

Changes to Irish Employment Permits Legislation

Overview

As of 1 October 2014, a new employment permits regime is in force in Ireland following the commencement of the Employment Permits (Amendment) Act 2014. We take a look at the new categories of employment permits under the Act and consider how the elimination of certain gaps in the existing regime will practically affect employers and individuals alike.

The Employment Permits (Amendment) Act 2014 (the "Act") is supported by a comprehensive set of regulations. Essentially, the new legislation has two main objectives:

- the Act seeks to address certain deficiencies in the existing legislation, many of which were highlighted following the High Court decision of *Hussein v The Labour Court & Younis* [2012] IEHC 364 in 2012; and
- the Act updates the current employment permit system by introducing new categories of employment permits with the aim of attracting highly qualified and specialised non-EEA workers to Ireland.

Changes Addressing Deficiencies in Earlier Employment Permit Legislation

- The rule known as the "50:50 Rule" requires employers, who wish to hire non-EEA nationals on an employment permit, to show that at least 50% of their employees are EEA nationals.

Prior to the commencement of the Act, the rule was somewhat ambiguous in that it did not apply to applications made on behalf of an employee, as opposed to on behalf of an employer. The Act abolishes this route by requiring that the 50:50 Rule is applied to all employment permit applications, whether made by an employer or an employee. The only exception to this is in the case of start-up companies with enterprise agency support that are applying for certain types of employment permits.

- Similarly, the Act ensures that the Labour Market Needs Test applies to applications made by an employer or an employee, although the test is only relevant in the context of applications for General Employment Permits or Contract Service Provider Permits. This test aims to ensure that an offer of employment is made to individuals already in the EEA labour markets before an application is made for an employment permit to employ a non-EEA national.
- Perhaps one of the most important and welcome changes to the Act is one which addresses the gaps in the earlier legislation highlighted in *Hussein v The Labour Court & Younis*. There, the High Court overturned an award of over €90,000 on the basis that the employee was engaged in unlawful employment due to the absence of an employment permit. This meant that he could not avail of the benefit of employment legislation. The Act attempts to remedy this deficiency by allowing a non-EEA national, who has been employed illegally without an employment permit, to take civil action against their employer to recoup unpaid wages as long as they can show that they took all steps reasonably open to them to comply with the legislation.

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Other Key Changes

Where the holder of a Critical Skills or a General employment permit has been dismissed by reason of redundancy, the individual must notify the Minister for Jobs, Enterprise & Innovation within four weeks of the redundancy. However, the individual can remain in Ireland for six months from the date of the redundancy to seek alternative employment.

In the event of a transfer of undertaking, the employer (or in the case of a Contract for Services employment permit or Intra-Company Transfer employment permit, the host company or foreign employer or the contractor, as the case may be) must notify the Minister of the change in name of the employer. The employment permit will then be re-issued under the new name.

New Categories of Employment Permits

The Act expands on the categories of employment permits that are available for non-EEA nationals. There are now nine categories of employment permits, with a new accompanying application form for each category:

- Critical Skills Employment Permit;
- Dependent, Partner and Spouse Employment Permit;
- General Employment Permit;
- Intra Company Transfer Permit;
- Contract for Service Provider Permit;
- Reactivation Employment Permit;
- Exchange Agreement Employment Permit;
- Sports & Cultural Employment Permit; and
- Internship Employment Permit.

Conclusion

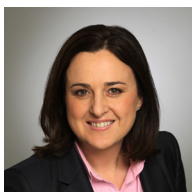
Various features of the Act are to be welcomed, such as the ability to take action for unpaid wages, as well as the wider choice of employment permits. However, many of the changes could make life more difficult for employers, particularly in circumstances where fewer than 50% of their workforce are EEA nationals and the required skill set is not readily available. It remains to be seen how the changes will affect the permit application process in practice.

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