

New law amendment facilitates employment of workers from third countries: part two

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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 second of a two-part series on this new amendment,⁽¹⁾ details the main changes of the reform regarding the EU Blue card and its ramifications for the Austrian employment sector.

Statutory easements regarding EU Blue card

Professionals in sector of information and communications technology

One of the requirements for obtaining the so-called "EU Blue card" is evidence of studies at a university or other tertiary educational institution with a minimum duration of three years. An exception has now been made for certain skilled workers in the field of information and communications technology. Accordingly, such workers may obtain an EU Blue card without an academic degree if they can provide evidence of at least three years of professional experience comparable to the level of a university degree, under the condition that such experience was acquired during the seven years preceding application.

Gross annual salary

The previous salary threshold of one-and-a-half times the average gross annual salary of full-time employees (as of 2022, €66,593, including special payments) has now been lowered to one times that figure (as of 2022, €44,395, including special payments).

Holders of EU Blue card of another member state

Third-country nationals who hold a valid EU Blue card of another member state do not require a posting permit or employment permit to perform a specific business activity in Austria for a period of 90 days within any 180-day period. These business activities include:

- attending internal or external business meetings;
- attending conferences or seminars;
- negotiating business deals;
- performing sales or marketing activities;
- exploring business opportunities; or
- participating in training.

Procedural simplification in case of change of employer

In case of a change of employer after 12 months of employment, there is no need for a labour market test to be carried out by the Austrian Public Employment Service. The test is designed to determine whether an unemployed, readily available worker could perform the same job at a comparable level. The EU Blue card holder can start working for the new employer, even if the modification application for the new EU Blue card has not yet been completed.

If the EU Blue card holder has not yet been employed for 12 months, they can begin working at the new company 30 days after submitting the modification application, even if the procedure for the new EU Blue card has not yet been completed.

If the EU Blue card holder no longer meets the requirements for the EU Blue card, they will be granted a period of six months within which they are entitled to seek new employment in Austria.

Additional waiver of labour market test

If the applicant is a holder of a Red-White-Red card as a very highly qualified worker, other key worker or graduate, and they wish to switch to the EU Blue card, the labour market test does not apply, if the employment is continued with the same employer.

Further changes

Joint application for family members

Until the amendment came into force, employers could only submit an application for a new employee to the competent residence authority. Now, the provision has been adapted so that employers can simultaneously submit an application for the employee's family members in Austria.

Employment of foreigners for artistic productions

Foreign nationals who are concert or stage artists, band members, film, radio or television workers, or musicians may be employed without an employment permit for eight weeks as opposed to four as part of an overall artistic production to secure a concert, an event, a performance, an ongoing film production, a radio or television live program.

Self-employed secondary employment

Foreigners who have been issued an EU Blue card, a Red-White-Red card or a settlement permit for artists are entitled to pursue self-employed professional activities if such activities are subordinate to their main employment.

Reduction of share capital in case of Red-White-Red card for "start-up founders"

To facilitate the acquisition of a Red-White-Red card for "start-up founders", the amount of the share capital to be contributed has been reduced from €50,000 to €30,000.

For further information on this topic please contact Jakob Widner or Sarah Micheuz at GRAF ISOLA by telephone (+43 1 401 170) or email (j.widner@grafisola.at or s.micheuz@grafisola.at). The GRAF ISOLA website can be accessed at www.grafisola.at.

Endnotes

(1) For the first article in the series, see "New law amendment facilitates employment of workers from third countries: part one".