

Basic Information - work permit Aufenthaltsgestattung / Duldung Basisinformation Arbeitserlaubnis

englisch

With a permission to remain **Aufenthaltsgestattung** or temporary suspension of deportation **Duldung**, access to the job-market is deemed "secondary" and self-employment is not permitted. The work permit **Arbeitserlaubnis** is termed "Permit to Exercise Employment" **Erlaubnis zur Ausübung einer Beschäftigung**.

"Employment **Beschäftigung** means performing work as a part of an employment contract, subject to instructions from a superior and within a labour organization."

(as cited by German law § 7 SGB IV).

- Unpaid work-training and unpaid trial periods typically have to require a work permit.
- 1-Euro-Jobs are arranged by government agencies and do not require a work permit.
- The area of volunteer and honorary activities is rather complicated. If the same type of work is typically a paid job, a work permit might be required.

Work permit Arbeitserlaubnis

After one year with a permission to remain **Aufenthaltsgestattung** or temporary suspension of deportation **Duldung** you may be eligible for a work permit. You must first find a work place, and the employer must offer the job to you personally. You need to file an application for a work permit with the Foreigners Authority **Ausländerbehörde**.

The Foreigners Authority will check whether or not there are any objections toward issuing such a work permit. Once you receive a favourable ruling, your application will be forwarded to the local employment agency **Arbeitsagentur**.

- You then file the application with the Foreigners Authority **Ausländerbehörde**, which is the authorized agency for final approval or rejection. The Foreigners Authority has to consult with the employment agency **Arbeitsagentur** through administrative channels.
- A work permit will be issued for a specific job only. Its duration will be limited. Extension applications needs to be filed early.
- The employer must clearly specify the particulars of the job and working conditions, and the employer should agree that this job is publicly advertised by the employment agency **Arbeitsagentur**. An even better alternative would be to report the job opening beforehand.
- The hourly wage must be commensurate with local standards, working hours and working conditions may be unusual, but must not violate standards of ethics and decency.
- With a permission to remain **Aufenthaltsgestattung** or temporary suspension of deportation **Duldung**, you will not be entitled to any legal claim to a work permit. The issue of such a work permit is at the discretion of the Foreigners Authority **Ausländerbehörde**.

Work ban Arbeitsverbot

After one year's holding a permission to remain **Aufenthaltsgestattung** a flat work ban by the Foreigners Authority **Ausländerbehörde** is not possible. Persons, subject to a temporary suspension of deportation **Duldung** may be banned from work by the Foreigners Authority **Ausländerbehörde**.

- Once you have filed the application, the Foreigners Authority **Ausländerbehörde** has to check whether or not you satisfy the legal residence requirements for a work permit. These requirements include the 1-year waiting period, your obligations for cooperating with German authorities, and the issue of whether or not the Foreigners Authority **Ausländerbehörde** believes that you are at fault for the inability to deport you.
- "Foreigners subject to a temporary suspension of deportation **Duldung** must not be permitted employment if ... measures to terminate their stay cannot be implemented for reasons caused by such foreigners. Such causes fall within the realm of the foreigner's responsibility in particular if deportation is delayed by providing false information on identity or citizenship, or by providing false information in general" (as cited by German law § 11 BeschVerfVO)
- Work and employment will also be prohibited, if one of the government authorities raises the allegation, that the person immigrated to Germany only to receive benefits.

Job market investigation Arbeitsmarktprüfung

The unemployment-rate in Germany is rather high. This was leading to the establishment of a "Priority Ranking". Persons with a secure residence-status (Germans, EU-citizens, persons with a right of residence **Aufenthaltsberechtigung**) are offered a job opportunity first. The employment agency **Arbeitsagentur** asks potential employers to submit a placement order and then arranges interviews for "privileged unemployed persons". There are numerous sanctions for those who reject such a job offer. Furthermore, wages, working hours etc. are checked, to make sure that the working conditions of persons with permission to remain **Aufenthaltsgestattung** or temporary suspension

of deportation **Duldung** are of the same quality as for others. The employer must provide information on these details. The job market investigation takes some weeks, but may also take up to 6 months. You may file for legal action due to inaction after 3 months.

- Once all of these requirements have been satisfied, and the employer did not locate anyone else suitable for this position, a very detailed justification must be provided to the employment agency **Arbeitsagentur**. After that the approval of a work permit may be issued.
- Some employment agencies say, that all €-400-jobs and all full-time jobs which do not require vocational training, can always be filled by priority unemployed in principle. They therefore flatly reject such applications. You should always insist on an individual investigation of your case.
- The employer should describe in detail if you are better qualified for the job than other applicants (language skills, prior experience, etc.).
- In particular hardship cases, the prerequisite of a job market investigation may be waived. For example through an attestation by a medical specialist, that this job would be significant for the rehabilitation from an illness. Please check whether or not such "hardship" might apply to you. You should claim all special circumstances directly within your application.

Appeals, legal action and costs Widerspruch, Klage und Kosten

There are no costs involved with the application for work permit. If your application is rejected, you may file an appeal within one month in writing (or orally to be recorded as a written document). You may provide the reasons for the appeal shortly thereafter.

- Such an appeal **Widerspruch** requires a written notification by the Foreigners Authority **Ausländerbehörde**, including instructions on legal

remedies. The Foreigners Authority must provide such notification at no cost.

- In case the appeal is rejected, you will be entitled to reimbursement of the processing fee, because you are receiving asylum seeker benefits **Asylbewerberleistungen**. The response to your appeal is typically forwarded to you via registered mail. Some Foreigners Authorities require a fee for the costs incurred (approx. € 4).
- As the next step, you may file legal action against the Foreigners Authority **Ausländerbehörde** at the Administrative Court **Verwaltungsgericht**. We recommend that you simultaneously file for a "speedy trial" **Eilantrag** with the Administrative Court, which demands, as well reasoned as possible, that the Court shall obligate the Foreigners Authority to issue a (temporary) work permit, until the legal action has been decided.
- Such legal action requires an attorney familiar with this sector of the law. For an initial consultation, the attorney may request consultation aid **Beratungshilfe** on your behalf. If there is a reasonable expectation for success, you may be entitled to trial cost assistance from the Court, meaning that you do not have to pay the court and attorney costs, even if you lose the case.

Illegal labour Illegale Arbeit

Being employed without a permit is forbidden. In a legal sense, such **Schwarzarbeit** is punishable by fines and criminal prosecution for you and the employer. This may have a negative effect on your residency process, for example if you are eligible for a residence permit **Aufenthaltserlaubnis**. It may also increase the pressure for deportation.

- You should also take into consideration that any illegal work may subject you to blackmail and extortion. Illegal workers are often extremely poorly paid and it is tough to retaliate if you are not being paid at all.

Please note: This information has been prepared to the best of our knowledge and ability. It does not represent any legal advice. All information shall be applicable to Schleswig-Holstein. 12/ 2006
Bitte beachten Sie: Diese Informationen sind nach bestem Wissen erstellt. Sie ersetzen keine juristische Beratung. Alle Angaben beziehen sich auf Schleswig-Holstein. 12/2006

The project **INFONET** – access to education and careers for refugees is part of the group Land Ahoy! - vocational qualification for refugees in Schleswig-Holstein, and is supported by the Refugee Council Schleswig-Holstein e.V. Das Projekt **INFONET** - Bildungs- und Berufszugänge für Flüchtlinge gehört zu der Gruppe Land in Sicht! - Berufliche Qualifizierung für Flüchtlinge in Schleswig-Holstein und wird vom Flüchtlingsrat Schleswig-Holstein getragen.

The Refugee Council was founded in 1991 and represents the umbrella organisation for initiatives, groups, organisations and individuals for refugee-aid and refugee-solidarity in Schleswig-Holstein. It provides anti-racist public relations services and supports refugee and migrant-relevant issues before government agencies and state government. The organisation is a member of the national working group for refugees, PRO ASYL.

Der Flüchtlingsrat besteht seit 1991, ist Dachverband von Initiativen, Gruppen, Organisationen und einzelnen Personen der solidarischen Flüchtlingshilfe in Schleswig-Holstein. Er leistet antirassistische Öffentlichkeitsarbeit und vertritt flüchtlings- und migrationspolitische Anliegen gegenüber Behörden und Landesregierung. Der Verein ist Mitglied in der bundesweiten Organisation für Flüchtlinge, PRO ASYL.

INFONET

Bildungs- und Berufszugänge für Flüchtlinge
Flüchtlingsrat Schleswig-Holstein e.V.
Oldenburger Str. 25
24143 Kiel

Tel. 0431 - 240 59 09
oder 0431 - 735 000
infonet@frsh.de

www.infonet-frsh.de