

AGREEMENT CONCERNING THE PLACEMENT OF FILIPINO HEALTH CARE PROFESSIONALS IN EMPLOYMENT POSITIONS IN THE FEDERAL REPUBLIC OF GERMANY

HIGHLIGHTS:

A. Areas of Cooperation

- Regulation on the deployment of Filipino health care professionals in temporary employment
- Preservation, promotion and development of Filipino workers' welfare in accordance with existing laws
- Exchange ideas and information about their experiences with the aim of improving and simplifying job placement procedures
- Other relevant technical and human resource development cooperation and continuing studies in the area of labor

B. Responsibilities of the Parties

- Ensure that the recruitment and deployment of Filipino health care professionals shall be in accordance with the existing laws, procedures, guidelines and regulations of each country
- Ensure that the Filipino healthcare professionals to be deployed are in possession of appropriate employment contract
- Ensure that the health care professionals are provided with proper briefing/orientation prior to their departure

C. Proviso concerning Employment Markets

- The placement of Filipino health care professionals from the Republic of the Philippines in jobs in the Federal Republic of Germany (FRG) will take into account the interest of both countries concerning their respective employment markets

D. Working Conditions and other benefits

- Filipino health care professionals may not be employed in the FRG under working conditions less favorable than those for comparable German workers
- Filipino health care professionals are subject to compulsory insurance in the German social security system (health and long-term care insurance, pension, accident and unemployment insurance)
- Employers must provide adequate accommodations to the Filipino health care professionals, or ensure that they have adequate accommodations

E. Supply and Demand for Nursing Staff

- Both will be updated on the supply and demand for nursing staff according to their respective laws and regulations as well the essential aspects of professional equivalency and linguistic requirements imposed on Filipino health care professionals

F. Visas

- Nurses will be issued a 3-month visa to enter Germany and upon arrival, they will be given a residence permit initially valid for a year (to cover the adaptation phase). After recognition of their degrees, they will get their work permits initially for 2-3 year, and then, on a more permanent basis.

G. Foreign Employer Guarantee Fund (FEGF)

- The employer through the BA/ZAV, shall pay the amount of USD50 as FEGF for every worker hired through the DOLE/POEA.
- The FEGF shall answer for claims for breach of contractual obligation

H. Labor Contract

- There will be a standard bilingual labor employment contract to be used for the placement of health care professionals
- The BA and POEA will make efforts to ensure observance of worker's rights

I. Human Resource Development

- Both Parties will explore projects to sustain and promote human resource development in the Philippines

J. Joint Committee

- A Joint Committee shall be formed for the adoption of implementing guidelines, monitoring and evaluation of this Agreement.

AGREEMENT
Concerning the Placement of Filipino Health Professionals in Employment
Positions in the Federal Republic of Germany

WHEREAS, both countries desire to strengthen existing friendly relations between them, through the development of cooperation in the area of labor;

WHEREAS, there is a need to strengthen mechanisms for discussion and settlement of concerns related to labor cooperation between both countries, based on the laws and regulations prevailing in both countries;

WHEREAS, Germany requires health professionals for its labor market to address the health needs of its citizens;

WHEREAS, the Philippines wishes to assist Germany in finding a solution to the skills shortage;

WHEREAS, the placement and employment of Filipino health professionals in Germany under S18 Residence Act, in conjunction with S30 Employment Regulations (Attachment 1) is only possible, provided that the job placements take place within a preferred framework of an agreement between German and Philippine public employment services concerning placement procedures and selection of workers;

WHEREAS, public-to-public placement of Filipino health professionals is allowed under Section 14 of Republic Act 10022, (Attachment 2);

The Philippine Overseas Employment Administration (POEA)

And

The Federal Employment Agency (Bundesagentur fuer Arbeit, BA)

Agree to the following procedures:

Article I. General Principles

A. Parties to the Agreement

The Parties responsible for job placements are
on the Philippine side:

The Philippine Overseas Employment Administration (POEA)

And on the German side:

The Federal Employment Agency (BA) through the International Placement Services

(ZAV)

Hereinafter referred to as the Parties

B. Areas of Cooperation

The Parties will work directly together on the implementation of this Agreement.

The Parties agreed on the following areas of cooperation:

1. Regulation on the deployment of Filipino health professionals;
2. Preservation, promotion and development of Filipino health professionals' welfare in accordance with existing laws;
3. Exchange ideas and information about their experiences with the aim of improving and simplifying job placement procedures; and,
4. Other relevant technical and human resource development cooperation and continuing studies in the area of labor.

C. Responsibilities of the Parties:

The Parties shall have the following obligations:

1. Ensure that the recruitment and deployment of Filipino health professionals under this Agreement shall be in accordance with the existing laws, procedures, guidelines and regulations of each country.
2. Ensure that the Filipino health professionals to be deployed are in possession of appropriate employment contract (Attachment 3) duly signed by both the health professionals and employer concerned prior to their departure from the Philippines.
3. Ensure that the health professionals are provided with proper briefing/orientation prior to their departure on relevant laws, regulations, policies, procedures, norms, cultures and practices in both countries of origin and destination relative to their deployment.

D. Proviso concerning Employment Markets

The placement of Filipino health professionals from the Republic of the Philippines in jobs in the Federal Republic of Germany will take into account the interests of both countries concerning their respective employment markets.

E. Working conditions.

Filipino health professionals may not be employed in the Federal Republic of Germany under working conditions less favorable than those for comparable German workers.

F. Social Security

Filipino health professionals are subject to compulsory insurance in the German social security system (health and long-term care insurance, pension, accident and unemployment insurance).

G. Employee Accommodations.

Employers must provide adequate accommodations to the Filipino health professionals, or ensure that they have adequate accommodations. These accommodations must meet the requirements of the Regulations on Workplaces (Workplace Regulation – ArbStättV) issued August 12, 2004, and the accompanying Technical Regulation ASRA4.4 "Accommodations".

H. Exclusion of Employers from Job Placement

The Parties to this agreement reserve the right to exclude those employers who are in violation of the principles referred to in Article 1, Paragraphs E to G.

Article II Job Placement Procedures

A. Request for Health Professionals

Filipino health professionals will be requested by employers in the Federal Republic of Germany.

The ZAV will submit a job description to the POEA for use in the selection of candidates.

For the placement of health professionals, the template in the Attachment 3 will be the binding bilingual employment contract.

B. Supply and Demand for Health Professionals

Both will keep themselves up-to-date regarding the supply and demand for health professionals, according to their respective national laws and regulations as well as about the essential aspects of professional equivalency and linguistic requirements imposed on Filipino health professionals in order to be accredited by the German government as nurses. All candidates shall receive a bilingual leaflet covering the necessary procedures imposed by the German side that need to be followed by prospective Filipino health professionals in order to gain recognition by the German government as nurses.

C. Selection Interviews in the Republic of the Philippines

The ZAV, with the assistance of the POEA, shall conduct job interviews where representatives of German employers may participate.

D. Unauthorized recruitment in the Republic of the Philippines

Under German law, job placements of Filipino health professionals, as well as their recruitment in the Republic of the Philippines, may only be carried out by the BA through the ZAV. Requests by name, based on unauthorized recruiting or job placements in the Republic of the Philippines, may not be processed.

E. Visas

The "approval certificate" from the ZAV (Attachment 4) forms the basis for the application and issuance of a visa at the Embassy of the Federal Republic of Germany in the Republic of the Philippines.

F. New Job Placements

In cases where, through no fault of the Filipino health professionals, the employment contract does not materialize, or is terminated prematurely subsequent to the health professional's arrival in Germany, the relevant BA/ZAV service center will endeavor to arrange for a suitable new position.

G. Administrative Expenses

The BA and the POEA will bear the administrative costs incurred by their respective sides.

H. Foreign Employer Guarantee Fund (FEGF)

The Employer, through the BA/ZAV, shall, in accordance with Philippine law, pay the amount of USD50 as Foreign Employer Guarantee Fund (FEGF) for every health professional hired through the POEA. The FEGF shall answer for claims for breach of contractual obligation.

Article III Labor Contract

There will be a standard bilingual labor employment contract (Attachment 3) to be used for the placement of health professionals under this cooperation framework. The BA and POEA will make efforts to ensure observance of health professionals' rights.

Article IV Human Resource Development

Both Parties will explore projects to sustain and promote human resource development in the Philippines. This will be determined as Priorities for Collaboration and Cooperation. The Parties will work to ensure that the implementation of these projects will be mutually beneficial for the Parties.

Article V Joint Committee

A Joint Committee shall be formed consisting of the representatives led by a Senior Official from the Parties, which shall fulfill the following tasks:

1. Adopt implementing guidelines for this Agreement;
2. Monitor and evaluate/assess the implementation of this Agreement;
3. Make necessary recommendation to resolve disputes arising from the implementation and the interpretation of the provisions of this Agreement;
4. Recommend proposals to amend the Articles of this Agreement;
5. Conduct periodic meetings in the Philippines and Germany alternately on a date and place mutually agreed by both Parties.

Article VI Settlement of Disputes

Any dispute between the Parties arising out of the interpretation or implementation of the Agreement shall be settled amicably by consultations or negotiations, through diplomatic channels.

Article VII Implementing Guidelines

The Parties will adopt the implementing guidelines of this Agreement.

Article VIII Amendment

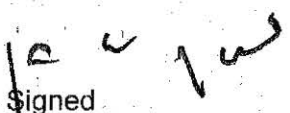
Any amendment or revision to the text of the Agreement shall be done by mutual consent of the Parties. Such amendment or revision shall enter into force in accordance with the provision on entry into force.


Article IX
Validity and Duration

This agreement will come into effect on the date of the written notification by the Philippines Side, through diplomatic channels, indicating that the domestic requirements for its entry into force have been complied with.

This agreement may be terminated in writing by either party no later than June 30 of each year, to take effect on December 31st of that year.

Manila, Philippines
19 March 2013


Signed
HANS LEO J. CACDAC
Administrator
Philippine Overseas Employment Administration


Signed
MONIKA VARNHAGEN
Director
Federal Employment Agency/
International Placement Services
(BA/ZAV)

Attachment 1 – wording of the law

Extract from the Residence Act (AufenthG)

§ 18 Employment

(1) The approval of foreign workers is oriented to the requirements of the economic situation in Germany taking into account the labour market requirements as well as the need to effectively combat unemployment. International agreements shall remain unaffected.

(2) A foreigner can be granted a residence permit for the purpose of taking up employment, if the Bundesagentur für Arbeit (BA) has given its approval in accordance with § 39, or it is determined by statutory instrument (in accordance with § 42) or inter-governmental agreement that the taking up of employment is permissible without the approval of the Bundesagentur für Arbeit. Any restrictions applicable when granting approval by the Bundesagentur für Arbeit shall be entered into the resident permit.

(3) A residence permit to take up employment in accordance with Section 2, which does not require qualified vocational training, may only be granted if this is determined by inter-governmental agreement, or if granting approval to a residence permit is permissible for this employment based on a statutory regulation in accordance with § 42.

(4) A residence permit for taking up employment in accordance with Section 2, which requires a qualified vocational training, may only be granted for employment in a professional group registered by statutory instrument in accordance with § 42. In justifiable individual cases, a residence permit may be granted for employment, if the activity serves a public interest (particularly regionally, economic or labour market policy interest).

(5) A residence permit in accordance with Section 2 and § 19 may only be granted, if there is a concrete offer of employment.

Extract from the Employment Regulations (BeschV)

§ 30 Care workers

A residence permit for a person to take up employment as a health carer or children's health carer as well as a carer for the elderly, who possesses a level of vocational training equivalent to the relevant requirements of professional legislation in Germany as well as sufficient German language skills, may be granted, provided that said person has been placed by the Bundesagentur für Arbeit based on an agreement with the administrative employment agency of the country of origin of said person concerning the procedure, selection and placement.

Attachment 2 – Section 14 of Republic Act 10022 (Philippines Side)

Section 14. Subparagraph (b.1) of paragraph (b) of Section 23 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

"(b.1) Philippine Overseas Employment Administration. – The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers. In appropriate cases, the Administration shall allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty thousand pesos (P50,000.00) for every month of suspension.

"In addition to its powers and functions, the Administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights. It shall also be responsible for the implementation, in partnership with other law-enforcement agencies, of an intensified program against illegal recruitment activities. For this purpose, the POEA shall provide comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topics such as prevention of illegal recruitment and gender-sensitivity.

"The Administration shall not engage in the recruitment and placement of overseas workers except on a government-to-government arrangement only.

"In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the Administration shall deploy only to countries where the Philippine has conclude bilateral labor agreements or arrangements: Provided, That such countries shall guarantee to protect the rights of Filipino migrant workers; and Provided, further, That such countries shall observe and/or comply with the international laws and standards for migrant workers."

Attachment 3 – employment contract

ARBEITSVERTRAG für philippinische Arbeitnehmer EMPLOYMENT CONTRACT for Filipino Workers

Im Arbeitsvertrag ist der **BRUTTOLOHN** angegeben. Dieser Lohn wird nicht in voller Höhe ausgezahlt, da auf Grund der deutschen Gesetze Steuern und Beiträge zur Sozialversicherung abgezogen werden.

The employment contract specifies the **GROSS WAGE**. This wage will not be paid out in full, as it is subject to taxes and social insurance contributions as required by German legislation.

Arbeitsvertrag

Employment Contract

folgender Arbeitsvertrag wird vereinbart:

The following employment contract is agreed

Zwischen dem Arbeitgeber
between the employer

mit Sitz in
based in

vertreten durch
represented by

und dem Arbeitnehmer
and the employee

geboren am
date of birth

Familienstand:
Marital status

wohnhaft in
resident in

Nicht verheiratet / verheiratet
not married / married

Der Arbeitgeber verpflichtet sich, den Arbeitnehmer

The employer undertakes to engage the employee

als
as a

in
in

vom
from

(Bezeichnung der Tätigkeit)
(Designation of activity)

(Ort der Beschäftigung)
(Place of employment)

frühestens vom Tage des Eintreffens des Arbeitnehmers am Beschäftigungsort ab
from the day of the employee's arrival at his place of work (at the earliest)

bis zum
up to

zu beschäftigen.

Der Arbeitnehmer verpflichtet sich, während der genannten Zeit bei dem Arbeitgeber eine Tätigkeit dieser Art auszuüben.
The employee undertakes to perform this type of activity during the period stipulated.

Arbeitgeber und Arbeitnehmer werden das nach dem deutschen Krankenpflegegesetz erforderliche Anerkennungsverfahren zur Führung der Berufsbezeichnung „Gesundheits- und Krankenpfleger“ betreiben. Employer and employee will operate the approval procedure for the entitlement of the occupational title "Health and Nursing Carer".

II

Der Arbeitnehmer erhält hinsichtlich des Arbeitsentgelts, der sonstigen Arbeitsbedingungen und des Arbeitsschutzes keinesfalls eine ungünstigere Behandlung als die vergleichbaren deutschen Arbeitnehmer des Betriebes.

With regard to remuneration, the other working conditions and occupational safety, the employee shall under no circumstances receive less favourable treatment than the comparable German employees at the place of work.

III

Im Einzelnen finden die Bestimmungen des Tarifvertrages

In particular, the provisions of the collective agreement

zwischen

between

und

and

vom

dated

oder des neuen Tarifvertrages, der etwa an die Stelle des früheren Tarifvertrages treten wird, Anwendung.

or any new collective agreement superseding an earlier version, shall apply.

Der Arbeitnehmer erhält für seine Arbeit denselben Lohn wie ein vergleichbarer deutscher Arbeiter des Betriebes.

The employee shall receive the same remuneration for his work as a comparable German employee at the place of work.

Sein Bruttolohn beträgt zurzeit

His gross pay shall currently be

€

Ferner werden wie bei einem vergleichbaren deutschen Arbeitnehmer des Betriebes vergütet:

In addition, the following additional remunerations shall apply (as for a comparable German employee at the place of work) for:

- | | | | | |
|----|---|------------------------------|---------|---|
| a) | Überstunden
Overtime | je Stunde mit
per hour at | _____ € | (Stundenlohn einschl. Zuschlag)
(hourly wage incl. supplement) |
| b) | Nacharbeit
Night work | je Stunde mit
per hour at | _____ € | (Stundenlohn einschl. Zuschlag)
(hourly wage incl. supplement) |
| c) | Sonntagsarbeit
Sunday working | je Stunde mit
per hour at | _____ € | (Stundenlohn einschl. Zuschlag)
(hourly wage incl. supplement) |
| d) | Feiertagsarbeit
Public holiday working | je Stunde mit
per hour at | _____ € | (Stundenlohn einschl. Zuschlag)
(hourly wage incl. supplement) |

IV

Die Arbeitszeit richtet sich nach den für den Betrieb geltenden Bestimmungen.

The working hours shall be in accordance with the provisions applicable at the place of work.

Die regelmäßige Arbeitszeit beträgt zurzeit

The regular working hours are currently

Stunden / wöchentlich

hours a week

V

- a) Der Arbeitgeber stellt von sich aus dem Arbeitnehmer eine von der zuständigen Agentur für Arbeit für angemessen befundene Unterkunft zur Verfügung.¹⁾
On his own initiative, the employer shall provide the employee with accommodation considered suitable by the competent Agentur für Arbeit Office.²⁾

Der Arbeitgeber verpflichtet sich, für eine von der zuständigen Agentur für Arbeit für angemessen befundene Unterkunft des Arbeitnehmers Sorge zu tragen.¹⁾
The employer undertakes to ensure for the employee accommodation considered suitable by the competent Agentur für Arbeit Office.²⁾

- b) Als Unterkunft ist vorgesehen: ein Einzelzimmer / eine Gemeinschaftsunterkunft
Accommodation intended: single room / shared accommodation
- mit _____ Betten¹⁾
with _____ beds²⁾
- c) Für die Unterkunft hat der Arbeitnehmer _____ Entgelt zu zahlen.¹⁾
The employee shall pay for accommodation _____ €.²⁾
- Für Heizung / Beleuchtung / Wasser / Bettwäsche / Reinigung usw.
For heating / electricity / water / bed linen / cleaning etc.
- hat der Arbeitnehmer wöchentlich / monatlich _____ - zu zahlen, oder kein Entgelt zu zahlen.¹⁾
the employee shall pay a weekly / monthly amount of _____ € - or alternatively, these amenities shall be provided free of charge.²⁾
- d) Der Arbeitgeber stellt von sich aus dem Arbeitnehmer eine angemessene Verpflegung zur Verfügung, bestehend aus
On his own initiative, the employer shall provide the employee with appropriate meals, consisting of
- | | | | | |
|------------------------|---|----------------------|---|--|
| Frühstück
breakfast | / | Mittagessen
lunch | / | Abendessen ¹⁾
dinner ²⁾ |
|------------------------|---|----------------------|---|--|
- e) Für die unter d) genannte Verpflegung hat der Arbeitnehmer täglich / monatlich zu zahlen.¹⁾
The employee shall pay a daily/monthly amount for his meals specified in item d).²⁾
- f) Die Verpflegung des Arbeitnehmers ist ihm durch Selbstversorgung auf eigene Kosten überlassen.¹⁾
The employee shall provide for his own meals at his own expense.²⁾

VI

Der Arbeitnehmer hat das Recht auf bezahlten Urlaub nach den geltenden Bestimmungen.
The employee is entitled to paid holiday in compliance with the applicable provisions.

Nach einer ununterbrochenen Beschäftigungsdauer von _____ Monaten in dem Betrieb des
Following an uninterrupted work record of _____ months with the employer,

Arbeitgebers beträgt der Urlaub _____ Werktage für jeden angefangenen / vollendeten Beschäftigungsmonat.¹⁾
his holiday entitlement shall be _____ working days for each month of employment started / completed.²⁾

VII

- a) Der Arbeitgeber übernimmt / einschließlich einer Reiseverpflegung von / übernimmt nicht ^{*)}
The employer shall / shall not assume _____ € ^{*)}

die Kosten der Rückreise des Arbeitnehmers von dem Beschäftigungsort bis nach
the costs of the employee's return journey (including meals while travelling) from his place of employment to

wenn der Arbeitnehmer die Pflichten aus dem Arbeitsvertrag erfüllt hat.
upon the completion of the employee's obligations in the employment contract.

- b) Wenn der Arbeitsvertrag aus Gründen, die der Arbeitgeber zu vertreten hat, nicht erfüllt werden kann und eine anderweitige Vermittlung des Arbeitnehmers für den Rest der Vertragszeit nicht möglich ist, so trägt der Arbeitgeber die Rückreisekosten des Arbeitnehmers.

In the event that the employment contract cannot be fulfilled for reasons, for which the employer is responsible, and alternative placement of the employee for the remainder of the contractual period is not possible, then the employer shall bear the travelling costs for the employee's return home.

VIII

Für das durch diesen Vertrag begründete Arbeitsverhältnis gilt das deutsche Recht. Ansprüche aus diesem Vertrag können nur gegen den Arbeitgeber selbst geltend gemacht werden. Für alle sich aus diesem Vertrag ergebenden Streitigkeiten sind die deutschen Gerichte für Arbeitssachen zuständig.

German law shall be applicable to the employment relationship resulting from this contract. Any claims arising from this contract shall only be assertable against the employer. German labour law courts shall have jurisdiction in all cases of dispute arising from this contract.

Der Arbeitgeber erstattet dem Arbeitnehmer die nachgewiesenen notwendigen Reisekosten zum Beschäftigungsort.

The employer shall remunerate the employee with the documented necessary travelling expenses to the place of employment.

Ort und Datum
Place and date

Ort und Datum
Place and date

Unterschrift des Arbeitgebers
Signature of employer

Unterschrift des Arbeitnehmers
Signature of employee

Datum, Unterschrift der ZAV
Date, signature of ZAV authority

Datum, Unterschrift POEA
Date, signature of POEA authority

^{*)} Nichtzutreffendes streichen
Delete as applicable

Attachment 4 - Approval certification



Bundesagentur für Arbeit

Zentrale Auslands-
und Fachvermittlung (ZAV)

Labour market approval

Your reference: .
Your message:
My reference:
(Please quote in all correspondence)

Name:
Direct line:
Telefax:
Email:
Date:

1. Original to Aliens' Registration Office
2. Copy to employee
3. Copy to employer
4. Copy to PPESO
5. Copy to ZAV

Placement of Filipino nurses in accordance with § 30 Employment Regulations (BeschV)

Approval certification

Based on the placement application of the employee named below and the statement of engagement of the employer named below, the approval for the granting of a residence permit, expected to start from , within the framework of the German-Philippine Placement Agreement for nurses is certified.

Employee:

Employer:

Place of employment:

Type of employment:

This certification is the approval of the Bundesagentur für Arbeit for employment in accordance with § 39 Residency Act (AufenthG).

The Registration Number is RP -

Note to the Aliens' Registration Office:

You may request information concerning the recruitment procedure from the ZAV.

On behalf of
