

# Information on the ban on recruitments and job placements for healthcare and nursing staff from countries on the WHO list for private employment agencies

## Key facts

- In 2006, the World Health Organisation (WHO) identified a critical shortage of healthcare personnel (especially doctors and nurses) in 57 countries and advised against actively recruiting and finding work for professionals from those countries.
- Germany has since incorporated this recommendation in its legislation, prohibiting private job placements for healthcare personnel from those countries.
- However, the Federal Employment Agency may organise employment for such workers on the basis of criteria agreed with the federal government.
- The selection of countries from 2006 will continue to apply until the current WHO list is revised.

## Starting point

When recruiting healthcare personnel from abroad, employers are often supported by private service providers. However, there are legal limitations in the private placement of doctors and nurses, which should be familiar to everyone involved in the process.

## Legal framework

If the employer and employee are based in Germany, a private placement may be organised without special approval. There are merely special requirements for the agency agreement stipulated in Section 296 of the Third Book of the German Social Security Code (SGB III).

However, private service providers are prohibited from recruiting and filling vacancies in healthcare and nursing occupations with professionals from any of the 57 countries listed in the attached document (Sections 38 and 39 of the German Employment Regulations).

Those are the countries in which the World Health Organisation (WHO) has identified a critical shortage of healthcare personnel and advised against actively recruiting and finding work for professionals from those countries. This recommendation has been incorporated in German legislation.

Any intentional or negligent violation of the ban on placements will be prosecuted by the Federal Employment Agency as an administrative offence and may be punished with a fine of up to 30,000 euros (Section 404(2) No. 9 and Section 404(3) SGB III).

Private service providers may be wondering which activities constitute a recruitment or job placement that might meet the criteria for a fine.

The term “job placement” is defined in Section 35 *et seq.* SGB III. It includes all activities aimed at matching apprentices or job seekers with employers to establish a training relationship or employment contract. This also applies to searches carried out by employers themselves, i.e. recruiting from abroad<sup>1</sup>. The activities indicated above will be considered a job placement even if they do not ultimately lead to the conclusion of an employment contract. For example, even job advertisements for healthcare positions in Germany are prohibited in those countries.

This applies to the facilitation of both employment and training.

An apprenticeship constitutes a form of employment within the structure of German employment law. Therefore, the private recruitment and placement of trainee healthcare and nursing personnel from countries on the WHO list is equally prohibited in Germany. Experience shows that third-country nationals who are placed in training in the German healthcare and nursing sector often already have professional knowledge and skills. As a result, their countries of origin are deprived of their expertise and training potential.

## **Placement authority of the Federal Employment Agency**

Although private service providers are prohibited from finding employment for healthcare personnel from the countries mentioned above, the Federal Employment Agency is solely authorised to arrange such work placements to the extent permitted by law. As a governmental organisation, the Federal Employment Agency must arrange placements in consultation with the respective country of origin to prevent damage to its healthcare system and avoid brain drain.

The Federal Employment Agency has been working with all the federal ministries concerned (Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Cooperation and Development, Federal Ministry for Economic Affairs and Energy, Federal Ministry of Health) to establish criteria that must be met for the Federal Employment Agency to cooperate with the countries in such matters. The criteria have also been coordinated with the World Health Organisation.

Three basic requirements have to be met:

- Cooperation with representative state actors must be ensured;
- The labour markets in Germany and the country of origin must not be disadvantaged in any way; and
- The recruitment and placement process must be fair and transparent for applicants; for example, applicants must not be asked to pay agency fees.

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<sup>1</sup> Hauck / Noftz – Rademacker, German Social Security Code, SGB III, Comment, Section 292 Point 5

Since 2019, this process has been tested in a pilot project for the placement of geriatric nursing trainees from El Salvador. The feasibility of further projects in India, Bhutan and Indonesia is also being examined in coordination with the World Health Organisation.

### **Further information**

The question is occasionally raised as to whether the selection of countries that are off limits to private employment agencies will ever be updated. The current selection is based on a recommendation made by the World Health Organisation in 2006. While the World Health Organisation is currently revising a new version, the familiar selection from 2006 will remain unchanged until the publication of a new list.