

Immigration Group

Business Visits & Van Der Elst Visas in Ireland

Business Visits & Van Der Elst Visas in Ireland

Moving employees to and even within Europe can sometimes be problematic. In today's business climate, to remain competitive, companies must ensure that they address and eliminate immigration issues which could affect the mobility of their workforce.

When considering sending an employee to Ireland, an employer should first determine the nationality of the employee and the purpose and length of the assignment. All overseas nationals who are not citizens of the EU, European Economic Area ("EEA") or Switzerland i.e. non-EEA nationals, require employment permits to work in Ireland.

Non-EEA nationals may be further sub-divided into two categories: visa requiring and non-visa requiring depending on their country of origin. A distinction exists under Irish law between an employment permit that is required to undertake employment in Ireland and a visa that once validly issued, gives the holder a right to enter Ireland only.

Purpose of the trip

Determining whether an employee is "working" or merely in a country for a short period "on business" is often a difficult question of semantics. In Ireland there are no specific guidelines as to the activities which will be classed as conducting business. However, from our experience, this will include the following:

- Attending meetings and conferences
- Undergoing training and induction
- Delivering product demonstrations
- Commissioning, testing and installation of machinery/software

Anything beyond the above activities could be classed as employment and would therefore require employment authorisation.

Van der Elst Visas

Even when employees' activities do not come within the business visit category, they might still be able to work in Ireland without first obtaining employment authorisation by availing of the Van der Elst scheme.

The Van der Elst scheme means that EU companies exercising their right to provide services under the treaty can send a non-EEA national who has been granted an employment permit and permission to remain in one EU member state to another EU member state to work on a temporary basis without having to apply for an employment permit.

From an Irish perspective, the scheme will apply to both visa requiring nationals (who will still be required to apply for an entry visa but will indicate during the course of their application that they are seeking to avail of the scheme) and non-visa requiring nationals (such as US nationals who can produce evidence at the port of entry to enable them to avail of the scheme).

In Ireland, the conditions to be satisfied to avail of the Van Der Elst scheme are as follows:

- 1 Applications will be assessed on a case by case basis
- 2 Permission to work in the State under the scheme will be granted for the duration of the temporary/short term contract up to a maximum of 12 consecutive months
- 3 The employee must be:
 - (a) Lawfully resident in the EU country in which the employer is established
 - (b) Lawfully employed by the employer in the sending country
 - (c) On the payroll of the employer in the sending country
- 4 Duration of permission to remain in the State in order to provide a service will never exceed the expiry date of the lawful residence of the employee in the sending EU country or the expiry date of the employee's passport
- 5 The employee may not take up any other employment in the State other than that for which permission was granted and, on conclusion of the temporary/short term contract, the employee must return to the sending EU country
- 6 The employee is not entitled to permanently reside in the State
- 7 Family members may not accompany or join the employee (except as visitors or having applied for and been granted immigration permission in their own right)

For further information on this topic please contact: David Heneghan, Solicitor, Immigration Group, E: dhenehan@efc.ie