Global Imigration Update

EUROPEAN UNION

EU Lawmakers Approve Plan to Harmonise Immigration Rules for Intracompany Transferees

May 15, 2014

European lawmakers have adopted a directive that will harmonise immigration rules for intracompany transferees in most EU member states and facilitate the transfer of managers, specialists and graduate trainees both into and within the region. EU member states will have two and a half years to implement the directive into their domestic laws from the date it is published in the Official Journal of the European Union, which is expected very soon. The directive will not apply in Denmark, Ireland and the United Kingdom.

Benefits of the New Permit

Under the directive, EU states will create a new permit specifically annotated to reflect "intra-corporate transferee" (ICT) status. ICT permits will be valid for a maximum stay of three years for managers and specialists and one year for graduate trainees.

In addition to permitting work in the EU state that initially grants the permit, the ICT permit will permit a transferee to work for entities of the same multinational group in other EU states for up to 90 days within a six-month period. For these intra-EU work stays, a member state may require, at a maximum, an ICT permit holder to submit a government notification before entering for employment in the member state's territory. For intra-EU work stays exceeding 90 days, member states may require a separate ICT permit application.

ICT permit holders will be permitted to work at third-party client sites of the multinational host company.

Accompanying family members of ICT permit holders will benefit from eased access to local labour markets and should equally benefit from the directive's the 90-day accommodation.

Eligibility Criteria

The directive will cover the temporary transfer of non-EU national managers, specialists and graduate trainees from an entity located outside the EU to an EU entity belonging to the same multinational group. The directive does not specify criteria for qualifying corporate relationships, but it contemplates a diverse range of possible business relationships.

EU states will be permitted to set their own requirements for prior qualifying employment, provided that the requirement is between three to twelve months for managers and specialists and three to six months for graduate specialists. There will be no specific educational requirements for managers or specialists, but graduate trainees will be required to hold a university degree. Applications for the permits will not require labour market testing. Transferees must earn a salary that is at least equal to that of local workers in comparable positions.

The directive anticipates that member states may create expedited application procedures for ICT permits.

What the Directive Means for Employers

The directive should do much to facilitate the movement of key workers for multinational companies. The impact will likely vary across EU member states, because member states will have considerable latitude to determine how to incorporate the permits into their domestic immigration systems. The adoption of the directive may lead to minor procedural changes in some countries, while in others it could lead to a substantial overhaul of a country's immigration system.

UNITED KINGDOM

Right-To-Work Checks Simplified, Employer Sanctions Increased

May 20, 2014

Employment eligibility verification requirements have been simplified while fines for noncompliant businesses have increased, effective May 16, 2014.

Simplified Right-to-Work Checks

The list of acceptable documents that can serve as proof of work authorisation has been reduced, which will simplify the verification process for employers. With the change, the Home Office establishes biometric residence permits as the primary form of evidence, with similar immigration documents, such as Residence Cards and passports endorsed with authorisation to work, also accepted. Employers that can establish they checked these documents prior to the commencement of employment have a statutory excuse to allegations of non-compliance.

Employers are no longer required to re-verify their employees' work rights annually. Rather, they are required to conduct re-verification checks that coincide with the expiration dates of their employees' visas.

The grace period for employers conducting a right-to-work check of employees following a merger, acquisition or other change in corporate ownership has been doubled to 60 days after the corporate reorganisation.

Increased Fines

The maximum civil penalty that can be imposed on an employer for employing an unauthorised worker has been doubled to £20,000. The Home Office's method of calculating civil penalties has also been simplified from the previous sliding scale. The maximum civil penalty for a first breach is up to £15,000 per unauthorised employee. Subsequent violations can result in a maximum penalty of £20,000 per unauthorised employee. The penalty assessed will be less than the maximums where mitigating factors, such as employer cooperation with ongoing investigations, are in evidence.

What This Means for Employers

Employers should see a reduction in the administrative and logistical burden of conducting right-to-work checks as a result of the simplification, particularly with the elimination of annual follow-up checks.

However, many Tier 2 sponsors will need to change their internal processes to account for not conducting the annual follow-up checks. Many sponsors use the annual checks as an opportunity to verify up-to-date contact and next of kin details, and to confirm that employees' roles and duties have not changed. These processes are an invaluable part of ongoing immigration compliance for Tier 2 sponsors and may need to be re-visited in another context.

The increase in potential penalties for facilitating or permitting unauthorised work highlights the importance of establishing internal procedures for initial right-to-work checks and for reliable systems to track visa and work permit expiration dates.

AUSTRALIA

Subclass 457 Visa Compliance: Compulsory Retirement Contribution Rate Increases on July 1

May 21, 2014

Australia's compulsory employer superannuation contribution rate – the amount employers are required to contribute toward employee retirement funds – will increase 0.25 percent to 9.5 percent on July 1, 2014 as part of a programme of increases designed to raise the rate to 12 percent by 2020. This superannuation rate last increased, by 0.25 percent, on July 1, 2013.

Employers who choose to reduce the salary component of the total salary package of a foreign national rather than increase the package by 0.25 percent (providing this is permitted under the employment contract) will need to notify Department of Immigration and Border Protection of the change. Before making any decision to reduce the salary component, an employer must ensure that the adjusted salary will continue to satisfy the market rate requirement.

What This Means for Employers

Employers should develop strategies for how they will account for increases in superannuation contribution rates. Employers should also review their subclass 457 visa holders' contracts of employment to determine whether the contracts permit them to adjust employees' salaries to account for higher superannuation rates. Employees will need to be notified of the change in superannuation rates and how it will impact them.

Employers that take on the expense of additional superannuation payments will not be required to take any action. A new subclass 457 nomination will only be required if the salary component of the salary package is reduced to accommodate for the increase in superannuation contribution rate.

MALAYSIA

Reminder: Employers Must Register for E-Filing System

May 22, 2014

Employers applying for new employment passes with the Malaysian Immigration Department (MID) are reminded that they must complete an online registration process before they can use the new e-filing web portal. Employers must use the new online portal to submit applications for approval to fill an open position with a foreign national candidate (Stage 1 of the employment pass application).

The online registration process may take up to two months. Companies that are not already registered can expect delays of approximately two months in the processing of new employment passes.

What This Means for Clients

Employers that have not already registered to use the new e-filing system should take immediate steps to do so. Employers may have to postpone start dates for upcoming assignments in Malaysia due to the expected delays. For registered employers, processing of employment pass applications continues to average five to eight weeks.

Though the new online filing system is creating new administrative burdens and delays for employers, it is expected to help MID processing become more efficient and reduce application wait times in the long term.

SOUTH AFRICA

New Re-Entry Bans In Force for Visa Overstays

May 27, 2014

Foreign nationals who overstay their visas in South Africa are now subject to bans on re-entering the country, according to an internal directive from the Department of Home Affairs (DHA). Previously visa overstays were subject to fines. The change is effective immediately. The length of an individual's re-entry ban will depend on the length of the overstay:

- A foreign national who overstays for 30 days or less will not be able to enter South Africa for 12 months.
- A foreign national who overstays a visa for the second time within a period of 24 months will not be able to enter for two years.
- A foreign national who overstays for more than 30 days will be subject to a five-year ban on entry.

What This Means for Employers

Employers are advised to work with their immigration partners immediately to review how the rule change will affect foreign nationals who are required to travel internationally in the upcoming weeks. Employers should continue to carefully monitor the expiration dates of their foreign workers and to plan extension applications well in advance to avoid lapses in authorised stay.

UNITED STATES

July 2014 Visa Bulletin: EB-2 India to Advance By Nearly Four Years, As Projected

June 10, 2014

According to the State Department's **July Visa Bulletin**, a surge in EB-2 India immigrant visa availability will occur next month, when the priority date cut-off for the subcategory will advance by nearly three years and nine months, to September 1, 2008. EB-2 China will move forward by five weeks, to July 1, 2009, but EB-3 China will remain at October 1, 2006 after this month's dramatic retrogression.

EB-3 Philippines will advance by one year, to January 1, 2009, while EB-3 India will move ahead by two weeks, to November 1, 2003. For all other countries, EB-3 will remain at April 1, 2011.

The significant advancement for EB-2 India is made possible by unused immigrant visas in the EB-1 and EB-2 worldwide categories. EB-2 India is expected to continue to advance in the remaining months of the fiscal year. The State Department projects that the cut-off date could move to February 2009 in August and to an early summer 2009 date in September of this year.

Though EB-5 remains current in July, the State Department could impose a cut-off date for China in August or September of this year.

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