

Labour leasing in Germany

1. Relevance of the Topic – Germany's Potential in the Workforce Leasing Sector

Germany is one of the most densely populated markets in Europe, attracting companies from many countries, including Latvia. According to information from the Central Statistical Bureau as of January 2024, Germany is Latvia's third most important export partner. While these statistics pertain to the export of goods, services, such as in the IT sector, and the flow of the workforce are equally significant.

Germany has an acute need for specialists and personnel in almost every sector. According to the German Federal Ministry for Economic Affairs and Climate Action, there has been a notable shortage of labor in areas such as crafts, manufacturing, construction, and healthcare for several years. This trend is expected to intensify over the next decade due to demographic changes, digitalization, and decarbonization processes. Consequently, Germany needs to attract workforce from other EU countries and third countries. In this context, Germany has enacted a new law on the immigration of skilled workers (Fachkräfteeinwanderungsgesetz), which will gradually come into effect until June 1, 2024. This new regulation expands opportunities for qualified workers from non-EU countries to enter Germany for employment and simplifies the visa issuance process in many cases.

This also opens new business opportunities for companies offering employment services to German companies.

2. Workforce Leasing Regulations in Germany

Workforce leasing is a type of commercial activity where a leasing company temporarily leases its employed workers to another company (the lessee). In Germany, the provision of employment services is strictly regulated by the Employee Leasing Act (Arbeitnehmerüberlassungsgesetz). To provide these services, a license issued by the German Federal Employment Agency (Bundesagentur für Arbeit) is required. It is not mandatory to establish a company in Germany to provide workforce leasing services; a foreign company can also obtain this license. However, a license must first be obtained in the home country of the foreign company. In Latvia, the license for workforce leasing is issued by the State Employment Agency.

It should be noted that if a leasing company provides workforce leasing services without a license, the contracts concluded with the leased employees and the lessee are invalid, and an employment relationship is established between the leased employee and the lessee with all the resulting consequences, such as the presumption of an indefinite employment contract instead of a fixed-term contract.

Not all sectors allow workforce leasing in Germany. For example, this type of commercial activity is prohibited in the construction industry with certain exceptions. There is also a limitation on the leasing period, with a maximum allowable period of 18 months for any single leased employee. According to the principle of equality established in the Employee Leasing Act, the leasing company must ensure the leased employee receives the same working conditions, rest, and remuneration as regular employees. It is important to note that the leasing company can only lease its employees who work based on an employment contract. Therefore, offering self-employed workers for leasing under a service contract is prohibited.

3. Additional Information

NJORD is a Nordic and Baltic law firm with offices in Denmark, Estonia, Latvia, and Lithuania, employing over 200 people, about half of whom are lawyers.

NJORD Latvia offers a full range of legal assistance and practical support for obtaining workforce leasing licenses in Latvia and Germany. We prepare the necessary documents, including employment contracts and cooperation agreements, in Latvian and German according to the requirements of Latvian and German regulations, submit them to the relevant authorities in Latvia and Germany, and represent our clients in communications with these authorities.

For more detailed information, please contact our head of the German practice, sworn attorney/ Rechtsanwältin Zane Ozola (zo@njordlaw.lv).



ZANE OZOLA
ATTORNEY AT LAW,
RECHTSANWALT
ZO@NJORDLAW.LV