

Immigration

# Employment Permits (Amendment) Bill 2014

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*In April 2014, the Irish government published the Employment Permits (Amendment) Bill 2014. The Bill passed all stages in the Oireachtas on the 16 July 2014 and it is expected that the final act and associated regulations will be commenced by mid-September 2014. This new legislation provides for a robust Employment Permits regime which will give greater clarity and certainty to potential investors and employers, both indigenous and multi-national, to better enable their business planning and HR decision making.*

The key changes to be implemented by the Bill are the introduction of nine new categories of Employment Permits as well as revisions to the current Employment Permits legislation to both update and address deficiencies:

- The current Green Card Permit scheme will become the **Critical Skills Employment Permit (CSEP)** which is designed to attract highly skilled people into the labour market with the aim of encouraging them to take up permanent residency in the State.
- The current Work Permit scheme will become the **General Employment Permit Scheme**. General Employment Permits will be considered for all occupations (unless not in the public interest or listed on the ineligible categories of employment for an employment permit).
- The Spousal or Dependent Employment Permit scheme will become the **Dependant/Partner/Spouse Employment Permit Scheme**. The objective of this type of Employment Permit is primarily to support the attractiveness of Ireland as a location for employment for potential and current Critical Skills Employment Permit holders and their spouses/dependant unmarried children.
- The current **Intra Company Transfer Permit Scheme** will be retained to facilitate the transfer of senior management, key personnel or foreign employees undergoing a training programme from an overseas branch of a multi-national corporation to its Irish branch.
- The **Contract for Services Employment Permit** was previously catered for under the Work Permit scheme but due to the complexities involved have now been established under a separate scheme. A foreign undertaking (contractor) who has won a contract to provide services to an Irish entity (relevant person) on a Contract for Services basis is eligible under the scheme. The Department of Jobs, Enterprise and Innovation may issue a Contract for Services Employment Permit to facilitate the transfer of non-EEA employees to work on the Irish contract in Ireland and where they remain on an employment contract outside the State.
- The **Reactivation Employment Permit Scheme** is designed to enable a foreign national who entered the State on a valid employment permit but who fell out of the system through no fault of their own or who has been badly treated or exploited in the workplace, to work again.
- The **Internship Employment Permit Scheme** is designed to facilitate the employment in the State of foreign nationals who are full time students (including post graduate students) enrolled in a third level institution outside the State and pursuing a degree course or higher.

- The ***Sporting Cultural Employment Permit Scheme*** is designed to facilitate the employment in the State of foreign nationals for the development, operation and capacity of sporting and cultural activities.
- The ***Exchange Agreement Employment Permit Scheme*** replaces the old Exchange Agreement class of Employment Permit and will cater for Employment Permits for international reciprocal agreements. Therefore Exchange Agreement Employment Permits are designed to facilitate the employment in the State of foreign nationals pursuant to prescribed agreements to which the State is a party. An example would be Fulbright programme for researchers and academics.

Other significant changes under the new legislation include:-

### **The Labour Market Needs Test**

The new legislation will retain and extend the requirement for a labour market needs test to all new applications, regardless of applicant (i.e. it will apply to both applications submitted by the employer and employee), for general and Contract for Services employment permits, with certain grounds for waiver including:-

- Where employment is one of the specified shortage occupations.
- Where the remuneration on offer is €60,000 or over.
- Where the application has been recommended by an Irish enterprise development agency.
- In the case of a former Employment Permit holder who has been made redundant.
- Where the General Employment Permit application is in respect of a carer with a proven history of caring for the sick person.

### **The 50/50 Rule**

This rule requires that employers who wish to hire non-EEA nationals on an Employment Permit must have 50% of its employees from the EEA. The new legislation retains and extends this rule to all applications, both new and renewal, regardless of applicant, with certain grounds for waiver including:-

- For enterprise start-ups with enterprise agency support for a period of up to two years in the case of Critical Skills, General or Intra-Company Transfer Employment Permit. This two year period will begin to run from the date of registration of the start-up as an employer with the Revenue Commissioners.
- Employer with a sole employee e.g. carer in a private home; and
- Renewals of Employment Permits which issued pre-enactment of the legislation.

The Department of Jobs, Enterprise and Innovation has stated that in the case of an Intra-Company Transfer Employment Permit application the 50/50 rule requirements can be satisfied by a combination of the employee figures of the Irish company and the foreign sending organisation.

Similarly in the case of a Contract for Services Employment Permit application, the 50/50 rule requirements can be satisfied by a combination of the employee figures of the foreign contractor and the Irish entity (who has contracted with the foreign company for the provision of services).

### **Refunds and Payments**

The new legislation prescribes the following:-

- The roll out later this year of payment of Department of Jobs, Enterprise and Innovation processing fees by electronic transfer for business users.
- Electronic transfer payment will be requested by the Department of Jobs Enterprise and Innovation upon receipt of a correctly completed application.
- 90% of the fee will be refunded in the case of a refused or withdrawn application before issue of the employment permit.

### **The Trusted Partner Pilot Programme**

In December 2014, Ireland will begin piloting the Trusted Partner scheme, an accreditation programme for sponsoring employers. To participate in the programme, employers will be required to obtain the approval of either IDA Ireland or Enterprise Ireland. Further details about the pilot programme are expected to be released later this year.

Participants in the programme are expected to benefit from the following:

- Shorter processing times for Trusted Partner applications;
- Reduced paperwork for every Employment Permit application applied for under the scheme.
- A waiver of labour market testing requirements.

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