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New law amendment facilitates employment of workers from third countries

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Introduction

On 1 October 2022, a legal reform of the Act Governing the Employment of Foreign Nationals and the Settlement and Residence Act entered into force. The aim of the reform is to simplify the procedure for recruiting skilled personnel from third countries (ie, no EU, European Economic Area or Swiss citizens) and ease the admission criteria to make a significant contribution – in addition to the qualification and promotion of the domestic workforce – to solving the increasing shortage of skilled and key workers through qualified labour migration. This article, the first in a two-part series on this new amendment, details the main changes of the reform regarding the Red-White-Red card and its ramifications for the Austrian employment sector.

Statutory easement for obtaining Red-White-Red card

Changes in the minimum wage for "other key workers" and "graduates"

Until the amendment came into force, the Red-White-Red card⁽¹⁾ for "other key workers" differentiated between workers who were under and over 30 years old in terms of minimum salaries. The reform lapsed the higher minimum salary for workers above 30 years, which means that regardless of age, as of 2022, applicants for the Red-White-Red card for "other key workers" must earn a minimum gross monthly salary of €2,835 as the value changes each year.

To apply for the Red-White-Red card for "graduates" of an Austrian university, there was a prerequisite to earn a minimum monthly gross salary. This requirement has been adjusted so that graduates must get paid the local customary minimum salary comparable to what Austrian graduates (ie, junior employees) would earn.

Adjustment of points system

Some subcategories of the Red-White-Red card are based on a points system. These subcategories include, for example:

- "very highly qualified workers";
- "other key workers"; and
- "skilled workers in shortage occupations".

To obtain a Red-White-Red card, the applicant also must achieve a certain number of minimum points, as follows:

- 70 points for "very highly qualified workers";
- 55 points for "other key workers"; and
- 55 points for "skilled workers in shortage occupations".

These points are awarded on the basis of determined criteria, for example:

- education or qualification;
- professional experience;
- age; and
- language skills.

To make it easier to achieve the minimum number of points, the following adjustments have been made:

- Applicants receive one point for each half-year of work experience (instead of two points per year, as was the case previously).
- For "other key workers" and "skilled workers for shortage occupations", additional points for English language skills are awarded if English is predominantly spoken at the respective employer (eg, English as the group language of an Austrian subsidiary of a multinational company).
- For "other key workers", points are awarded for work experience regardless of whether the completed professional training or qualification corresponds to the employment sought.
- For "skilled workers for shortage occupations", the following changes have been made:
 - Points are awarded uniformly in the case of completed training or education (regardless of university or non-university education, as was the case before the amendment) in the respective shortage occupation.
 - Workers aged between 40 and 50 years old at the time of application now also receive five points for their seniority. Previously, individuals could only receive 15 points until the age of 30 and 10 points until the age of 40.

Proof of language skills (Red-White-Red card)

Any language diplomas and course certificates submitted as proof of German or English language skills must not be older than five years (instead of the previous one-year requirement) to receive points within the respective points system.

Permanent labour market access for regular workers

Red-White-Red card as "regular worker"

Workers who have been employed for two years as registered regular workers in the fields of tourism, agriculture and forestry for at least seven months per year and who can prove German language skills at A2-level may apply for the Red-White-Red card as a "regular worker". This new sub-category of the Red-White-Red card scheme does not require a minimum salary, nor is a labour market test⁽²⁾ carried out by the Austrian Public Employment Service (AMS).

Employment permits for specialists within project framework of six months

For particularly qualified workers from third countries, or specialists, who are to be temporarily employed in addition to regular staff to carry out temporary projects, especially in the information technology sector, without the intention of immigration, are given the opportunity to issue the necessary employment permits for a maximum duration of six months.

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Endnotes

(1) Within the Red-White-Red card system, there must be differentiation between:

- "very highly qualified workers";
- "skilled workers in shortage occupations";
- "other key workers";
- "self-employed key workers";
- "start-up founders";
- "graduates"; and
- "regular workers in in tourism, agriculture and forestry".

(2) In some categories of the Red-White-Red card, a labour market test is carried out by the AMS. If this test shows that there is no equally qualified worker registered as a jobseeker, the residence title will be granted if all the other requirements are fulfilled.