



LEGAL ALERT

REGULATION OF THE MECHANISMS AND PROCEDURES FOR THE HIRING OF FOREIGN NATIONALS

The new regulation of the mechanisms and procedures for hiring foreign nationals was published on the 31st of August¹.

With the entry into force of the new regulation, which will happen on the 29th of November 2016, the previous regime, approved by Decree-Law n. 55/2008, on the 30th of December, is going to be fully revoked, as well as any other regulatory requirements that contradict the new regulation.

Following the last regime, the new regulation determines that hiring national citizens should prevail over hiring foreign nationals, whenever it is possible. This disposition establishes that hiring foreign nationals can only be done as long as there are no national citizens with the same qualifications as foreign nationals or that there are not enough national citizens. In order to guarantee that this measurement is applied, the legislator has established in the new regime the obligation of implementing a training plan and gradual replacement of foreign nationals by national citizens, which has to be provided by the employer from the third year of the activity onwards.

During the term of the previous regulation, the supervising Ministry was faced with the problem arising from the possibility of private employment agencies hiring foreign nationals for placement or secondment.

The regulation did not mention that prohibition, but this should be inferred by interpretation of the 3rd article of the Decree-Law n. 6/2001, of the 20th of February, that established the recruitment system and placement of hand labor, which provided clearly that private employment agency could only recruit for providing national citizens, and that is why the supervising Ministry issued a circular (circular Nr. 484/MITRAB/DTM/GD/21/2014) to clarify this principle. In the new regulation this problem is outdated, as private employment agencies are strictly forbidden of

¹ Decree-Law n. 37/2016



hiring foreign nationals for placement or secondment, and may only do so to ensure its own operation and activity.

As for the most common types of foreign national's recruitment, the legislature kept the currently existing modalities (short term working regime, quota system and work permit regime) although the regimes have undergone some changes and, in some cases, there were even new procedures introduced. We highlight the following:

- In the quota system, it will be required to present the literary qualifications certificate or the professional certificate, accompanied by the equivalency certificate issued by the entity that oversees the area of education in regards to those obtained overseas, or a proof of work experience;
- Regarding the specialized technical assistance work (which includes the hiring of foreign nationals to work in foreign non-governmental organizations, scientific research, teaching and other specialized technical assistance and that meet the same requirements of the authorization regime work), hiring foreign nationals to exercise representative functions in a non-governmental organizations shall be subject to a presentation of an opinion of the entity that authorized the commencement of business by such organization;
- In all the regimes, the issue of the admission certificate or authorization for hiring foreign nationals will depend on the confirmation that the company has no contribution debts to the compulsory social security system, by issuing a certificate of discharge by the managing body of the compulsory social security system, which is valid for 30 days, and whose request is the entity's responsibility that oversees the work area in the province where the application was received. As can be seen, in the previous regime, the certificate request was made by the applicant, but with the new regime it becomes the responsibility of the provincial departments of labor, which will cause an increased delay in the proceedings and decision making by the competent authority;
- The short-term regime cannot exceed 90 days per year, consecutive or interpolated, which is in line with the previous regime, that established 30 days with the possibility of renewal up to 90 days if necessary;



- It will be established how to process the transfer, temporary or permanent, of foreign nationals to another province and its compatibility with the hiring requirements in the quota system.

Finally, the sanctions framework set for the default has changed, highlighting in this regard, (i) the obligation of the employer to make cease employment contracts of national citizens, in proportion to the employment contracts of foreign nationals and (ii) the possibility of the administrative act that authorized or allowed the hiring of the foreign national to revoke in case it adopts serious or criminally punishable behavior.

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