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Rules for inter-company expatriates

If you're here on temporary company assignment you should be aware of certain legal considerations related to your status, writes Patrick Rovers.

Lots of foreign companies send their employees to the Netherlands on a temporary basis. These employees are, for instance, involved in setting up a Dutch branch or subsidiary or are simply here as a replacement.



Sending employees abroad may sound easy but there are several legal considerations such as, does an inter-company transfer require a Dutch work permit and are there special arrangements or exceptions?

Work permit

In the Netherlands, a prospective employer is responsible for obtaining a work permit with regard to the future services of the expatriate (non-EU).

But before an application for a work permit may be lodged, the employer must seriously look for suitable candidates in the Netherlands and the European Union.

A regular procedure involves the statutory obligation to file the job opening with the Employment Office and with Eures, the European employment services.

A five-week deadline

When intending to employ an expatriate, the employer must first file the job opening with the Employment Office for a period of at least five weeks before he is allowed to apply for a work permit.

The employer also has to advertise the job opening in a newspaper or specialized magazine. Meeting these requirements usually takes up a lot of energy, money and handling time.

Inter-company key personnel

The regular procedure is not applicable to the transfer of key personnel (such as top managers and highly qualified specialists) of an international group of companies.

A work permit may now be applied for without first having to place advertisements in Dutch newspapers or magazines and without the required filing of the job opening with the Employment Office and Eures — this simplifies the work permit application considerably.

International group of companies

An international group of companies can in this way easily and speedily transfer key personnel into the Netherlands. To qualify as an international

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group of companies, the group must have subsidiaries or branches in at least three countries and must realize a turnover of at least EUR 50 million. As a rule, joint ventures operations do not qualify.

There is a one-year requirement

Till last year, Dutch labour law required key personnel to be employed by the group for a period of at least one year before transferred to the Netherlands.

In practice this regulation often frustrated a swift transfer of key personnel. At the end of 2000 new labour regulations abandoned the one-year criteria. This will allow for more flexibility regarding the international transfers of key expatriates.

What are key personnel?

In order to qualify, key personnel must possess specific specialist knowledge and experience that is essential for the Dutch subsidiary or branch of the group.

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In practice, this last requirement is often quite difficult to substantiate. Please also note that the posting to the Netherlands of key personnel must have a temporary basis, that there is a minimum gross salary requirement of EUR 50,000 and that the expatriate must have a bachelor degree or higher.

Exceptions

Companies from Poland, Hungary, Czech Republic, Slovakia, Slovenia, Romania, Bulgaria, Lithuania, Estonia and Latvia that send their key personnel to the Netherlands in order to work for a branch or subsidiary, do not have to meet the 'separate companies in three countries' rule nor the turnover requirement. To qualify for a Dutch work permit the prospective employer 'merely' needs to prove that key personnel is involved.

Please note that expatriate key personnel may need pre-requirement authorization for temporary stay (*machtiging tot voorlopig verblijf, MVV*), a visitor's visa and/or a residence permit depending on their nationality and the intended stay in the Netherlands.

In closing

Skipping the advertisements and the compulsory listing with the Employment Office and Eures in practice means less paperwork and costs for the prospective employer in the Netherlands.

In an ideal situation it may even lead to shorter application procedures for work permits.

To use the special arrangement for inter company transfers, only temporary key personnel with specific specialist knowledge and experience, essential for the Dutch subsidiary or branch may qualify.

Furthermore the international group of companies must meet very strict specifications. Be advised that all requirements will be thoroughly checked before a work permit is granted on an inter company basis.

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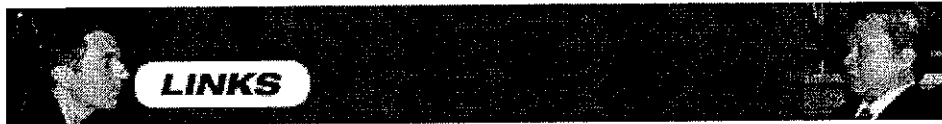
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Patrick R. Rovers (pvcs.nl@vviworld.net) is a consultant with Van Velzen C.S. the Netherlands B.V., 0031 161 437288

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