be on hold. An American being transferred to a German company should submit evidence to the local labor office that he is uniquely qualified for the position because he not only has the requisite education and experience but is also extremely familiar with the company due to his experience in the United States. Unless an EU citizen can demonstrate a background essentially identical to the American’s, it would simply take too long to bring the EU citizen’s skill level up to that of the American applicant.

The second form of work permit is a settlement permit. This is a permanent permit, and as a result, the standards are more stringent for this form of permit than for the residence

permit to engage in work. Essentially, the employee needs to be able to evidence that he is either (i) a scientist with recognized and unique qualifications, (ii) a professor at a university or a school of applied science, (iii) a researcher, or (iv) an executive who has specialized skills and who earns at least €88,000 (equal to approximately US\$110,000); this threshold amount was reduced to €63,600 (approximately US\$81,000) as of January 1, 2009.

Focusing on (iv), the Foreigners' Office will want to see evidence that the salary exceeds the above-mentioned threshold (either in the form of an employment agreement or written confirmation from the employer), as well as evidence of the executive's specialized skills. It is also

important to submit a resume setting forth the applicant's education and experience and to explain to the Foreigners' Office why this particular individual is being transferred to Germany; important in this regard is the corporate level at which the employee will be hired, the decision-making authority he has in terms of personnel and financial matters, the number of employees he will be supervising, and whether he has the authority to enter into binding transactions on behalf of the company. The answer to these questions, as well as the salary level, will determine whether the applicant will be approved for a settlement permit. Once the applicant has submitted complete information, it generally takes the Foreigners' Office one to two months to render a decision.

■ DRIVER'S LICENSE

The American will be able to drive in Germany with his U.S. driver's license for six months (or, depending on the situation, for up to one year). If he intends to stay in Germany for longer than one year, he will need to obtain a German driver's license within six months of becoming registered with the local resident registration office. The extent to which the privileges granted by a U.S. driver's license may be recognized in Germany depends on the state in which the U.S. license was issued and, possibly, the German state in which the employee will be residing. Though this is still a work in progress, the American Chamber of Commerce in Germany has been instrumental in getting U.S. driver's licenses from many states recognized in Germany. The American Chamber of Commerce's web site—www.amcham.de/location-germany/drivers-license.htm—is an excellent source of information as to whether a particular U.S. driver's license may be recognized in Germany.

Once all of this has been completed, the American can look forward to confronting the United States–Germany Double Taxation Treaty for income tax purposes ... good luck!



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