

Employment abroad

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The importance of postings and employment abroad is growing continuously. In an age of merging markets, an ever larger number of small and medium-sized companies are seizing the opportunity to operate abroad.

TK insurees in particular are deployed abroad by their companies with above-average frequency. A number of aspects need to be considered in this context. This information leaflet provides an overview of the most important points.

¹ Unfortunately, this information is currently only available in German

You will find additional information on Great Britain under point 4.5.

Should you have any further questions, please contact the staff in your Service Centre Mitgliedschaft und Beiträge [Membership and Contributions] who will gladly be of assistance.

Yours sincerely,
TK-Firmenkundenservice
[TK Business Customer Service]

Contact and assistance

You can get more information

§ on social security law in Germany from your Service Centre Mitgliedschaft und Beiträge [Membership and Contributions] and at firmenkunden.tk.de, search code 2032524¹.

§ on tax law from your local tax office.

§ on exemption agreements from the GKV-Spitzenverband [National Association of Statutory Health Insurance Funds] Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA) Pennefeldsweg 12 c 53177 Bonn Tel. 02 28 - 95 30-0 Fax 02 28 - 95 30-600 E-mail post@dvka.de dvka.de

§ on the deploying country at firmenkunden.tk.de, search code 2034096¹.

Our German-language film "Mitarbeiter entsenden" [Posting staff], which can be found at firmenkunden.tk.de, search code 2030078, provides an introduction to this complex issue.

Would you like to download this information leaflet (again)? If so, it is available for downloading as a PDF at firmenkunden.tk.de, search code 2126796.

1. Territorial principle

The territorial principle is applied in terms of social security. This means that, in principle, employees are insured in the country where they work. Accordingly, all employees who are employed in Germany are liable to social security contributions.

Exceptions to this rule apply in certain cases due to

- § supranational legislation, i.e. laws which are in force in multiple countries.
- § cross-national, i.e. bilateral agreements.
- § a short-term posting abroad.

2. Short-term posting abroad

As per German social security law, the German term "Ausstrahlung" [short-term posting abroad] means that employment relationships continue to be subject to German social security obligations even if the work is performed abroad. The preconditions for this are as follows:

- § The employee is posted abroad within the scope of an employment relationship based in Germany.
- § The posting is limited in time in advance due to either the nature of employment (e.g. projects) or by contract.

Should one of these conditions not be satisfied, the rules for short-term postings abroad may not be applied.

Social security under German law then ceases to exist.

Section 4 Sozialgesetzbuch IV [Social Security Code book IV] – Short-term posting abroad

(1) Should the regulations on compulsory insurance and insurance entitlement require employment, then such regulations shall also apply to persons who, within the framework of an employment relationship existing within the scope of this code of law, are posted to a territory outside the scope of this code of law provided the posting is limited in time in advance given the nature of employment or by contract.

2.1 Employment in Germany

Employment must be carried out abroad for an employer based in Germany. As such, the employee remains integrated in the operational organisation of the Germany-based employer. The employer remains subject to the employer's right to issue instructions regarding the type, place and time of work.

The fact that the employer's right to issue instructions may be less strictly regulated due to the posting abroad is of no relevance. Ultimately, the employer must have a claim to remuneration vis-à-vis the Germany-based employer.

A key indication of employment in Germany is, for example, if remuneration continues to be settled in payroll accounting as is the case for employees in

Germany. It is of no importance whatsoever if no payroll tax is paid due to the provisions of a double taxation agreement.

There are a number of exceptions when posting employees to a foreign subsidiary or to a foreign allied company within a corporate group.

2.2 Definition of posting

The term posting is used when the employee is deployed by the domestic employer to work abroad. This is also the case if the individual is employed specifically for the foreign posting and there is a possibility of the employee subsequently returning to Germany to continue to be employed by the same employer. A posting is also possible even if no employment was performed prior to deployment abroad, for example in the case of housewives and pupils.

It is, however, required that the employee was either employed previously in Germany or had his domicile or habitual residence there.

Example 1

An employee who previously worked for another German company is employed specifically by a German company for a project in China.

Description

This is a posting resulting from a Germany-based employment relationship since the employee has previously worked in Germany.

If the employee lives abroad and is employed in his home country or another country by a German company then is not classed as a posting.

Example 2

An employee who emigrated to Uruguay many years ago is employed by a German company for a project in Uruguay.

Description

This is not a posting since the employee did not live or work before hand in Germany. That is to say he/she was not posted abroad on the basis of a domestic employment relationship.

Example 3

A German company employs a Portuguese national who, to date, has worked in his home country for a project in Canada.

Description

This is not a posting since the employee is not deployed on the basis of an employment relationship in Germany.

Individuals may also be posted abroad within the framework of a self-employed activity or a temporary employment relationship. The latter is the case if the employer (lender) lends the employee from Germany to a foreign company. This requires, however, that the necessary authorisation under the Arbeitnehmerüberlassungsgesetz [Temporary Employment Act] is granted.

2.3 Temporal limit of a posting

The employment of a German employee abroad may only be considered a posting if the period of foreign employment is limited in advance. This can be achieved either contractually or due to the nature of the task. There is no specific permitted duration, indeed a posting may last several years. What matters is that a time limit has been defined.

Example 4

A German company sends an engineer to Nigeria in order to build a dam there.

Description

This is a temporary posting as the nature of the task is limited in time. The fact that the exact duration of the posting abroad is not yet clear is of no importance here.

Example 5

A German company sends an employee to Brazil. According to the contract, employment is limited to two years in Brazil.

Description

This is a temporary posting as the stay abroad is contractually limited from the outset.

2.4 End of a short-term posting

The short-term posting ends when

the employee continues to work abroad but the domestic employer changes.

- § the employment location is moved from abroad back to Germany.
- § the temporary foreign employment is converted into a permanent one.

2.4.1 Returning to Germany

If the employee returns to Germany on a permanent basis, the posting ends. The posting is not interrupted or ended should the individual return home on holiday, to attend training or to report to the company. This period may not, however, exceed two months.

Example 6

An employee is posted to Bolivia for two years. During this time he returns to Germany each year for four weeks' holiday and for two one-week stays for training and reporting purposes.

Description

The character of the posting is not altered by the brief periods spent in Germany.

This regulation is particularly important in the case of open-ended postings where the social security obligation in Germany has ceased to exist. A brief return and employment in Germany of up to two months does not result in (renewed) obligatory insurance and thus there is no insurance cover under German law.

2.5 Posting of the self-employed

In general, the same rules apply for postings for the self-employed as for employees. However, the following must also be noted:

- § The self-employed person normally performs his/her work in Germany and will continue to run his/her company or similar even whilst posted abroad.
- § The individual must have worked on a self-employed basis for at least two months prior to the posting.
- § The self-employed work abroad must be similar to the work performed in Germany.
- § German legislation must have applied prior to the posting.

3. Competition between systems

The posted employee is, in principle, also subject to the social security system in the host country despite the fact that German social security remains mandatory.

As such, under certain circumstances, the social security contributions arising from employment may have to be paid in two states. To avoid such overlaps, a series of social security agreements have been concluded which provide for standardised regulations under supranational and cross-national law.

4. Postings in Europe

4.1 General information

Cross-national regulations can only be applied if

- § the deploying company usually conducts business activities in Germany (significant activities other than purely administrative ones)
- § and the posting is limited in time in advance due to the nature of the employment (e.g., projects) or by the contract.

The Regulations (EC) 883/04 and 987/09 apply to the following states:

§ Belgium	§ Luxembourg
§ Bulgaria	§ Malta
§ Denmark	§ Netherlands
§ Germany	§ Norway
§ Estonia	§ Austria
§ Finland	§ Poland
§ France	§ Portugal
§ Greece	§ Romania
§ Great Britain (see point 4.5)	§ Sweden
§ Ireland	§ Switzerland
§ Iceland	§ Slovakia
§ Italy	§ Slovenia
§ Croatia	§ Spain
§ Latvia	§ Czech Republic
§ Liechtenstein	§ Hungary
§ Lithuania	§ Cyprus (Greek side)

4.2 Material scope of application

The provisions of the EC Regulations apply for:

- § unemployment insurance
- § health insurance
- § long-term care insurance
- § pension insurance
- § accident insurance

4.3 Personal scope of application

In principle the EC Regulations are applied to all citizens of

- § EU countries
- § Iceland
- § Norway
- § Liechtenstein and
- § Switzerland as well as
- § refugees and stateless persons.

Furthermore, they also apply for third-country nationals who live in a European state. Figure 1 (page 5) lists the exemptions to be considered in individual cases.

4.4 Temporal limit

In accordance with EC Regulations, an employee is only subject to the legislation of the posting country if the expected duration of the posting is not more than 24 months. Another employee may also not be replaced as a result of the posting.

The German health insurance fund issues a special form (A1) for exemption from compulsory social insurance abroad. The certificate is provided by the competent pension insurance institution in the case of employees who are not members of a statutory health insurance fund.

If it is clear from the outset that the deployment will last more than 24 months, the legislation in the country of work shall apply. In some cases, the legislation of the posting country can continue to apply if an exception agreement is reached.

You will find further information on exception agreements under point 8.

Example 7

An employee is deployed to Spain by his German employer. The posting is for 30 months.

Description

German legislation does not apply as it is specified from the word go that the posting will last more than 24 months. German legislation may continue to apply if an exemption agreement is reached.

4.5 "Brexit": Special information on the United Kingdom

The United Kingdom withdrew from the EU on 31 January 2020. The Withdrawal Agreement applies to circumstances that had a cross-border connection to the United Kingdom **prior** to 1 January 2021. As a result of the Withdrawal Agreement, the previous regulations on the coordination of social security systems remain applicable unchanged.

Situation post 1 January 2021

The EU and the United Kingdom have reached a Trade and Cooperation Agreement (partnership contract). The provisions of Regulations (EC) No. 883/2004 and 987/2009 which applied to date shall continue to apply in all circumstances which commence as of

- § 1 January 2021 and
- § have no previous cross-border connection whatsoever to the United Kingdom (place of residence, nationality or country of posting).

The automated process will continue to be used for the time being for issuing the A1 certificate.

You will find a selection of FAQs all about Brexit at [firmenkunden.tk.de](https://www.firmenkunden.tk.de), search code 2042472¹.

The DVKA has published the latest information on the impact of Brexit on health and long-term care insurance. You will find a copy of the complete Withdrawal Agreement in German here: [dvka.de/de/informationen/brexit/brexit.html](https://www.dvka.de/de/informationen/brexit/brexit.html).

5. Posting of third-country nationals

A number of points need to be considered when posting staff to the United Kingdom, Iceland, Liechtenstein, Norway and Switzerland. These are listed in Figure 1 on page 5.

Image 1 – Overview of personal scope of application

The following overview shows in which constellations of nationality and posting member state the personal scope of Regulation (EC) No 883/2004 is fulfilled and, as such, the A1 certificate as per Article 12 (2) of Regulation (EC) No 883/2004 can be issued.

Employment in	Nationality			
	EU state stateless	Iceland, Liechtenstein, Norway	Switzerland	a third country (e.g. USA, Turkey)
an EU state (excluding Denmark)	satisfied	satisfied	satisfied	satisfied
the United Kingdom (see point 4.5)	satisfied	satisfied	satisfied	1
Denmark	satisfied	satisfied	satisfied	2
Switzerland	satisfied	3	satisfied	3
Iceland, Liechtenstein, Norway	satisfied	satisfied	4	4

1: In the case of third-country nationals, a decision must be made whether the Withdrawal Agreement or the Trade and Cooperation Agreement (TCA) is to be applied (also see point 4.5).

§ If the Withdrawal Agreement is applied, **nationals of the United Kingdom are assessed as those from an EU state**. An E101 certificate is issued.

§ If the Trade and Cooperation Agreement is applied, **nationals of the United Kingdom are assessed as third-country nationals**. Either the A1 or E101 certificate is issued.

2: Section 4 SGB IV [German Social Code book IV] applies to third-country nationals. In the case of Turkish nationals, the application of the German-Danish agreement may be considered. In individual cases, please contact the DVKA [German Liaison Agency for Health Insurance - International].

3: The German-Swiss Agreement applies for third-country nationals. The CH1 certificate is issued.

4: Liechtenstein: The German-Liechtenstein Agreement is effective for third-country nationals. The A1 certificate is issued.
Iceland and Norway: Section 4 SGB IV is applicable here.

6. Electronic application process for the A1 certificate

Employers must apply for the A1 certificate for their employees electronically.

There are two options when applying for the A1 certificate:

§ The employer either submits the completed questionnaire via his system-checked payroll program

§ or via a fill-in tool such as sv.net to the social insurance institution.

The social insurance institution checks whether the A1 certificate can be issued.

The response is also provided electronically.
If the requirements for continued application of German legislation are satisfied, the electronic reply includes the A1 certificate.

This reply must be printed out by the employer and presented to the employee. The print-out is classed as the original document.

With effect from 1 January 2022, self-employed persons have also been obliged to use the electronic application process.

The fill-in tool sv.net can also be used for these applications.

More information can be found on the TK Business Customer Portal at [firmenkunden.tk.de](https://www.firmenkunden.tk.de), search code 2117742¹.

7. Posting to a country with which an agreement exists

In addition to the multilateral social security agreements with the EU and EEA states, bilateral agreements on social security have also been reached.

The following Figure 2 (page 7) provides an overview of the countries with agreements and the affected social insurance fields.

Here, again, the prerequisite for a posting is that

- § the employee is posted abroad within the scope of an employment relationship in Germany
- § and that the posting is limited in time in advance due to either the nature of the employment (e.g. projects) or by the contract.

7.1 Material scope of application

Unlike in the European states and Switzerland, the existing bilateral agreements do not always apply to all fields of social insurance. Figure 2 (page 7) shows the states with which social insurance agreements currently exist and the fields of insurance to which they apply. Long-term care insurance is not yet included in the bilateral agreements (with the exception of Northern Macedonia).

Since the individual agreements do not always cover all insurance fields, it is possible that the employee who has been posted abroad will have insurance cover in certain insurance classes under both the German and foreign social insurance systems.

7.2 Temporal limit

The bilateral agreements usually provide for longer periods (see Figure 2, page 7) for the continued application of German legislation. If individual agreements do not state a specific temporal limit, it must be clear from the task to be performed or from the (labour) contractual agreements that the employee will not work permanently in the other state.

8. Exemption agreement

An exemption agreement may be reached in certain cases where the requirements of the EC or EEC regulations or the bilateral agreements are not satisfied.

Such an agreement is possible, for example, if the deadlines set out in the agreements are exceeded or if the delimitations of responsibility provided for in the agreements do not achieve satisfactory results for other reasons.

The application should be submitted in good time before commencing employment and applications for extensions in good time before the end of the preceding exemption period. The German contact point for the application, which is submitted together by the employer and the employee, is the DVKA.

Employees have to transmit applications for an exemption agreement for an EU or EEA state electronically.

Applications for exemption agreements in countries where an agreement exists must be submitted as a paper copy. The applications can be found at dvka.de.

Exemption agreements are always subject to a time limitation.

The employer is sent a notification of the conclusion of the exemption agreement.

In the case of postings to EU states, Norway, Iceland, Liechtenstein, Switzerland and countries with which a bilateral social security agreement exists, the DVKA issues a certificate confirming the continued application of German legislation.

When posting third-country nationals to countries within the EU, the German health insurance fund, or in the case of those who are not covered by statutory health insurance, the German pension insurance institute, will issue a certificate following submission of the report from the DVKA.

9. Entitlement to services and benefits

Employees working abroad are entitled to receive the services and benefits vis-à-vis employers which are afforded to them within the scope of the German health insurance system. The same also applies to dependants covered by the employee's insurance as defined by Section 10 SGB V [German Social Code, book V] who accompany the individual abroad or visit him there. This employee entitlement refers to the nature of service and benefits, including when the costs for such are considerably higher abroad compared to Germany (for example in the USA).

The health insurance fund for its part reimburses the employer for the costs it has paid up to the amount as would have been incurred in Germany.

Should deployed employees seek private medical treatment despite being entitled to benefits on the basis of the agreement, the health insurance fund reimburses the costs which would have been incurred for such treatment in Germany.

Important

In general it is the employer who is reimbursed. For reimbursements to be made, specified invoices are required with which the health insurance fund can determine the costs customary in Germany.

Image 2 – Contents of the bilateral agreement

	Health insurance	Pension insurance	Unemployment insurance	Accident insurance	Application of German legal regulations	Limited group of people ²⁾
Albania	<input type="radio"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	24 months	no ⁵⁾
Australia		<input type="checkbox"/>	<input type="radio"/>		48 months	no
Bosnia-Herzegovina	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	no time limitation	no
Brazil		<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	24 months	no
Chile		<input type="checkbox"/>	<input type="radio"/>		36 months	no
China (People's Republic) ³⁾		<input type="checkbox"/>	<input type="checkbox"/>		48 months	no
India		<input type="checkbox"/>	<input type="radio"/>		48 months	no
Israel	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	no time limitation	no
Japan		<input type="checkbox"/>	<input type="radio"/>		60 months	no
Canada		<input type="checkbox"/>	<input type="radio"/>		60 months	no
Korea		<input type="checkbox"/>	<input type="radio"/>		24 months	no
Kosovo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	no time limitation	no
Morocco	<input type="checkbox"/> ⁴⁾	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	36 months	yes ²⁾
Moldau, Republic	<input type="radio"/> ¹⁾	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	24 months	no ⁵⁾
Montenegro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	no time limitation	no
North Macedonia	<input type="checkbox"/> ¹⁾	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	24 months	no
Philippines		<input type="checkbox"/>	<input type="radio"/>		48 months	no ⁵⁾
Quebec		<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	60 months	no
Serbia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	no time limitation	no
Turkey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="checkbox"/>	no time limitation	no
Tunisia	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	12 months	yes ²⁾
Uruguay	<input type="radio"/>	<input type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	24 months	no ⁵⁾
USA ⁷⁾	<input type="checkbox"/> ⁶⁾	<input type="checkbox"/>			60 months	no

Material scope of the agreement

As per the final protocol: If German legal regulations apply for the insurance fields () covered by the material scope of the agreement, then they shall also apply to the insurance sectors marked here.

¹⁾ also applies to long-term care insurance

²⁾ Limitation of the group of people to nationals of the countries subject to this agreement. Refugees and the stateless are also included in Morocco and Tunisia.

³⁾ The special administrative regions of Hong Kong, Macao and Taiwan are not included.

⁴⁾ Benefits in kind are not envisaged, only check-ups to monitor inability to work.

⁵⁾ Exception: Yes, for those working for diplomatic missions and consular representations.

⁶⁾ If a person employed in the USA is subject to pension insurance under German legislation, he or she is exempt from "Hospital Insurance for the Aged and Disabled" - Medicare, Part A.

⁷⁾ The agreement covers the federal states, the District of Columbia, the Free State of Puerto Rico, the Virgin Islands, Guam, the Confederation of the Northern Mariana Islands and American Samoa.

10. Additional insurance cover when working abroad

When deploying staff to countries with high health care costs such as the USA, it may be expedient for the employer to take out additional private health insurance cover in order to render the costs more calculable.

11. Tax law when working abroad

The question as to whether and to what extent wages from employment abroad have to be taxed in Germany depends first and foremost on whether the employee retains his permanent residence in his home country or not.

Note:

We are only able to provide general information on tax law. In order to avoid legal disadvantages, we strongly recommend that you consult your competent tax office or, alternatively, a lawyer's or tax consultancy firm specialising in foreign employment postings before commencing employment abroad. These bodies can provide detailed answers and outline the specific regulations for your circumstances.

12. Cross border workers

The term cross-border worker is defined differently in German social security law and tax law. In essence, this term refers to employees who work in one state, live in another and return home to their country of residence on a regular basis.

You will find further information on this in the TK business customer portal at [firmenkunden.tk.de](https://www.firmenkunden.tk.de), search code 2061602¹.

13. Working from home when abroad

In principle, assessments in terms of insurance law are based on the territorial principle. This means that, as a rule, obligatory insurance cover must be provided by the state in which the employee works remotely from home.

14. Ordinary employment in several member states

When an employee regularly works in two or more states, this is referred to as ordinary employment in several Member States.

This requires that:

§ Work is performed on at least one day a month or

§ on at least five days per quarter.

If at least 25 per cent of the work is performed in Germany, a longer-term A1 certificate can be issued for the member states concerned, irrespective of the individual assignment.

This applies both to employees and the self-employed.

Please note: The DKVA is responsible for checking and issuing the A1 certificate.

Further information and applications can be found at [dvka.de](https://www.dvka.de).

Figure 4 – Social security when working abroad pursuant to Regulation (EC) 883/04 as of 1 May 2010

