



LEGAL ALERT

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

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

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

Of the key alterations we highlight, *inter alia*, that the hiring of national citizens shall prevail, when possible, over the hiring of foreign nationals. This comes as a result, on the one hand, from the determination that the hiring of a foreign national can only be done as long as there are not nationals with the same qualifications as foreign nationals or their number is insufficient and, on the other hand, from the provision that establishes that an employer that hires foreign nationals must guarantee the transmission of scientific and technical knowledge to nationals, based on a training plan and gradual substitution with nationals, to be provided by the employer from the third year of the activity implementation onwards.

We also highlight that private employment agencies are expressly forbidden from hiring foreign nationals for occasional transfer or placement, being only permitted to do so for their own functioning and activity.

In what concerns the hiring modalities of foreign nationals, the hiring based upon a work permit assumes that the main hiring modality, all other modalities being not applicable when the reason for these is to avoid the hiring modality based upon a work permit. Albeit the maintenance of the current hiring modalities –short-term hiring (not exceeding 90 consecutive or interpolated days) hiring in the quota system, and hiring based upon a work permit – these have suffered alterations and, in some cases, new procedures and requirements were introduced.

In respect to the quota system, the limits are similar to the previous framework, namely in large enterprises 5% of all employees, in medium enterprises 8% and in small enterprises, 10%, and enterprises with less than 10 employees are authorized to hire at least one foreign employee.

The transfer process, temporary or permanent, of a foreign national worker, namely to another province and its compatibility with the requirements of hiring in the quota system modality, has also been expressly established.

¹ Decree-Law n. 37/2016



Finally, the sanction framework foreseen for the breach of a new regulation has suffered profound alterations, which we highlight, namely, (i) the obligation of the employer that terminates a national's employment contract, to equally terminate a foreign national's employment contract, in the same proportion and (ii) the possibility of cancellation of the administrative act that authorized or permitted the hiring of a foreign national in the case of serious infringements or criminal activity by the foreign national.

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