

German Ministry of Labor and Social Affairs waives requirement of prior A1 certificates for short notice and short-term business trips to Germany

On June 5 2019, the German Ministry of Labor and Social Affairs issued guidance on the handling of A1 certificates for short notice and short-term business activities in EU countries, the EEA countries Iceland, Liechtenstein and Norway as well as Switzerland. According to the Ministry, European law does not require that A1 certificates are obtained prior to any business travel, including short notice and short-term travel. Rather, this is subject to the Member States' discretion when implementing the European requirements. As a consequence, the German Ministry considers it sufficient that for short notice and short-term business travel to Germany, the A1 certificate is applied for retrospectively where necessary, for example in case of custom controls.

Background

International business travel by employees has become an essential part of everyday life for many companies. Business travel to other EU/EEA Member States and Switzerland requires an "A1 certificate", a document which confirms that the employee remains covered only by the country of origin's social security system while traveling abroad. In principle, the A1 certificate must be obtained in advance and for each trip by the employer, and carried by the employee before the start of any business activities in the Member States, the EEA countries Iceland, Liechtenstein and Norway as well as Switzerland. Otherwise, fines can be imposed where the relevant national legal systems provide for this option.?? This is particularly the case in France and Austria where controls have recently been stepped up and fines apply (between EUR 1,000 and EUR 10,000 for first-time offenders in Austria and up to the social security ceiling of currently EUR 3,377 in France). The obligation to obtain an A1 certificate, however, leads to a considerable administrative burden, especially in the case of short-term business trips of a few days or business trips scheduled at short notice.

Exception for "short-term" and "short notice" business travel

In exercising its discretion in implementing the relevant European law, the German Ministry of Labor and Social Affairs waived the requirement to apply for A1 certificates prior to "short-term" and "short-term" business travel. Business trips of up to one week are considered as "short-term". The guidance does not expressly specify what "short notice" means in this sense. Considering, however, that one week is regarded as "short-term" we anticipate that one week notice would still be considered "short notice".



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In those cases it is no longer required to apply for and carry an A1 confirmation during business travel in Germany. Where necessary, e.g. in case of customs controls, it will be sufficient if the A1 certificate is applied for retrospectively and then submitted to the authorities.

Practical Notes

The guidance of the German Federal Ministry of Labor and Social Affairs is a welcome clarification. It facilitates the handling in Germany and creates clarity regarding the interpretation of the relevant legal requirements by the German authorities. This guidance, however, is not legally binding for any business travel to other EU/EEA Member States or Switzerland. Whether A1 certificates need to be obtained in advance or can be obtained retroactively and what risks apply is subject to the relevant local laws. This also applies to whether fines can be imposed in case of non-compliance. In light of this, companies with employees who regularly travel abroad are strongly recommended to get an overview of the relevant local requirements to avoid non-compliance and potential fines.

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