

EMPLOYMENT PERMITS

LEGISLATION

- The Employment Permits Acts 2003 to 2006
- The Employment Permits (Amendment) Act 2014

AUTOMATIC RIGHT TO WORK IN IRELAND

An individual from an EU member state or one of the countries of the EEA is entitled to come to work in Ireland.

EEA COUNTRIES

EEA i.e. Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, **the UK**. [EU Members] and include the following countries: Iceland, Liechtenstein, Norway, and Switzerland.

Employees from these countries do not need an employment permit to work in Ireland. They are entitled to have their dependents come to live with them.

A spouse or civil partner of an EEA/Swiss national who is exercising the right of free movement, has similar rights to work and live in Ireland.

An EEA or Swiss national is entitled to be treated in the same way as Irish citizens when applying for work in Ireland. They are free to apply for any job vacancy, including jobs in the public sector.

WHO NEEDS AN EMPLOYMENT PERMIT?

Individual from countries other than the ones outlined above generally need an employment permit.

The Employment Permits (Amendment) Act 2014 has now allowed for 9 different types of employment permits.

Non-EEA nationals seeking work in Ireland require a general work permit. In the first instance they are required to register with the Garda National Immigration Bureau (or in the local Garda District Headquarters if living outside of Dublin) if they intend in remaining in Ireland. Upon registering they receive a stamp which indicates the conditions of their permission to remain in Ireland.

WHAT DO I NEED TO DO TO HIRE AN EMPLOYEE WHO NEEDS A WORK PERMIT?

Employers who want to employ people who need employment permits have to meet certain requirements.

- They must be legally trading in Ireland – this means they must be registered with the Revenue Commissioners and with the Companies Registration Office (CRO) if the employer is a company. You can check the registration at the CRO at: www.cro.ie
- The employer must employ the individual directly – this means that applications from recruitment agencies, agents, intermediaries or companies who intend to outsource or subcontract you to work in another company are not accepted.
- There is a limit to the proportion of the workforce who can be employment permit holders. Permits are not granted to employers where a result of granting the permit would be that more than 50% of employees in the firm would be non-EEA nationals.

Employees who have employment permits are obliged to abide by the immigration rules. This means that they may need a visa in order to come here and they must register with the immigration authorities.

TYPES OF EMPLOYMENT PERMITS

General Employment Work Permit	Available for skills on a general nature
Critical Skills Employment Permit Formerly Known As Green Card Permit	To attract foreign nationals with skills that are in short supply.
Intra-Company Transfer Permit	Useful for multi-national companies and start-ups in foreign direct investment.
Contract For Services Employment Permit	The purpose is to facilitate the temporary employment in Ireland of foreign nationals working in a company based outside of Ireland, typically where the foreign company has won a contract for services with an Irish company.
The Atypical Working Scheme	Applies to non-EEA nationals who, in certain circumstances, are required by a company/organisation based in Ireland to undertake work where the contract is short-term (i.e. up to three months).
Exchange Agreement Employment Permit	Deals with reciprocal international arrangements whereby opportunities are afforded to Irish nationals in exchange for opportunities being afforded to foreign nationals
Reactivation Employment Permits	Are designed for situations where 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 legally again.
Sports and Cultural Employment Permit	Deals with applications related to predominantly sports professionals.
Dependent, Partner and Spouse Employment Permit	Will continue to be available to partners and family members of holders of certain work permits.

STAMPS

There are 6 different Stamps [2 most popular in workplaces highlighted in grey] that employers should be aware of:

Stamp 0	Temporary Permission to remain in Ireland. The holder is not entitled to state benefits or to work unless specified by the INIS.
----------------	---

Stamp 1	<p>This person is permitted to be in the country but cannot work unless the employer has obtained a permit.</p> <p>Permission must be sought from the Minister of Justice and Equality to engage in any profession or business.</p>
Stamp 1a	<p>Is permitted to be in Ireland for the purpose of full time training.</p> <p>Employment is not allowed.</p>
Stamp 2	<p>Students who are studying in approved courses and are permitted to work 20 hours a week during term time and 40 hours a week during term holidays.</p> <p>An employer must receive a letter from the relevant college to confirm the dates the student is on holidays from college to confirm they are entitled to work 40 hours during that period.</p>
Stamp 2A	<p>Students who are studying in and are not permitted to work in Ireland.</p>
Stamp 3	<p>Persons who are not permitted to work in Ireland.</p>
Stamp 4	<p>This person is allowed to work in the country without a permit.</p> <p>This may be reviewed on a regular basis i.e. annually, so it is important for the employer to monitor the dates on the permit.</p>

RECRUITMENT PROCESS

We would recommend that during the recruitment process you require valid documents such as a passport to prove a candidate's entitlement to work in Ireland before they begin employment.

All candidates should be requested this in order to prevent claims of discrimination. You must request the original document, e.g. passport, GNIB card, etc. and be satisfied that the potential employee is the rightful holder. Compare both GNIB and Passport to ensure it's the same person. There is a high rate of people with no GNIB cards that will borrow one from a friend in order to get work.

RECORD MANAGEMENT

This means checking that any photographs or dates of birth are consistent with the appearance of the potential employee and that expiry dates have not passed.

A photocopy of the entire document or documents should be made (including the front cover, any page with a photograph or a signature and any page with a Government stamp or endorsement) and kept on file.

Remember all GNIB have expiry dates. it is up to the card holder to renew their cards on time.

If the card has expired the card holder is not eligible to work and you the employer are liable for prosecution.

COMPLIANCE WITH LEGISLATION

The Employment Permits Acts 2003 to 2006 make it a criminal offence to employ a foreign national without an employment permit.

Section 2(4) of the 2003 Act places an onus on the employer to carry out reasonably thorough checks in order to be satisfied that a prospective employee does not require an employment permit, or that one has been obtained.

The Workplace Inspections Service are authorised to exercise powers under the Employment Permit Acts. If in the course of an inspection there is evidence found to suggest that an employee does not have a valid Work Permit, both the employer and employee are advised to rectify the matter. If the employer fails to do so the employer could be prosecuted. An employer failing to rectify matters could be prosecuted. The Garda Síochána are also an enforcement authority under Employment Permits legislation with prosecution powers.

EMPLOYEES WITHOUT PERMITS

If you do have a number of employees who are working without work permits, it is important that you address this issue immediately.

Even though they are working illegally, the rules of natural justice must apply as you address this issue with them i.e. the employee must be given the opportunity to explain their situation.

We would strongly encourage you to review your staff employment permits that you have on file and if there are any issues pertaining to them, you should contact us to discuss it further.

CIVIL ACTION

The Employment Permits (Amendment) Act 2014 provides that a foreign national without an employment permit, who took all reasonable steps to get one, can take civil action against their employer to compensate them for work done or services rendered.

CONTACT THE HR SUITE:

If you have any queries please do not hesitate to contact our office on 066-7102887 and we would be happy to deal with your query.