

How can I get a work permit?



The conditions and the procedure

*information for asylum seekers with
Aufenthaltsgestattung or Duldung*

If you came to Germany as an asylum seeker, you will need a permit to work. This flyer will give you information which regulations apply in obtaining a permit and how to apply for this permit. If you have further questions, please contact one of the “Bleiberechtsnetzwerke” in Baden-Württemberg

(-> www.bleibinbw.de) or any other independent advice centre for refugees. You will find contact details on the website of the “Flüchtlingsrat Baden-Württemberg“: www.fluechtlingsrat-bw.de

This paper was updated in December 2014. It is based on information from the network “Land in Sicht” from Schleswig-Holstein. There may have been changes since the last update. Please note that this flyer contains only general information and cannot replace detailed information and advice which can be tailored to your individual case. Therefore we request you to consult a refugee advice centre or a lawyer for further individual advice. The content of this paper represents the authors’ views on the relevant legal regulations.



1. When are you not allowed to work?

After coming to Germany as an asylum seeker, you are not allowed to work for the first three months. This work ban is regulated according to § 61 Asylverfahrensgesetz (Asylum Procedure Law). During that period your identity paper as an asylum seeker will state:

„Erwerbstätigkeit nicht gestattet.“ (“Employment forbidden.”)

But even in these first three months, you are allowed to work according to certain conditions (“Arbeitsgelegenheit”) for a state or a charitable organization. However, you will only be paid 1,05 euro per hour according to § 5 Asylbewerberleistungsgesetz (Asylum Seekers’ Benefits Act).

INFO: When will a work ban (“ausländerrechtliches Arbeitsverbot”) be imposed? (§ 33 Beschäftigungsverordnung)

If you have a “Duldung” (temporary suspension of deportation), the Foreigners’ Registration Authority (Ausländerbehörde) has the right to impose a work ban...

- if it is claimed, that you came to Germany only to receive social benefits or
- if you are legally obliged to leave Germany and you do not fully cooperate with the authorities in efforts to enable you to leave. The authorities may consider you as being responsible of stopping or delaying your deportation.

A work ban will always be expressly stated in your identity papers (“Employment forbidden”).

TIP: *If you are banned from working, you can contact a refugee advice centre or a lawyer in order to know if the imposed work ban is in accordance with the law.*

2. When and how do you have access to the labour market?

After the three months of the work ban have expired, there are two different ways of accessing the labour market (provided that meanwhile you have not been given a “Duldung” including a work ban):

- **The *restricted* work permit** (§ 32 Beschäftigungsverordnung, Employment Regulation). You have to apply for a work permit at the local Ausländerbehörde (Foreigners’ Registration Authority) before starting a job. These regulations apply as long as your asylum case has not been decided and as long as you hold a “Aufenthaltsgestattung” (temporary residence permit for the time of the asylum procedure) according to § 55 Asylverfahrensgesetz (Asylum Procedure Law). The same is true if you have a “Duldung” (§ 60a Aufenthaltsgesetz) not including a work ban. The Foreigners’ Registration Authority will carry out a priority check and an investigation of working conditions (§ 39, Abs. 2 Aufenthaltsgesetz, see 4.).
- **The *unrestricted* work permit** (§ 31 Beschäftigungsverordnung). This means for you: You can accept every work you want without applying for a work permit. These regulations apply if your asylum proceedings have ended with a positive decision providing you with a Aufenthaltserlaubnis (residence permit). The same regulations apply if you have a “Duldung” (not including a work ban) or a Aufenthaltsgestattung (temporary residence permit) and if you have been in Germany legally for more than 48 months.

3. What can you do, if you have restricted access to the labour market?

If you only have restricted access to the labour market, the following information is written in your “Aufenthaltsgestattung” or “Duldung”: *„Erwerbstätigkeit nur mit Genehmigung der Ausländerbehörde gestattet.“* („Employment allowed with permission from the Foreigners’ Registration Authority only“)

You need a work permit

- for every job
- for every company-based vocational training
- for an internship

If the Federal Employment Agency (Bundesagentur für Arbeit) needs to give its approval, the Foreigners’ Registration Authority will then forward your application to the Foreign and Specialist Recruitment Headquarters, an office of the Federal Employment Agency. This authority will check whether other persons with a more favourable residential status should be offered the job. Furthermore, the working conditions will be checked.

TIP: *For a school-based training you do not need a work permit.*

4. What does the Bundesagentur für Arbeit check?

The Federal Employment Agency checks whether there are reasons to reject your application.

I. Standard case procedure = priority check and investigation about the working conditions. The priority check means: They are checking if there is a privileged employee available for that specific job. According to the law, “privileged” persons are Germans, EU citizens and other foreigners who already have a work permit.

TIP: *There are certain branches of work, chosen by the Federal Employment Agency, in which employment is generally possible without a “priority check”. For foreigners who have already been staying for more than 15 months, no priority check will be carried out.*

The investigation of working conditions means: The foreigner must not be employed under worse working conditions than those of comparable German employees. Therefore it will be checked whether the offered salary corresponds to the normal standard wage and whether legal provisions, e.g. laws for the protection of employees, are observed. No investigation of working conditions is carried out if the length of stay has already exceeded 48 months.

II. Exceptions:

There will be no priority check, just an investigation of working conditions IF

- the application is for the continuation of an employment after working one year with the same employer.
- in cases of hardship, the overall circumstances of the individual case should be taken into account. In case of traumatized persons the intended employment has to be part of the therapy.

5. How does the decision making procedure work?

If a work permit is needed, the Foreigners' Registration Authority will forward your application to the Federal Employment Agency. Once all documents have been submitted, the Federal Employment Agency has to review the application within two weeks.

If that doesn't happen within that time limit and/or the Employment Agency had not asked for further information from your employer or for other information during these two weeks, then the application will be considered as accepted (vgl. § 36 BeschVO). The Foreigners' Registration Authority will then grant you a work permit or issue a written notice of rejection. The approval is always denied, if the application is for employment with a temporary employment agency ("Leiharbeitsfirma"). The work permit can be limited to the actual job, the employer and the region and a limit can be also imposed on the number of working hours (§ 34, Abs. 1 BeschVO).

TIP: Ask the Foreigners' Registration Authority to send your application to the Federal Employment Agency as soon as possible.

6. Exceptions

The Bundesagentur für Arbeit will not take part in the decision made by the Foreigners' Registration Authority, if,

a) you are applying for one of the following activities:

- traineeships which are part of school, studies or programmes funded by the EU
- work on a voluntary basis
- employment as a "highly qualified" person (e.g. scientists)

- activities of family members of the employer who are living with him/her
- activities which primarily serve to improve a person's medical condition, reintegration or education

b) if you entered the country as a minor and

- gained a school-leaving qualification at a school of general education OR
- if you took part in a school-based vocational preparation course of one year, a pre-vocational education programme or if you took part regularly in a professional training preparation course according to the Vocational Training Act.

7. What can you do if the Ausländerbehörde rejects your application?

The Ausländerbehörde has to send you a written rejection. It is possible to appeal against this decision. You must take care to heed to the appeal time limits which can be found in the instructions on the right to appeal (Rechtsmittelbelehrung) at the last page of the authorities' decision letter. If this appeal fails to succeed, legal action can be taken at the competent administrative court.

If it can be assumed that the employer would give the offered job to a different person before long (thus making your appeal meaningless), then your appeal can be accompanied by an emergency application. This emergency application will have to be decided upon very soon by the administrative court without any hearing.

8. Summary: access to the labour market

You have a **Aufenthaltsgestattung** (§ 55 AsylVfG) or a **Duldung** (§ 60 a AufenthG):

- 0 - 3 months: **work ban**
- 3 - 48 months or since being issued a “Duldung”: **restricted access to the labour market**. But company-based vocational training, internship, volunteering, employment of highly qualified persons or working in the family business are possible without sending an application to the Federal Employment Agency. Self-employed work is not allowed..
- After 15 months: A priority check is no longer carried out.
- After 48 month: **unrestricted access to the labour market**. Self-employed work is still not allowed.
- If you have a “Duldung” this is only applicable if you are not banned from working according to § 33 Beschäftigungsverordnung.

c) You have a **Aufenthaltserlaubnis** (residence permit) according to § 22, § 23, § 23 a, § 25 paragraph 1-5, § 25 a AufenthG:

- As soon as you get a “Aufenthaltserlaubnis”, you have **unrestricted access to the labour market**. If you got an Aufenthaltserlaubnis according to § 25, paragraph 3, 4 or 5 or according to § 25 a, you have to ask your local Foreigners’ Registration Authority for permission in order to be self-employed.

9. Future developments

In the coalition agreement from the 27th of November 2013, the government of Germany proposed additional changes:

- A new regulation, § 25 b AufenthG, is to be introduced. This regulation enables people who have been living in Germany for a long period of time with a “Duldung” to get a residence permit (Aufenthaltserlaubnis). In contrast to former regulations, § 25b AufenthG is not only valid for persons holding a “Duldung” who entered Germany before a certain date. This information is based on the “Bundesratsbeschluss from the 28th of August 2012 (BR-Drucksache 505/12). Persons with a “Duldung”, who may fulfill the conditions for granting a residence permit according to the proposed legal changes, are no longer in danger of being deported before this law is put into effect, because some federal state governments have decided to let these people stay. Baden-Württemberg is one of these federal states (Decree of the Ministry of the Interior from 11th of February 2014).
- The proposed introduction of the § 25b AufenthG, will be accompanied by a change in § 25a AufenthG. Therefore “adolescents” who are well integrated into German society (aged between 15-21 years) and who have had a “Duldung” for the past four years (six years according to the present law) can get a “Aufenthaltserlaubnis”.

Translations

AufenthG	Aufenthaltsgesetz (Residence Act)
AsylbLG	Asylbewerberleistungsgesetz (Asylum Seekers' Benefits Act)
AsylVfG	Asylverfahrensgesetz (Asylum Procedure Law)
BeschVO	Beschäftigungsverordnung (Employment Regulation)

You can find these laws on the internet on the websites of the departments:
www.gesetze-im-internet.de