

Annex I – Legal provisions

Extract from the Working Hours Act

§ Section 3 Working hours of employees

The working time of employees may not exceed eight hours per working day. It may be extended to up to ten hours only if within six calendar months or within 24 weeks an average of eight hours per working day is not exceeded.

§ Section 4 Breaks for rest

Work must be interrupted by predetermined breaks of at least 30 minutes if the working time exceeds six hours, up to nine hours, and 45 minutes if the working time exceeds nine hours in total. The rest breaks in accordance with the first sentence may be divided into periods of at least 15 minutes each. No worker may be employed for more than six consecutive hours without a break.

§ Section 5 Rest period

(1) Workers shall have an uninterrupted period of rest of at least 11 hours at the end of the daily working time.

(2) The duration of the rest period referred to in paragraph 1 may be reduced by up to one hour in hospitals and other establishments for the treatment, care and support of persons, in restaurants and other places of entertainment and accommodation, in transport undertakings, in broadcasting and in agriculture and animal husbandry, if any reduction in the rest period within a calendar month or within four weeks is compensated by the extension of another rest period to at least twelve hours. [...]

§ Section 7 Deviating regulations

(2) Provided that the health protection of the employees is ensured by an appropriate time compensation, a collective agreement or, on the basis of a collective agreement, a works or service agreement may also permit,

No. 2. to adapt the provisions of Sections 3, 5 (1) and 6 (2) in agriculture to the tilling and harvesting season and to the effects of the weather.

§ Section 10 Employment on Sundays and public holidays

(1) If the work cannot be carried out on working days, employees may be employed on Sundays and public holidays in deviation from § 9 [...] No. 12 in agriculture and animal husbandry and in facilities for the treatment and care of animals.

§ Section 15 License, authorization

(1) The supervisory authority may ...No. 1 may grant a longer daily working time for seasonal and campaign operations for the period of the season or campaign which deviates from Articles 3, 6(2) and 11(2), if the extension of the working time over eight hours on working days is compensated by a corresponding reduction in working time at other times.

Ordinance on the Employment of Foreigners (Beschäftigungsverordnung - BeschV)

§ Section 15a Seasonal employment

(1) Foreign nationals who are admitted on the basis of an agreement between the Federal Employment Agency and the labour administration of the country of origin on the procedure and selection for the purpose of seasonal employment in accordance with Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers (OJ 2014, p. 1). L 94 of 28.3.2014, p. 375), the Federal Employment Agency may, for the purpose of exercising seasonal employment of regularly at least 30 hours a week in agriculture and forestry, horticulture, the hotel and catering industry, fruit and vegetable processing and sawmills

1. issue work permits for a period of up to 90 days per period of 180 days in the case of nationals of a State listed in Annex II to Regulation (EC) No 539/2001. [...]

The seasonal employment of a foreign national may not exceed six months in any twelve-month period. The duration of seasonal employment may not exceed the period of validity of the travel document. In the case of Section 39 No. 11 of the Residence Ordinance, consent shall be deemed to have been granted until a decision has been taken on it. Foreigners who have been employed as seasonal workers in the territory of the Federal Republic of Germany at least once in the last five years are to be given preferential consideration within the scope of the number of work permits and consents determined by the Federal Employment Agency. The period for the employment of seasonal workers is limited to eight months within a period of twelve months for a company. Sentence 5 shall not apply to fruit, vegetable, wine, hop and tobacco growing enterprises.

(2) The granting of a work permit or consent shall be subject to the following conditions

1. proof of sufficient health insurance cover is provided
2. the seasonal worker is provided with adequate accommodation, and
3. there is a concrete job offer or a valid employment contract which specifies in particular
 - a) the place and nature of the work,
 - b) the duration of employment,
 - c) the remuneration,
 - d) the working time per week or month,
 - e) the duration of paid leave,
 - f) where appropriate, other relevant working conditions; and
 - g) if possible, the date of commencement of employment.

If the employer provides accommodation for the seasonal worker, the rent must be reasonable and may not be deducted from the wage. In this case, the seasonal worker must be given a rental agreement setting out the terms of the lease. The employer must immediately notify the Federal Employment Agency of any change in the accommodation of the seasonal employee(s).

(3) The work permit or consent shall be refused or withdrawn if

1. the foreign national is already in the territory of the Federal Republic of Germany, unless the entry has been made for the purpose of taking up seasonal employment or the work permit or approval is applied for a further seasonal employment following a seasonal employment,
2. the seasonal worker has submitted an application pursuant to Article 16a of the Basic Law or applies for international protection in accordance with Directive 2011/95/EU; Section 55(2) of the Asylum Act shall remain unaffected
3. the seasonal worker or seasonal workers have failed to comply with the obligations arising from a previous decision on admission to seasonal employment,
4. insolvency proceedings have been opened against the employer's enterprise with the aim of dissolving the enterprise and winding up the business,
5. the employer's enterprise has been dissolved in the course of insolvency proceedings and the business has been wound up,
6. the opening of insolvency proceedings on the assets of the employer's enterprise has been rejected for lack of assets and business operations have been discontinued or
7. the employer's company does not carry out any business activity.

The work permit or approval is to be refused if the number of work permits and approvals stipulated by the Federal Employment Agency for the relevant period is reached. § Section 39(2) of the Residence Act remains unaffected.

(4) The work permit shall be applied for by the employer at the Federal Employment Agency.

(5) In the event of a single or multiple extension of the employment relationship with the same or a different employer, a further work permit may be issued, provided that the maximum duration specified in subsection 1, first sentence, no. 1 is not exceeded.

(6) The work permit and consent shall be granted without a priority review, provided that the Federal Employment Agency has determined an admission number based on need in accordance with section 39(6), sentence 3 of the Residence Act.

Annex II – Social Security

Social security obligation (§ 8 SGB IV):

In principle, persons who are employed in Germany for remuneration are considered to be in need of social protection and are therefore subject to compulsory social insurance. This also applies to seasonal agricultural workers from third countries. According to the German regulations, special features apply in particular to short-term employment. Short-term employees are exempt from pension, health, nursing care and unemployment insurance. However, they are covered by statutory accident insurance.

Short-term employment exists if the employment is limited from the outset to no more than three months or a total of 70 working days in a calendar year and - if the remuneration exceeds 450 euros per month - this employment is not carried out on a professional basis. For the period from March 1 to October 31, 2021, the time limits will be extended to four months or 102 working days due to the pandemic. Thereafter, the time limits of three months or 70 working days will apply again. In the case of employment subject to social insurance, social insurance contributions must be paid to the German social insurance institutions in accordance with German regulations. The examination of the prerequisites for compulsory social insurance, which also includes professional status, is the responsibility of the collection agencies (statutory health insurance funds) and, in the case of an employer's examination, of the German Pension Insurance Fund. Employers in Germany do not have to observe any special registration requirements when registering foreign employees.

Health/accident insurance:

In the case of employment subject to social insurance, health insurance is part of social security. Contributions are paid half by the employer and half by the employee.

The employer also pays the contribution to statutory accident insurance. Agricultural accident insurance is handled by the Social Insurance for Agriculture, Forestry and Horticulture (SVLFG). Entrepreneurs and employees of an agricultural enterprise are liable for agricultural accident insurance. The insurance cover extends to all persons employed in the company - even temporarily - such as seasonal workers.

In the case of employment exempt from social security contributions, separate proof is required that the employee is insured through his or her own health insurance in Germany. If this is not the case, the employee must be insured through the employer. The employer will take out a comparable private health insurance policy for the employee at his own expense. There is the possibility of group insurance. Otherwise, the seasonal worker from the third country cannot be employed in Germany, as health insurance cover is required for the work permit.