

Legislative Alert

Amendments to the Work Permit Legislation

In this issue we would like to draw your attention to the recent amendments to work permit legislation.

Amendments to the Work Permit Rules

On 2 February 2011 the Government adopted *Resolution No. 71 Amending the Rules for Determining the Quota, Conditions and Procedures for the Issuance of Work Permits to Foreign Employers for Attracting a Foreign Labour force to Kazakhstan*.

Below we briefly outline the main amendments.

1. Introduction of a ratio between foreign and local employees

Amendments establish a gradual restriction on the number of foreign employees to be hired by medium and large-size business entities. This restriction will be in effect until Kazakhstan joins the World Trade Organization.

Thus, from 1 July 2011 through 1 January 2012 the total amount of foreign employees both attracted and to be attracted should not exceed:

- ▶ 50 % of the total number of 1st category employees;
- ▶ 30 % of the total number of 2nd and 3rd category employees.

From 1 January 2012 the total number of foreign employees both attracted and to be attracted should not exceed:

- ▶ 30 % of the total number of 1st category employees;

- ▶ 10 % of the total number of 2nd and 3rd category employees.

2. Expansion of the list of positions falling within first category employees

The list of positions in the first category of employees was broadened to include not only CEOs, but also their deputies, financial and technical directors, as well as chief: engineers, constructors, technologists, power engineers, metallurgists, architects, geologists, geophysicists, with higher education and at least five years of experience in a similar position in the relevant business sector.

3. New grounds for refusal to issue/ prolong a work permit and withdrawal of issued work permits

The list of grounds for refusal to issue a work permit has been amended to include the following:

1. the transfer of foreign employees (by employers that obtained work permits) to work for another legal entity and/or individual;
2. violation of the ratio between foreign and local employees in the relevant category upon obtaining work permits for them;
3. violation of the ratio between foreign and local employees when applying for a work permit.

In the first two cases work permits will be withdrawn and new ones will not be issued within 12 months from the date of identification of violations.

In addition, the authorized body will reject prolongation of an existing work permit if a violation of the ratio between foreign and local employees has been identified.

4. Amendments to the time frames for issuance and prolongation of work permits

The decision of the authorized body on (i) Issuance of a work permit should be made within 15 working days (instead of 20 working days as it was in the past), (ii) Prolongation of a work permit will be made within 5 working days (instead of 10 working days as it was in the past).

5. Issuance of a work permit for working in several administrative territorial units

It is now possible to obtain work permits for foreign employees working in two or more administrative territorial units (regions). Previously, the option for obtaining work permits for 2 or more regions was abolished.

At the same time, the duration of business trips for foreign employees having work permits to work in one region, has been decreased from 120 to 60 calendar days within a calendar year.

In case the term of business trips exceeds 60 days, an employer should apply for a new work permit covering two or more regions.

6. Other changes and amendments

The list of persons exempt from the requirement to search for local employees in the local labour market, when hiring foreign employees, has been enlarged. Now it includes organizations implementing projects

under the “*Industrialization Map of Kazakhstan for 2011–2014*”, including contractors performing start-up, maintenance and assembling of technological equipment.

The form of Information on *Attracted Foreign Employees*, (to be submitted to the state authorities together with other documents when applying for work permits) was amended. Amendments were also introduced into the set of documents to be submitted. Thus, an additional new document - information on calculation of local content for personnel should be submitted. The form of this document is established in Annex 6-1 to the *Work Permit Rules*.

Quota for year 2011

According to *Resolution of the Government No. 1479 dated 30 December 2010*, the quota for attracting foreign employees was set at 0,85 % of Kazakhstan’s economically active population. The above mentioned quota was split between Kazakhstan’s regions and Astana and Almaty.

New list of the most demanded professions for 2011

On 31 December 2010 the Ministry of Labour and Social Protection adopted the *Order No. 452-n*. According to the Order, when attracting a foreign labour force for filling positions included into the list of the most in demand professions, such individuals will be given additional points required for evaluation of qualification characteristics affecting the decision on granting a work permit to the foreign employee.

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