

BREXIT | LOOKING TO THE FUTURE OF EMPLOYEE MOBILITY & VISAS

November 2016



100 Days Later...

Just over 100 days since the historic BREXIT vote of June 2016, which has paved the way for one of the Founding Members of the European Union to (begin to) hand back their membership card, no one still knows what is going to happen.

What we do know though is that it is very likely, based on Prime Minister Theresa May's remarks, that Article 50 of the Lisbon Treaty will be invoked by the United Kingdom before the end of March 2017 - thus starting the two year negotiation period for the United Kingdom to leave the European Union.

This move has already raised many questions for businesses in terms of workforce management - and we expect there will be many more questions to come.

With this newsletter we offer professionals and in-house counsel the opportunity to briefly refresh their pre-Schengen knowledge in terms of the requirements for non-EU employees in Continental Europe as well as the United Kingdom's regulations on foreign national employees - particularly in reference to Recruitment, Healthcare & Social Security, and Dismissals

Work Visa Requirements for Non EU Citizens

Although all part of a 'united' Europe many jurisdictions on the Continent still show their individualistic tendencies when it comes to employing foreign nationals. Some countries have seemingly easier processes and procedures than others. This also depends on the type of work visa required.

For example in Belgium it is a fairly straightforward process to obtain work visas for non-EU nationals. At minimum a 'B Permit' is required, however a long stay visa would be required for anyone working in the country for more than 90 days over a six month period.

Italy also has a straightforward modernised system where employers can make online applications for work visas ('*nulla osta*') for non-EU nationals. Once the work visa has been obtained it will be up to the employee to apply for a permit to stay in the country (the '*permesso di soggiorno*'). Interestingly the employer only needs to formalise the employment agreement with the non-EU national within 6 months of the employee entering the country. Hence,

start working and we will sort the details out later.

In Spain work permits are also applied for by the employer, whilst the employee applies for a visa in their country of origin - which will only be issued if the employer's work permit application is granted. The employer must show that it has been unable to cover the position with a local resident or that an exception may apply. The entire process may take from 3 to 5 months.

In France, a formal contract of employment, in addition to a resident work permit, is required (according to L5221-2 of the French Labour Code) before the international employee even touches down in the country. The process for employers to request the work visa should take less than two months. If two months passes and the visa has not been issued then it is likely that the request was not successful. Here however employers will be able to appeal and make another request for a work visa. Within 3 months of the French work visa being granted the employer must pay a fee to

the French Immigration and Integration Office (OFII) equal to 55% of the first year's annual salary for contracts of 12 months or more - or a fee of €74 to €300 for contracts ranging between three and twelve months.

In Switzerland a foreign national's work and residency permits are also required before arriving in the country. It is advisable for employers to make the application for work visas early in the year as the government establishes a strict limit on the number of work visas that can be given to non-EU / EFTA nationals (In 2017 the number will be 4500 for short-term L-permits and 3000 for ordinary B-permits). Once the quota is used up for a given year no new work visas can be issued.



However, even before the application process starts Swiss employers must demonstrate that they have been unable to fill the role with either a Swiss or EU / EFTA national.

Over the Channel in the United Kingdom employers looking to hire foreign nationals have a choice of visa options available based not only on the potential

employees qualifications but also on their ancestry and nationality (i.e. if they have roots in a Commonwealth country). In general, the Tier 2 work visa is the most commonly used. In order for an employer to sponsor a foreign worker the employer must obtain a special 'sponsor' licence from the government. The employer must first

demonstrate, as in Switzerland, that they have made a reasonable effort to fill the vacancy with a UK or EU national before hiring a foreign national. However, a loophole does exist for multinationals transferring existing staff to their UK offices - which can be achieved with a Tier 2 visa without the need of first advertising the job vacancy.

Healthcare for Non EU Citizens

Many countries within the EU have socialised healthcare systems - however the benefits may vary from jurisdiction to jurisdiction especially when it comes to the care of foreign nationals. For example, in Belgium, Spain, and Italy health care and pension contributions are included in the ordinary social security contributions employers pay on behalf their foreign national employees - whether members of the European Union or not.

On the other hand, in France, unless a bilateral agreement is in place, employers will contribute a fee of 45% of the gross monthly salary of their non-EU employees to the national security system. The employees will also be required to contribute 23% of the gross

monthly salary in order to ensure coverage under the national health system. Indeed, in France, non-EU employees are subjected to the same social contributions as EU employees.

In The Netherlands all employees (both EU and non-EU citizens) are obligated to have Dutch health insurance, even if the employee has another insurance that covers health care costs. Employers here must pay a mandatory contribution - which in 2016 is 6.75 of gross income.

In the UK non-EU nationals who are coming to the UK for more than six months may be subject to an immigration health surcharge when



applying for their work visa - estimated at GBP 600 for a general three year Tier 2 work visa.

In general private health insurance is an extra option for both employers and employees (except in Switzerland where it is mandatory). However it is also likely to play a greater role in terms of international employees in the future.

We say this as a recent report revealed that the UK pays more than GBP 650 million to national EU healthcare systems

for treating English citizens abroad while only claiming back an estimated GBP 50 million from overseas EU health services for treating EU

nationals within the UK. This is surely to be a talking point during Brexit negotiations once Article 50 has been triggered.

SOCIAL SECURITY FOR NON EU CITIZENS

In many European countries it is the norm that employers deduct social security contributions (also including pension contributions) from the salaries of their non-EU national employees as they would do for an employee from their local jurisdiction. Hence there are no obligations for employers to make additional pension and social security contributions for foreign nationals.

In most cases there are no regulations which allow non-EU employees from opting out of social security contributions in the country

where they carry out their work. However, in the UK non-EU citizens with long-term employment contracts may be able to opt out of paying national insurance contributions if they can prove that they are already making contributions in another EEA country or in a country where the UK has entered into a bilateral agreement such as Japan, Turkey and the USA.

In addition, there may be some circumstances allowing non-EU nationals on temporary work contracts in the UK to also be exempt

from making national insurance contributions.

In terms of national pension schemes and contributions within the borders of today's European Union, we do not foresee this to be an immediate issue that employers need to face. Rather it will more likely be a matter for their foreign national employees to confront once they arrive at retirement age. However, it remains to be seen if Great Britain will aim for a 'hard' or a 'soft' Brexit and what the negotiation processes will involve.

The information provided here above is in no way intended to replace legal counsel. This document is being provided to educate and to highlight matters which may impact business today and in the future. We invite you to contact our specialised experts for more in-depth detail on any of the matters discussed within these pages at info@ellint.net.

© ELLINT
Employment & Labor Lawyers International
Avenue Louise 65 / 11
B-1050 Brussels | Belgium