



Orth Kluth Newsletter

# Employment of refugees from Ukraine

Under what conditions are companies in Germany allowed to employ people who fled the war in Ukraine?

Based on the current status, we assume that people who fled the war in Ukraine may generally be hired by German companies without major obstacles. Prior to any employment, the company must however check the residence status of the person in question. Employment is allowed if such person can provide a residence title that explicitly states that the employment is permitted (or is not prohibited) ("*work permit*").

Pursuant to an EU Council decision, people who have fled the war in Ukraine are generally entitled to a residence title with a

work permit. If a candidate has not yet obtained such titles companies can support the application process with the local foreigners authorities (*Ausländerbehörden*).

People who have already applied for asylum can also be employed under certain conditions.

## Right of residence after entry

Refugees from Ukraine may currently not be employed immediately after immigration into Germany. Entry into and stay in

Germany for up to 90 days are generally permitted without a visa for Ukrainian nationals with a biometric passport (visa). The duration of stay can be extended by a further 90 days.

"We are now regulating the practical implementation in Germany as quickly as possible. (...) We will ensure that refugees from #Ukraine receive health insurance coverage and access to the labour market in Germany."

Federal Minister of the Interior  
Nancy Faeser, on 3.3.2022 on Twitter (translated from German by us).

In addition, based on a current ordinance of the Federal Ministry of the Interior<sup>1</sup>, all foreigners (including non-Ukrainian nationals and persons without a biometric passport) who were in Ukraine on 24 February 2022 and will enter or have already entered Germany until 23 May 2022 (current status) without a long-term residence title are exempt from the requirement of a residence title. This also applies to Ukrainian nationals who were already legally resident in Germany on 24 February 2022 (e.g. on the basis of the visa exemption).

According to the current legal situation, employment of refugees from Ukraine is

not yet permitted immediately after immigration into Germany. This first requires the acquisition of a residence title, which can however be applied for after entering Germany (exceptionally).

## Residence title and work permit for refugees

Employment is permitted if the person from Ukraine has a residence title (in particular a residence permit) and no prohibition of employment is explicitly stated therein (section 4a Residence Act). This must be verified by the company by verifying the residence document. Employment may also be restricted to a specific employment, which may require a change of the permit prior to the actual employment.

Based on an EU Council decision as of 4 March 2022<sup>2</sup>, Ukrainian nationals who had their residence in Ukraine before 24 February 2022 (i.e. were displaced by the Russian invasion as of that date) and their family members are entitled to a residence title in Germany (section 24 para. 1 Residence Act). Employment must be permitted separately within the residence title. We assume, based on various public statements, in particular by the Federal Ministry of the Interior, that this will generally happen when the residence title is issued. The employment of these persons (subject to explicit restrictions, for example, to a specific employment) would then be permitted without further requirements.

The same applies to stateless persons and nationals of third countries and their family

<sup>1</sup> Verordnung zur vorübergehenden Befreiung vom Erfordernis eines Aufenthaltstitels von anlässlich des Krieges in der Ukraine eingereisten Personen vom 7. März 2022.

<sup>2</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

members who have fled Ukraine and benefited from international protection or equivalent national protection in Ukraine. For the same group of persons without such protection status, comparable regulations will apply in Germany (at least insofar as a return to the home country is not possible), which however still require some further implementation in national law.

The residence permit is initially issued for one year and then automatically extended by two periods of six months each until the European Council decides to end the temporary protection. Subsequently, it can be extended for another year up to a total of three years.

The granting of a residence permit requires an application to the competent local foreigners authority and the declared willingness of the person concerned to be accepted by the Federal Republic of Germany. There are no further prerequisites for the issuance of the permit (save for some rarely relevant exceptions).

## Supplementary German regulations expected

It is expected that further regulations will follow at national level in the short term to implement the EU Council Decision. The aforementioned entitlement to a residence title already applies to Ukrainian nationals (or persons with protection status there). For refugees with other nationalities, further implementation in national law is still necessary.

In addition, further facilitations for obtaining a secure residence status in Germany and an even easier access to the German labour market might be enacted. It may then also be possible to protect persons which

are not eligible so far (e.g. people who had already left Ukraine before the mentioned date as a precautionary measure) within a certain extent.

## Persons in the asylum procedure

Due to the aforementioned entitlement to a residence permit, the qualified persons from Ukraine do not necessarily have to go through an asylum procedure at first. In the further course, it can nevertheless be examined whether it might be individually advantageous to file an asylum application.

Asylum seekers can also be employed by German companies. However, the following requirements apply in particular:

- Employment is initially not permitted during compulsory accommodation in a reception centre.
- Employment can be permitted by the foreigners authority after 3 months at the earliest.
- In most cases, the Federal Employment Agency must agree.
- After successful completion of the asylum procedure, recognised persons entitled to asylum receive a residence title permitting employment.

Whether employment is permitted can be seen on the residence document and must be checked by the potential employer.

## Recommendations

If persons from Ukraine are to be employed, it must be checked individually whether a residence document permitting employment is available. If this is the case, employment can take place - subject to

explicit restrictions on the residence document.

*This Newsletter is based on the legal status as of: 10. March 2022*

Ukrainians who have fled Ukraine as of 24. February 2022 are eligible to obtain a residence title that should also allow them to take up employment. The prerequisite for employment of these persons is therefore only the completion of an application procedure at the competent local foreigners authorities.

If the relevant person has not yet obtained a residence title or if employment is not permitted therein, the local foreigners authority should be contacted. The company can support these proceedings or even establish the initial contact itself. We have attached some addresses for information or contact points that provide free advice to this newsletter.<sup>3</sup> Information on the exact procedure can also be found on the websites of the foreigners authorities.

Once a residence title has been issued, it can be examined individually during the period of validity whether a long-term *regular* residence title can also be obtained for the person concerned.

It should be monitored in the near future whether further facilitations for persons who have fled the war in Ukraine will come into force.

If needed, we will be happy to inform you about new regulations or provide individual and uncomplicated support if you wish to employ affected persons.

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<sup>3</sup> [Information website of the Federal Ministry of the Interior; information website of the Federal Office for Migration and Refugees; Förderverein PRO ASYL e.V. - Working Group for Refugees](#)

Berlin: [Information website of the Berlin Senate Chancellery; Contact and Counselling Centre for Refugees and Migrants \(Kontakt- und Beratungsstelle für Flüchtlinge und Migrant innen e.V.\); Migration Counselling of the Berlin Welfare Associations; Asylum Counselling of the AWO Berlin-Mitte.](#)

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