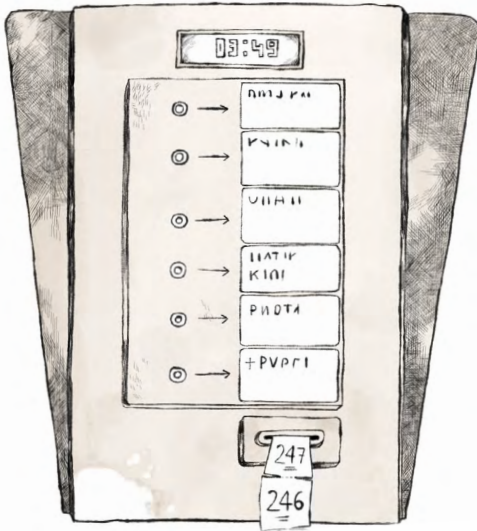




Österreichische
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Access to Labour Market

for foreign
Students

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Access to Labour Market

for foreign Students

February 2025

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Insurance

Within the context of your studies and as an ÖH-member, you have the advantage of automatically having an extensive accident and liability insurance by the Generali Insurance AG.

More Information via:

oeh.ac.at/service/oeh-versicherung/

Do you still have questions?

Write us an E-Mail via: wiref@oeh.ac.at



GENERALI

Dear Student,

Congratulations for your decision to study in Austria.

Before taking up those studies, you have to cope with requirements regarding university admission, residence permit, (including financing your studies, or access to labour market. To make life easier, the department for foreign students prepared four brochures, covering

- › University admission
- › Residence permit
- › Access to labour market
- › Hints how to handle administrative proceedings

You will find all information necessary to deal with those issues in those booklets. If there are additional questions or specific requests for information, please check the homepage www.oeh.ac.at or contact our department either via e-mail: ar@oeh.ac.at or via phone: +43/1/310 88 80 - 65 (-67 for legal counselling)

The actual counselling hours are published at www.oeh.ac.at/beratung

All the best for your studies
The Team of the department for foreign students



f.l.t.r.: Sarah Rossmann, Nina Mathies, Simon Neuhold

Hello,

everyday student life can be pretty chaotic, and every semester brings new challenges: a new curriculum, the search for support and grants, or an overview of your rights and obligations as a student vis-à-vis your university.

We, the Austrian Students' Union (ÖH), help students with a variety of problems. We advise and support wherever possible and necessary - via e-mail, telephone, video call or in a personal conversation. We inform you about your student rights, at the university and in everyday life. In counselling and in our counselling brochures, but also via our website www.oeh.ac.at, our progress magazine, our regular newsletter and, of course, on our social media channels.

These services are a large and important part of our work as student representatives. It is equally important to address and solve existing problems.

That's why we need to make a political commitment to this. As ÖH, we negotiate with policy makers to improve your study conditions.

Studying. Changes.

In order to promote far-reaching changes, we need a strong ÖH that clearly addresses our demands as students and addresses problems openly. The ÖH has made it its goal to be critical, vocal and, above all, visible. This brochure is intended to help precisely with that.

Enjoy!

Nina Mathies, Sarah Rossmann and Simon Neuhold

Access to Labour Market for non-Austrian Students

Introduction

There are several reasons to look for a job – (necessary) additional income to cover the required financial means for a residence permit, gaining experience or looking for financial independence. In addition to find a suitable job, third-country students have to meet legal requirements – some opportunities might be illegal. And be careful: “Illegal employment” (from an alien law point of view) may lead to an entry ban for several years.

This guideline shall give an overview to the legal framework for non-EEA-students; there are too many options to give detailed information for all of them. For details, there is the personal information and counselling at OeH.

1.1. EMPLOYMENT LAW, SOCIAL INSURANCE AND TRADE LAW

Compliance with social (insurance) regulations and labour laws should go without saying – during the job and in the process of leaving. For employment of third country nationals, this is **not** sufficient: social insurance does not check compliance with Employment of foreign nationals act (Ausländerbeschäftigungsgesetz - AuslBG); it will be sort of luck if immigration authority only will find out and just drop “income without work permit” from the proof of income when someone is applying for renewal of a residence permit, but they will also be very strict regarding the required study success: A single ECTS point missing may lead to rejection of the student residence permit renewal. There could be a “worst case scenario” being caught by finance police at the workplace: This will result in a report of “illegal employment” an entry ban being the most likely result. Employers face heavy fines – € 1.000 per person or higher.

Working on a self-employed basis, there are trade law regulations: Fields of business heavily regulated are diminishing with the time, but even "free" trade and/or craft will require a business licence. There is a single exception for "new types of freelancers", i.e. artists, writers, people providing personal care. Finding the right category is tricky: Please contact the regional office of the chamber for commerce.

If there is a report of "employment without work permit": get competent counselling for the subsequent alien police proceedings! The first impression of officers can be right or wrong, and there might be a credible explanation assisting a friend in a particular case, but working regularly, being registered with social insurance is a clear offense. Not knowing regulations is no excuse for the violation.

1.2. ACCESS TO LABOUR MARKET

Austrians and EEA nationals or Swiss citizens

Any EEA or Swiss national (save Croatians until June 2020), and any Swiss citizen is entitled to take up any job if compliant with labour law or business law.

Administration for EEA nationals

In addition to the registration of the place of living (Meldezettel), there is the requirement to get a registration certificate from immigration authorities within four months – missing this will lead to an administrative fine. The relevant EU directive lists three categories: workers and self-employed persons, persons attending a course of study including vocational training, and "others". Economically active persons do not have to show any other documents save a proof of their activities, students will have to show sickness insurance cover and to assure national authorities that they have sufficient resources to cover their living, all others have to show comprehensive sickness insurance cover and have to show sufficient resources (with stronger evidence).

Third country nationals

Students from "third countries" (not EEA or Swiss citizens) need a work permit to take up an employment. If the type of residence permit is not based on the study, there may be some exemptions: Being a family member of a third country national, a red-white-red card plus is issued, including free access to any job. The same rules apply to family members of Austrians or EEA citizens. There is no access to labour market at all if there is a residence permit for a more distant relative of an Austrian (Niederlassungsbewilligung-Angehöriger), self-employment only for a more distant relative of an EEA citizen (Niederlassungsbewilligung).

Some employers are exempt from Employment of foreign nationals act (there may even be access to a different - better - type of residence permit).

These are

- › Universities and universities of applied science if the job is related to research or teaching
- › Journalists
- › Researchers at recognized research institutions
- › Staff of diplomatic/international organisations

Access to business licences can be limited on the basis of reciprocity: The same (or similar) regulations apply to third country nationals in Austria as Austrians have to meet in their country of origin.

1.3. EMPLOYMENT

Irrespective of the designation of the contract, any job where you get instructions by a superior and you owe the time, not the result, is seen as employment by law (and jurisdiction). All people subject to Employment of foreign nationals act need a specific permit to do those jobs.

You may get

- › Work permit (Beschäftigungsbewilligung) to be applied for by the employer and valid for (up to) one year covering a specific job for a single employer
- › Confirmation of notification (Anzeigebestätigung) for trainees as defined within the study programme and concert or stage artists for a short artistic production

There is an exemption for Turkish nationals according to the EU-Turkey association agreement, allowing for the exemption document (Befreiungsschein) – get counselling if you are Turkish national and have been working for more than 4 years.

Any work permit application is to be submitted by the employer to Employment service (AMS, the competent authority) before starting the job and subject to a check if there is an unemployed person registered with Employment service (called labour market test). Such people are to be employed first. This results to a high number of rejections of work permit applications. There is a better chance if someone can produce certain qualifications not easily available at Austrian labour market, e.g. specific language knowledge, professional training/experience for a specific job (from your studies), the relevance to the job being offered has to be explained.

After the work permit being issued, the job has to start within 6 weeks. After any interruption (cancelling the registration with social insurance), the permit is voided and there has to be a new application. The same regulation applies if there is a different job task, any change to the amount of working hours or salary. If another employer enters the legal relationship through transmission of the company or change of its legal form, the permit continues to be valid. Due to an EU directive guaranteeing easier access to labour market, a work permit for up to 20 hrs is open to all students without labour market test. More than 20 hrs are theoretically possible with labour market test, although this is extremely unlikely.

If an application is rejected, the employer has the right to file an appeal being dealt with by the Federal Administrative Court . The employee can only do so on his/her own, if the reason for rejection is on his/her side, e.g. working without permit more than one time in the last 365 days. In this situation, the employee has to wait until the second last violation ended more than a year ago. This limitation has been found unlawful by the European Court of Human Rights (ECHR) and the subsequent changes to the law were superficial, resulting to a very broad admission of complaints lodged by employees.

A quite new paragraph in the law allows to shorten that "one-year ban" if the employer can show he has implemented an effective monitoring system to avoid further violations. The impact on employees being registered with social security without work permit (by fault of one employer) looking for a new employer is not yet clear. Please get counselling if you suffer from a sloppy employer.

Special situation: Association agreement EU-Turkey

Turkish nationals working (legally) for an employer for one year have the right to get their work permit renewed for that employer. After three years there is an easier possibility to change the employer (still after checking if someone registered with AMS is available), after 4 years, there is free access to labour market (any employer).

After the first year, there is no limit to part-time jobs anymore, one can work full-time. As people covered by those regulations may reduce study activity or give up studies at all, the renewal of the student residence permit does not make much sense. The Austrian Administrative High Court found a regulatory gap in the residence law, meaning there is no suitable type of residence permit to be issued. Instead, the work permit or the exemption certificate are seen as residence permit, too. For the first three years, it's crucial to keep the current job with the initial employer and not to miss any deadline (e.g. for a renewal application of the work permit).

Candidate countries from the west Balkans

There are similar Stabilisation- and Association-Agreements with the west Balkan countries, but no detailed implementation regulations. Thus there is no opening of labour market for citizens from those countries, just some visa liberalisation/visa waiver.

1.4. SELF-EMPLOYMENT

The major difference is payment for a defined result, not for working hours, the contractor taking business risk. If producing the result takes less time, the "hourly wage" (just as a calculation figure) is higher, if the contractor needs more time – less money per hour. Aspects pointing towards "real" self-employment are the ownership of tools required for a project, working for more than one customer, the possibility to hire further staff/to sub-contract part of the "job" (your own employees could need a work permit).

Taking up such sorts of business activity without business licence (as "new freelancer" explained above) creates a big risk that social insurance will qualify the contract as employment later, seeing the contract as "free work contract" (sort of an intermediate type between full employment and real self-employment). This will lead to additional payments to social security and the conclusion that a work permit would have been necessary – probably leading to problems with alien police. The risk is much lower for anyone with a business licence.

To differentiate between employment and self-employment

Not any activity is suited for self-employment. Any job requiring presence at the company premises (e.g. answering the phone) is not self-employment (irrespective of the headline of the contract). The possibility to have someone else to substitute a "contract partner" will just lead to a „free work contract“. If the tools are supplied by the contract partner (e.g. the computer), it's a hint for employment. If there is a project, e.g. to write a software application on your own computer wherever you want to work – at home, in the park – and there are just some business meetings at the premises of the company, it's very likely self-employment. This assessment may change if there is just a single contract partner, creating economic dependence.

But please use competent counselling: the wording of a "service contract" may make the difference.

1.5. INTERNSHIPS

Employment of foreign nationals act makes a difference between voluntary work and internships: An internship required by study program has a clear legal basis there, its aim is specific (vocational) training and the type of the job, working time and payment clearly point towards the "element of training" – being different from "employment". Qualified work may lead to reasonable payment. Any other voluntary work must not be paid – sort of reimbursement of expenses to be checked individually: get counselling before starting!

Working at the university is easier: research, teaching and art (at art universities) are exempt from Employment of foreign nationals act. There are constitutional guarantees for freedom of research and art, so neither Employment service (AMS) nor immigration authorities can define research or art. But have a close look at the job: A caretaker at a university is still a caretaker and not a scientist.

Internships covered by EU exchange programs are exempt from Employment of foreign nationals act, too. The type of residence permit being issued is "special cases of employment" (Sonderfälle unselbständiger Erwerbstätigkeit), there is no hourly limit (save general employment law regulations). If the duration of such an internship is below 6 months, a visa type D will be issued.

1.6. GRANTS

Generally speaking, third country nationals are not covered by the Austria study aid system. But there are some exemptions or specific programmes:

Liese Prokop Study Grant

The Liese Prokop Grant is open to refugees for specific study situations: Extra-ordinary study programmes to prepare for a regular study programme (then there is access to the regular study aid system, see below) or a nostrification study at any university or university of applied sciences are covered, too.

Requirements for this grant:

- > Legal status as refugee, holding the status of subsidiary protection and pursuing an extraordinary study programme or nostrification study
- > Social need and some evidence that support for the study is necessary
- > Admission at an Austrian university

Access to Labour Market for non-Austrian Students

- › Starting the study programme before reaching 30 years of age (save nostrification: there is no age limit)
- › For prolongation: showing study success. Max. duration is 6 semesters

Deadline for application:

Once a year, check ÖIF website: www.integrationsfonds.at

Other opportunities are rare; some detailed information can be found at:

- › www.stipendium.at
- › www.oead.ac.at
- › www.grants.at
- › www.scholarships.at

Study aid

Non-Austrian students can receive study aid if they meet one of the following conditions:

- › EEA citizens being economically active/making use of the freedom of workers or their spouses
- › third-country nationals who are long-term residents (5 years of stay)
- › stateless persons with a status similar to a long-term resident
- › refugees

OeH social fund

Students in a specific "emergency situation" may apply for one-time financial support once a year.

Requirements:

- › social need according to OeH guidelines
- › no study aid
- › not living with parents
- › sufficient study success

Apply at:

Department for social affairs at OeH Bundesvertretung
Taubstummengasse 7-9/4th floor, 1040 Vienna

1.7. AFTER FINISHING STUDIES

Getting a job at the university in research or teaching, the available types of residence permits are “special cases of employment” (Being exempt from Employment of foreign nationals act) or “researcher”. The difference is the definition of a research project for the latter. Changing from a student permit to the categories mentioned above is quite easy: No quota system, no exceptional income requirements or labour market test, and a full scale residence permit with the option to get a permanent status. The researcher permit is issued for two years, then the switch to a standard residence permit (red-white-red card plus) is quite easy, or there is the option to renew the “special cases” permit annually.

If there is an employer outside university or defined research institutions: there are several categories of a key worker residence permit (red-white-red card):

a. Very Highly Qualified Workers

- › There is a complex point scheme to be met, master’s degree or PhD, especially in a MINT subject will be necessary. Work experience might be useful.
- › There is no labour market test and salary has to meet collective bargaining wages

b. Skilled Workers in Shortage Occupations

- › The point scheme is easier to be met, the list of professions is announced annually by order of the ministry of work. Generally speaking, there are some qualified industry professions with a technical background, graduate engineering and qualified nurses
- › There is no labour market test and salary has to meet collective bargaining wages

c. Other key workers

- › The point scheme is similar to the skilled workers category, there is a defined minimum income (gross): 50% of the maximum wage considered for social insurance calculation in 2025, this results to € 3.225
- › There is a labour market test and the collective bargaining minimum wages are to be met (if higher)

d. University graduates

- › Similar to the “shortage” category, the minimum salary is that from the general bargaining wages at the level “a university graduate will receive”
- › There is no labour market test. The job duties shall be “suited to university graduates”

Due to valid jurisdiction from Constitutional court, part-time jobs are eligible, too. AMS will have a very close look if you go below 30 hrs a week - please seek competent counselling if you get a lower part-time job offer.

The point scheme and further details are available at www.migration.gv.at

Someone residing in Austria for 5 years may apply for the status as a long-term resident, receiving the permit "long-term resident - EU". The duration of a student's permit is counted by 50% towards the 5-years requirement and the change from the "second class" student's permit to full scale residency has to happen on a different basis (not just 10 years divided by two), e.g. by receiving a red-white-red card or researcher permit. The long term status is a permanent one and gives full access to any job.

Any period of legal stay, irrespective of the category, is counted towards the 6 years to be eligible for citizenship application. This possibility requires a B2 German language certificate, theoretically fulfilled by the German language test for study admission. The major hurdle is the required proof of income: The minimum figures according to immigration law (as in any residence permit renewal proceeding) have to be met in 36 out of the last 72 months. Seems easy as this was required for each renewal, but in the citizenship proceeding only the own income (from jobs) and maintenance obligation by law are accepted, not financial support given voluntarily or on a contract basis.

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01/5853 333

oeh.ac.at/helpline

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This brochure is based of regulations as per February 1, 2025. Please be aware even after a thorough check errorry might occur and no liability can be accepted by the authors.



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