

Hiring foreign employees in the Kyrgyz Republic: law and practice

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Today, there are many companies hiring foreign employees for various reasons. But only a few of them observe the necessary formalities for employing foreigners or stateless persons in the Kyrgyz Republic. It should be kept in mind, however, that the lack of appropriate permits may turn out quite costly, both materially and morally, for local employers and foreign employees. Thus, in the event of deportation of foreign employee, employer might pay more in penalties and transportation costs than it would have paid, had his foreign worker been employed properly. Furthermore, until issued the required permits, employers will feel uneasy in expectation of labor inspections and foreign employees will feel uncertain about their social and financial stability. Despite gaps and uncertainties in Kyrgyz migration law, knowing the rules and requirements is critical, as it helps maximally avoid possible sanctions.

Employment of foreign workers in the Kyrgyz Republic

To work or conduct business in the Kyrgyz Republic foreigners and stateless persons need to obtain *work authorization*. To hire and employ foreign workers in the Kyrgyz Republic employers need to obtain employment license.

The Regulation “On employment of foreigners and stateless persons in the Kyrgyz Republic” approved by Government Resolution dated September 8, 2006 № 639 (the “Regulation”) provides for two kinds of permits:

- Permits authorizing the hiring and employment of foreign workers in the Kyrgyz Republic (the “Employer Permit”); and
- Permits authorizing foreigners or stateless persons to work or conduct business in the Kyrgyz Republic (the “Employee Permit”). Employee Permits are issued to individuals who have reached the age of 18.

The Ministry of Labor, Employment and Migration of the Kyrgyz Republic (the “Ministry”) is the public agency charged with issuing the aforesaid permits. Permits are issued by the Ministry within quotas annually set by the Kyrgyz Government for the hiring of foreign and stateless workers.

Procedure for issuing work permits

To get a work permit local employer or foreign individual entrepreneur need to submit the necessary documents to the nearest local office of the Ministry. The list of the documents necessary for getting an employer or employee permit is approved by the Ministerial order.

The Ministry will issue work permits upon completion of the following formalities: i) on-site inspection of the company applying for the permit, and ii) review of the documents and discussion by the ad hoc Ministerial commission to determine whether to issue or refuse the

permit (at this stage, where necessary, the documents can be forwarded to other public agencies for approval);

The main purpose of the on-site inspection is to examine the company's operation and working conditions, and to determine whether it has good reasons for employing foreign workers. Based on the findings of the on-site inspection, a report is prepared stating whether or not employing foreign workers is reasonable. If it is stated to be reasonable, the documents will be sent to the Ministry's central office for approval.

Review period

The lagging review period is cited among the shortcomings of the current practice for issuing permits. The Regulation prescribes that employer permits must be issued within 30 days of filing (but not more than 35 days where additional review is required) and that employee permits must be issued within 15 days. In reality, however, the average review period for issuing permits varies between two and two and a half months.

Period of validity

Kyrgyz law defines different permit validity periods for different categories of foreign employees. Work permits for skilled foreign workers are generally valid for two (2) years. Permits for foreign individual business people are valid for three (3) years. Work permits for foreign professionals and other citizens are valid for one (1) year with the possibility of annual extension.

Fee for the issuance of a permit

The said permits are issued at a certain charge. The Ministry assesses an initial fee of KGS 4,000 for the issuance of an Employer Permit. Employee Permits are usually issued for a fee of KGS 2,000¹, however citizens of EurAsEC countries may obtain work permits for a reduced fee of KGS 1,000 due to the existence of numerous bilateral and multilateral labor migration agreements on the mutual granting of preferences².

Non-transferability of permits

Work permits are employer-specific and may not be transferred. Foreign workers who have been issued work permits by a particular employer are therefore not allowed to transfer them to another employer. If foreign professionals work for more than one company, they must obtain work permits for each employer.

Foreign business people holding work permits may only do business at the places specified in their application. If a foreign business person holding a valid work permit wishes to do business in a place which was not included in their original application, the business person must re-new the existing work permit, or apply for an additional permit.

¹ KR Government Resolution "On approval of list of fees for issuing permits to engage in activities involving employment of foreigners in the Kyrgyz Republic and promotion of overseas employment of Kyrgyz workers" dated October 31, 2006 № 754.

² Eurasian Economic Community comprises: Kyrgyz Republic, Russian Federation, Republic of Kazakhstan, Tajikistan, Republic of Uzbekistan, Republic of Belarus.

Persons exempt from the work permit requirement

Kyrgyz laws set forth numerous categories of foreigners and stateless persons who are usually not required to obtain work permits. They include:

- ✓ Persons who have official refugee status;
- ✓ Permanent Residents of the Kyrgyz Republic;
- ✓ Persons who have been granted political asylum by the Kyrgyz Republic;
- ✓ Persons who travel to the Kyrgyz Republic to supervise the installation of technological equipment which has been supplied by foreign companies;
- ✓ Students undertaking unpaid work or internships with Kyrgyz educational institutions while on vacation or otherwise;
- ✓ Persons working in diplomatic and consular missions, or with organizations having diplomatic status and which are located in the Kyrgyz Republic;
- ✓ Foreign correspondents and journalists accredited by the Kyrgyz Republic;
- ✓ Persons subject to other employment requirements in accordance with international or intergovernmental agreements between the Kyrgyz Republic and foreign countries.

Punishment for violating Kyrgyz migration law

Violations of Kyrgyz migration law are punished by the following administrative sanctions:

- Employer's violating migration rules are punished by (i) administrative fine of KGS 2000 to 5000 which are assessed directly to the employer's officer or person authorized to handle migration matters; ii) the legal entity itself is also fined between KGS 20,000 to 30,000.
- Foreigners and stateless persons working or conducting business in violation of Kyrgyz migration law are punished by administrative fines (varying between KGS 1,000 to 2,000) with or without deportation³.

In addition to the foregoing, Kyrgyz law provides for *penal sanctions* for violating migration law, namely, by fines varying between KGS 50,000 to 200,000 or by imprisonment for one year.

Gaps in legislation

In practice, however, some of the issues inherent in employing foreign workers are not clearly specified in the current migration law. In particular, there remain questions about foreign employees visiting Kyrgyzstan on business, or foreign senior executives (officers) not staying in Kyrgyzstan or staying for a short period of time.

³ The cost of deportation of foreigners and stateless persons from the Kyrgyz Republic is borne by the employer.

Also, it is not clear whether a foreigner or stateless persons traveling to Kyrgyzstan on business needs to obtain a work permit? If the Regulation were strictly observed, foreign workers would need work permits no matter how long they are going to stay in the country and whether they will be paid salary by a foreign or local company. In reality, however, the Ministry has been tolerant to *foreign experts who travel to the Kyrgyz Republic to perform follow-up reviews and advising in respect of investments made by foreign companies*. Such persons are exempt from the work permit requirement, according to the Ministry.

Besides, under Kyrgyz law, expatriate senior executives are not allowed to work until they obtain work permits. But the question arises about who shall run the company and sign the documents or employment agreements and other contracts for such persons while their work permits are pending? Hence, during this period expatriate employees may be regarded as being in violation of Kyrgyz migration law.

It is not clear also whether a new work permit or notice to the Ministry of Labor is required where a foreign employee moves from one job or position to another within the company.

The list of required documents is another concern. Thus, among other documents necessary for getting the permit, the Ministry requires the copy of the employment agreement. However, such agreement can be provided only after the Ministry's commission approves the permit. Besides, employment contracts are usually signed between local employers and foreign employees after they get their permits.

This brief note addresses some of the main issues arising in connection with hiring and employing foreign workers in the Kyrgyz Republic and requiring legislative action.

As aforesaid, despite existing gaps in legislation, work permits are still critical to ensuring the legality of hiring and employing foreign workers. Hence, where employers find it important to secure themselves against unauthorized inspections involving significant financial and other expenditures, the work permits must certainly be obtained.

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