

NEW SKILLED WORKER IMMIGRATION ACT AND NOVELTIES FOR LABOR MIGRATION IN GERMANY

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SUMMARY

In Germany, a new act relating to the immigration of skilled workers (Fachkräfteeinwanderungsgesetz) came into force on 1 March 2020. Due to the ongoing Covid-19 crisis, labour migration and the new act are currently not receiving a lot of attention. However, the new act will be very relevant once travel restrictions are scaled back. This is especially the case, as its intention is to counteract the shortage of skilled workers which Germany is currently facing, especially in the medical care sector, but also with regard to specialists in scientific and technical professions. The new act further expands the legal framework for the migration of qualified professionals from non-EU countries to Germany for the purpose of performing this work.

The new act does not provide a completely new immigration system. Rather, it revises and supplements existing regulations. Novelties of the act include a broader definition of skilled workers and an expedited application procedure. We believe that at least some of the changes will be suitable to facilitate migration of skilled workers to Germany. However, it remains questionable, in particular, whether the changes will lead to the intended and much required acceleration of immigration procedures that currently take several months in specific regions.

MAIN CHANGES INTRODUCED BY THE NEW ACT

Access to the German labour market was already relatively easy for individuals with a German university degree (or with a recognized or comparable degree). With the new act, individuals with a German vocational training qualification (or with a recognized or comparable qualification) are now also considered skilled workers, thereby simplifying their German labour market access. With an existing job offer, any such skilled workers may now enter and work in Germany for up to four years, provided that the university degree or the vocational training qualifies the skilled worker for the specific job in question. In this context, the Federal Employment Agency will no longer conduct a "priority check" to examine whether there are any German or EU applicants available for the specific job. Again, this will simplify and accelerate labour market access for the foreign skilled worker.

Within the information and communication technology sector, a residence permit can be granted even more easily if the foreigner possesses substantial practical professional knowledge. In this case, a formal qualification as a skilled worker (by being in the possession of a German, recognized, or comparable university degree or vocational training qualification) will not be required in order to benefit from the advantages of the new act.

Under specific conditions (in particular, a certain level of language skills and proof of secured livelihood), skilled workers are allowed to enter Germany for a period of up to six months to seek a job, i.e., even without a job offer. During this period, jobseekers can also perform trial work for up to ten hours a week with an aim of entering into an employment relationship.

In addition, in cases where a foreigner does not possess a German university degree or a German vocational training qualification (and no comparable or recognized degree or qualification), the option to enter Germany for the purpose of supplementary qualification measures and for the recognition of the degree or qualification has been added by the new act.

CHANGES DIRECTLY AFFECTING COMPANIES

In the past, residence permit applications had to be filed by the foreigner in person. The act has now added the possibility for the employer to file the residence permit application on behalf of the foreign applicant (this employer application procedure is subject to an additional EUR 411 fee). The implementation of this fast-track procedure intends to facilitate cooperation between the employer and the immigration authority and to shorten the duration of the application procedure.

Additionally, a residence permit will no longer need to be amended in cases where employment transfers to another entity by way of law (TUPE) or where the employer changes its legal form. Prior to the new act, such employment changes always required additional administrative procedures in order to amend the existing residence permit.

It should be noted that while most changes aim at simplifying and accelerating the immigration process, there is now also a new obligation for the employer to notify the immigration authority when an employment relationship requiring a residence permit terminates. Until now, employers had only been obliged to keep on file a copy of the residence permit for the duration of the employment. If the new notification obligation is omitted, late or incorrect, administrative fines of up to EUR 30,000 can be imposed. The notification needs to occur within four weeks of the employer receiving knowledge of the termination of employment.

ISSUES AND DIFFICULTIES TO BE EXPECTED IN PRACTICE

We believe that the act will simplify and improve labour immigration into Germany. However, in our view, the act falls short of its goals and still leaves room for further improvement.

Specifically, it is questionable to what extent the act will actually result in shorter application procedures. While the act includes the optional implementation of new centralized immigration authorities to deal with the new fast-track procedure, the immigration authorities are currently poorly resourced. Further, such centralized immigration authorities will only be able to deal with certain parts of the immigration process.

Finally, the immigration authorities will still require that all applications and the supporting documents are submitted in German. This regularly results in additional costs and time for the necessary translations.

Maintaining this German language requirement in an increasingly global labour market does not really fit with Germany's need to simplify the access of qualified workers to the German labour market.

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