

Info Letter 2/2022

Employment of EU citizens without registration of a German residential address

Labour advice and counselling centres in Berlin often confront employers who refuse to deliver written employment contracts, other proof of employment, or even outstanding payments to EU citizens, claiming that such documents require the employee's residential address formally registered in Germany.

This information sheet clarifies the possibilities for EU citizens to work in Germany without a locally registered residence. For further information, contact the Berlin Advice Centre for Migration and Decent Work BEMA: www.bema.berlin/en.

1. Labour rights apply — even without a formally registered address

If workers have not yet registered their residence but are working, they are entitled to all the rights granted under German labour law. It is therefore impermissible to deny workers a written employment contract, pay slips, or even payment for hours already worked simply because they have not registered an address in Germany.

2. Validity of contract

Any contact address for the employee, including an EU address abroad, is sufficient for the creation of an employment contract. Being registered in Germany is not mandatory.

3. Tax registration

Without German registration, the tax office cannot assign an automatic tax identification number. However, in such cases the employer can register employees with the tax office responsible for their company. In this case, the employees will be allocated tax class VI (Section 39 c, § 1 of the Income Tax Act (EStG)). Employees are refunded any overpaid wage taxes in the following calendar year after filing a personal tax return.

Persons without permanent residence in Germany can receive an identification number for income tax purposes from the tax office upon application. The form is available at <https://www.formulare->

bfinv.de/ffw/content.do. Enter 010250 into the page's search field; it will return a fillable form titled, 'Antrag auf Vergabe einer steuerlichen Identifikationsnummer für nicht meldepflichtige Personen durch das Finanzamt'.

For some foreign employees, an additional certificate (§ 39 (3) EStG) may be required for wage tax deductions. This certificate must be applied for and issued anew each year at the tax office responsible for the employer. As the certificate is tied to your employer, you must re-apply at the appropriate tax office after changing jobs. The form is available online at: <https://www.formulare-bfinv.de/ffw/content.do>. Enter 034005 into the page's search field; it will return a fillable form titled, 'Antrag auf Ausstellung einer Bescheinigung für den Lohnsteuerabzug 201_ für beschränkt einkommensteuerpflichtige Arbeitnehmer'.

4. Health insurance and social security

In principle, employees should choose their own health insurance provider. If a new employee has not been registered with a German health insurance provider, they will not be able to provide the relevant information upon hiring. If employees do not present a health insurance membership certificate and have never been insured in Germany, the obligation to choose and register with a health insurance provider is transferred to the employer (section 175, § 3, sentence 2 of the Fifth Book of the Social Code (SGB V)). Registration for health insurance by the employer is part of the registration process for social security. As soon as the employer notifies the health insurance provider, the social security administration (Deutsche Rentenversicherung) automatically issues a social security number.

5. Opening a bank account

People without a registered address in Germany can also open a bank account. According to § 3 of the German Payment Accounts Act (Zahlungskontengesetz, ZKG), people who are legally resident within the EU and who wish to open an account must not be discriminated against 'on grounds of their nationality, language, place of residence, or for any other reason'. If you face such discrimination, contact the Federal Financial Supervisory Authority or any anti-discrimination counselling centre for assistance.

[https://www.bafin.de/SharedDocs/Downloads/DE/Formular/dl_fo_ba-siskonto_beschwerdeformular.html].

6. Obligation to register after three months

According to section 27, § 2, sentence 3 of the Federal Registration Act (Bundesmeldegesetz, BMG), EU citizens who otherwise live abroad are also obliged to register in Germany after three months of residency. They must register their residence with the Residents' Registration Office within 14 days of this deadline. The term residence is to be understood broadly: 'Any enclosed space used for living or sleeping' (§ 20 BMG)

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