

Ireland – A Top Global Location for Highly Skilled Workers

Proposed Changes to Irish Employment Permits Legislation

The Irish Government, in its Action Plan for Jobs, published in February 2013, set out its strategy to make Ireland “the best small country in which to do business and as a consequence, retain and create sustainable jobs”. As part of the commitments contained in the Action Plan for Jobs, the Minister for Jobs, Enterprise and Innovation (the “Minister”), Richard Bruton, published the Employment Permits (Amendment) Act, 2014 on 23 April 2014 which, when enacted, “will reform and modernise Ireland’s employment permits system as part of a plan to make Ireland the top global location for ICT skills” and will confirm Ireland’s status as “the Internet capital of Europe”. It is expected that the Bill will be approved by the Irish parliament by Summer 2014.

The key changes proposed in the Bill are the introduction of nine new categories of employment permit and revisions to the current employment permits legislation to update it and to address certain deficiencies.

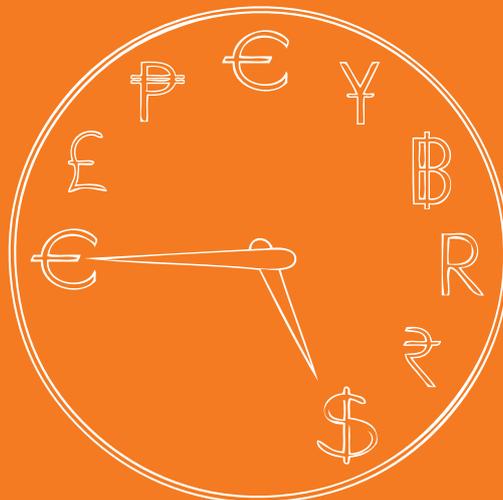
1. New Categories of Employment Permits

The Bill proposes the introduction of the following nine categories of employment permits:

(a) The Critical Skills Employment Permit (CSEP)

The Bill proposes renaming the current “Green Card Employment Permit” as a CSEP. These employment permits are for highly skilled short labour supply roles. In order to attract such highly skilled non-EEA nationals to Ireland, the Bill provides for immediate family re-unification, a fast track to Irish residency and waives certain conditions applying to other categories of employment permit.

*Dublin, London
& New York*



(b) Dependent/Partner/Spouse Employment Permit

The Bill proposes renaming the current “Spousal or Dependent Employment Permit” as a Dependent/ Partner/Spouse Employment Permit. The purpose of this type of permit is to accommodate families and dependants of researchers and holders of CSEPs so as to encourage highly skilled persons to take up employment in Ireland.

(c) General Employment Permit

The Bill proposes renaming the current “Work Permit” as a General Work Permit. This type of permit relates to job positions requiring skills of a more general nature. An employer must show that they were unable to fill the position from the local and EEA labour market.

(d) Intra Company Transfer Permit

This type of permit facilitates the transfer of non-EEA nationals from a foreign branch of a company to its Irish branch on a temporary basis. The transferee must have been employed by his/her employers for a specified time period prior to the transfer (to be specified in Regulations).

(e) Contract for Service Provider Permit (CSP Permit)

This type of permit enables a non-EEA national employed by a foreign company to temporarily work in Ireland where the employer has won a contract for services with an Irish company. The employee must have been employed by his/her employer for a specified time period prior to being sent to Ireland (to be specified in Regulations).

(f) Reactivation Employment Permit

This type of permit will enable non-EEA national employees who have previously held an employment permit but have since fallen out of the system to obtain a new permit. The criteria for granting such permits will include a requirement that the employee previously held a permit, is not working illegally and has a real offer of employment. The Minister must also be satisfied that the circumstances of the case merit the issuance of such a permit e.g. undue hardship, humanitarian considerations, linkages with the local community, family circumstances etc.

(g) Exchange Agreement Employment Permit

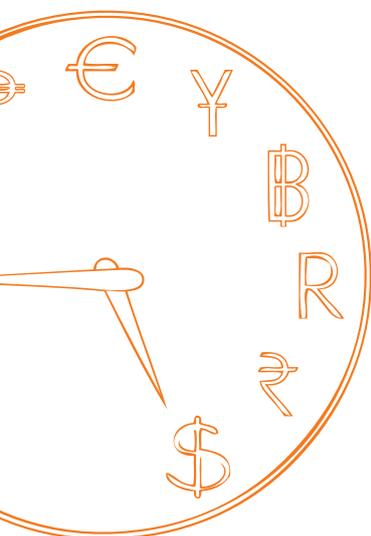
This type of permit will deal with current reciprocal international arrangements where opportunities are afforded to Irish nationals in exchange for opportunities afforded to foreign nationals e.g. trade agreements which include labour transfers, exchange agreements concerning researchers or student work experience etc.

(h) Sports & Cultural Employment Permit

This type of permit will deal with applications relating mainly to sports professionals. The Bill will allow the Minister to consult with any body or person who “has knowledge of or expertise in the sport or cultural activity concerned” in order to consider such an application.

(i) Internship Employment Permit

This type of permit will deal with applications relating to student internship programmes involving work experience in job positions on the Highly Skilled Occupations List.



2. Other Significant Changes Proposed

The Bill also proposes the following significant changes:

(a) The 50:50 Rule

The 50:50 Rule requires employers who wish to hire non-EEA nationals on an employment permit to have at least 50% of their employees from the EEA. The changes contained in the Bill will require the 50:50 Rule to be applied in respect of all employment permit applications except in the case of start-up companies. In order for the Minister to grant a permit in the case of a start-up company, he must receive a recommendation from the IDA or Enterprise Ireland (Irish enterprise development agencies) and he must be satisfied that, in granting the permit, this will help develop the potential for further employment. Under the Bill, start-up companies must meet the 50:50 Rule within a reasonable time period.

The 50:50 Rule will also apply to renewal applications in respect of permits issued following the enactment of the Bill. However, renewal applications for existing (pre-enactment) permits will be exempt from the 50:50 Rule.

(b) Labour Market Needs Test (LMNT)

The LMNT seeks to ensure that an offer of employment is first made to people already in the local and EEA labour markets before an application is made for an employment permit to employ a non-EEA national. The Bill proposes that the LMNT will, subject to specified exceptions, apply to General Employment Permits and to CSP Employment Permits.

(c) Equal Status for Employee and Employer Applications

Under current legislation, applications for employment permits submitted by an employee are not subject to the LMNT or the 50:50 Rule. The Bill proposes to remove this distinction so that both types of applications are subject to the same rules when being considered for an employment permit. This proposed change will strengthen the requirement for employers to consider EEA nationals for a job position before they are entitled to apply for an employment permit.

3. Hussein v The Labour Court

The Bill also addresses an issue in the current legislation which arose in the case of *Hussein v The Labour Court* [2012] IEHC 364 delivered by the Irish High Court in August 2012. The High Court overturned an award of back pay and other monies due that had been made in Mr. Hussein's favour against his employer by the Rights Commissioner and the Labour Court. The Court did so in circumstances where it found that Mr. Hussein's contract of employment was unlawful where he did not have an employment permit.

The Bill proposes to extend the defence that already exists in current legislation for employers to employees where either party is being prosecuted for failure to hold an employment permit. The defence is that the employee "took all such steps as were reasonably open to him or her to ensure compliance" with the employment permits legislation.

The Bill also proposes permitting an employee (such as Mr. Hussein) who has been employed illegally without an employment permit to take civil action against his/her employer for compensation despite the illegality of the employment contract.

If you have any questions relating to the Employment Permits (Amendment) Act, 2014 and the implications that it has for you or your business, contact one of our team of specialised lawyers who have in excess of 25 years experience between them in advising on these issues.

28 April 2014

*For further
information
please contact
one of our
team:*



Jane Pilkington
*Partner, Commercial
Litigation & Corporate
Immigration*

t +353 1 614 5033
e jpilkington@mhc.ie



Ger Connolly
*Partner
Employment Law
& Benefits*

t +353 1 614 2409
e gconnolly@mhc.ie



Avril Daly
*Associate,
Employment Law
& Benefits*

t +353 1 614 5885
e adaly@mhc.ie



Carah Deasy
*Associate, Commercial
Litigation & Corporate
Immigration*

t +353 1 614 5068
e cdeasy@mhc.ie

MHC.ie

Dublin

South Bank House
Barrow Street
Dublin 4
Ireland

t +353 1 614 5000
e dublin@mhc.ie

London

60 Lombard Street
London
EC3V 9EA
United Kingdom

t +44 20 3178 3368
e london@mhc.ie

New York

1450 Broadway
39th Floor, New York
NY 10018
USA

t +1 646 862 2028
e newyork@mhc.ie