

Romania - Import of Extra-Community Workers

The migration of the Romanians on the European labor market has caused a deficit of local labor force, a deficit especially felt in the construction or services industries sectors.

In order to cover this deficit and to meet their contractual obligations, employers in these fields import the labor force, especially extra-community, using one of the two legal procedures available, namely the secondment, or direct employment of extra-community (countries outside the European Union) workers based on employment contracts.

Common aspects of the secondment and employment procedures

Both procedures involve the following steps:

- *Recognition of the education diploma of the foreign worker*

Recognition of the education diploma is obtained from the National Center for Recognition and Equivalence of Diplomas, which issues a Certificate of Attestation within 30 days from the date of application. This Certificate is necessary for obtaining the permit for secondment, or for direct employment under an employment contract.

The foreign worker has to meet the requirements regarding the minimum level of education necessary for the position for which is being seconded, or hired, as provided by the Classification of Occupations in Romania, and other special regulations, as the case may be.

Both in case of secondment, and direct employment, in addition to the education diploma, the workers must also hold qualification certificates for the specific positions for which they are seconded, or hired. In order to occupy certain positions, they also have to meet the other conditions required by the Romanian legislation for certain regulated professions, such as, for example, holding certificates of graduation of a labor health and safety course in order to fill the position of Labor Health and Safety Inspector.

- *Permit for secondment or employment*

This Permit is issued by the competent Immigration Inspectorate from the headquarters of the Romanian company where the worker will be seconded/employed within 30 days as of the submission of the relevant application and documentation. This deadline may be extended by 30 days if additional verifications/documents are required.

- *Long-stay visa for secondment or employment*

The long-stay visa is issued by the diplomatic missions or consular offices of Romania in the country of origin of the extra-community worker. This type of visa is not required to be obtained by all non-EU citizens, so this step should not be followed by American, Canadian and Japanese citizens whose right of residence can be extended without the obligation to obtain a visa for entry into Romania.

In principle, the interview at the diplomatic mission/consular office where the visa shall be applied on passport is scheduled within 10 days from uploading the documents and of the application for visa.

- *Single Residence Permit or EU (European Union) Blue Card*

The Single Residence Permit is issued by the competent Immigration Inspectorate taking into account the residence in Romania of the extra-community worker within 30 days as of filing the application and the relevant documentation. Unlike the other steps in which the presence of the worker is not necessary, at this stage, the worker must be present at the time of filling the application.

Differences between the secondment and employment procedure

The employment procedure, unlike the secondment procedure, implies the obtaining of a certificate which is issued by the Employment Agency competent from the registered office of the Romanian hiring company.

The secondment procedure implies the filing of a Services Agreement concluded between the Romanian company where the worker will be seconded and a company within the group with the Immigration Inspectorate. This agreement must be previously registered with the competent Tax Authority.

Secondment or employment?

Although the secondment procedure of the extra-community workers in Romania is simpler than the employment under an employment contract, secondment procedure is not used when:

- it is intended to use the extra-community worker over periods of more than 1 year, as secondment cannot be extended for more than 1 year; and
- the Romanian company importing the workforce is not a member of the same group of companies as the company from which the employee is seconded.

Therefore, the secondment procedure is mainly used by the Romanian companies affiliated to a group of companies with a non-Community presence, and which use the secondment not only for procedural reasons, but also for fiscal reasons, given that the tax treatment of the income of the seconded extra-community workers is more favorable than that of those hired under employment contracts.

This article provides general information and should not be considered as legal advice. For more information about the issues discussed above, you can contact us at office@buzescu.com.

Buzescu Ca