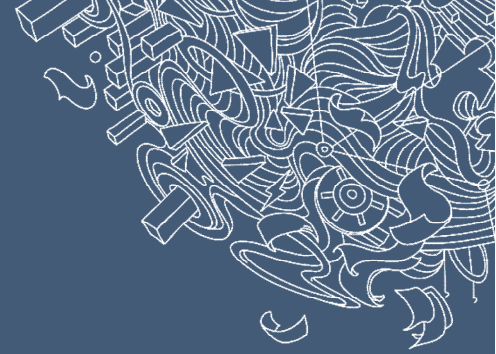


# IRISH IMMIGRATION UPDATE



## EMPLOYMENT PERMITS BILL 2022

On 12 October 2022, the Minister for Business, Employment and Retail, Damien English TD introduced the Employment Permits Bill 2022 in an effort to modernise the employment permits system in Ireland.

The bulk of the provisions are carried over from the current act while some important new changes are to be introduced. The bill is currently in Third Stage before Dáil Éireann.

## WHAT IS NEW?

### HIGHLIGHTS

- The operational aspects of employment permits will be moved to regulations to allow for more flexibility and adaptability to labour market needs.
- The introduction of a seasonal employment permit for seasonally recurring roles.
- The Bill intends to strengthen the current employment permit system by revising the following two restrictions, which largely guide the system:
  - Labour Market Needs Test (LMNT) seeks to ensure that an offer of employment is first made to the Irish/EU labour market before an application is made for an employment permit to employ a non-EEA national.
  - 50:50 Rule requires that employers seeking to hire foreign nationals on an employment permit have at least 50% of their workforce from Ireland or the EEA, Swiss Confederation, citizens of the UK or a combination of these.
- The Dependent<sup>1</sup> Employment Permit (dependents of holders of a Critical Skills Employment Permit (CSEP)) is amended and separated from the previous Dependent, Partner, Spouse Employment Permit. The partners and spouses of CSEP holders may now apply for a Department of Justice permission instead. The conditions for a CSEP dependent work permit are the following:
  - The primary permit is in force and the primary holder is in employment in the role for which the primary permit was granted; or
  - The primary permit is expired but the primary permit holder now holds a Stamp 4.
- New requirements on notifying the Department (DETE) and retention of records.

### LMNT

- The LMNT is designed to establish a need for the grant of a General Employment Permit (GEP), Contract for Services Employment Permit or Seasonal Employment Permit. In effect it means that an employment permit shall not be granted unless the employer (or the contractor or subcontractor) has advertised the employment and has, before making the application, offered the employment to an Irish citizen (or a person in the State under Section 8, namely a programme refugee) or a citizen of the EEA or Swiss confederation to comply with the State's obligation concerning community preference and to protect the domestic and EEA labour market. The role must be advertised on the EU-based jobs website EURES, and one or more additional online employment platforms in a manner to be prescribed in regulations. It will no longer be a requirement to publish advertisements in hard-copy newspapers.
- Exemptions to the LMNT include:
  - Where the employer is in a position to submit a letter of support from the IDA or Enterprise Ireland; or

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<sup>1</sup> A dependent other than the spouse or civil partner of the CSEP holder.

- Where the Minister is satisfied that there is a shortage of skills for the role (i.e. the role in question falls within the Critical Skills Occupations List); or
- The application is in respect of a GEP holder who was dismissed by reason of redundancy.

## 50:50 RULE

- This rule applies in all situations except for certain start-up companies (start-up waiver) and certain situations where employers do not have any employees on the date of application (sole employee waiver).
- Exceptions also include an application for a critical skills employment permit (CSEP), a GEP or an intra-company transfer employment permit, where:
  - the person who has made the offer of employment, or the connected person, has been registered with the Revenue Commissioners for a prescribed period;
  - an enterprise development agency has made a recommendation referred to in section 14 in respect of that application (i.e. that an employment permit be granted or renewed); and
  - the Minister is satisfied that, having regard to such recommendation, granting the employment permit that is the subject of the application concerned, will contribute to the further development of employment in the State.

Applications for the Dependent Employment Permit, the GEP, the Reactivation Employment Permit, and the Sports and Cultural Employment Permit also have access to a waiver to the 50:50 rule (sole employee waiver). These arrangements will continue. However, the Bill proposes that employers availing of the sole employee waiver will no longer be prevented from taking on more employees but will be subject to the regular 50:50 rule when they apply for a second permit. In the current system, the waiver only applies to employers who intend to limit themselves to one employee.

**Table 1: Application of LMNT and 50:50 Rule to different types of work permits <sup>2</sup>**

PERMIT TYPE	LMNT*	50:50 RULE	50:50 WAIVER FOR SOLE EMPLOYEE	50:50 WAIVER FOR START UP COMPANIES
Critical Skills		✓		✓
Dependant/Partner/Spouse		✓	✓	
General	✓	✓	✓	✓
Intra-Company Transfer		✓		✓
Contract for Services	✓	✓		
Reactivation		✓	✓	
Sports and Cultural		✓	✓	
Exchange Agreement		✓		
Internship		✓		

\*The LMNT is waived where the employment is on the highly skilled occupations list or the application is supported by an enterprise development agency.

Source: Government of Ireland (2018) [Review of Economic Migration Policy](#)

<sup>2</sup> Oireachtas Library & Research Service, 2022, L&RS Bill Digest: Employment Permits Bill 2022. Bill No. 91 of 2022

## REDUNDANCY

Where holders of CSEP and GEP are made redundant, the foreign national should notify the Department in writing including the reason for dismissal by redundancy. An application for a new permit on behalf of redundant employees may be made within 6 months even if the occupation concerned no longer falls under CSEP or GEP or has been moved to the Ineligible List of Occupations. (Sections 37 and 38).

## NOTIFYING THE DEPARTMENT

- When terminating an employment, regardless of whether the employment is terminated by the employer (or connected person) or foreign national, the Minister shall be notified within a period to be specified in regulations. Not complying with this requirement constitutes an offence. It shall be a defence to show that the person charged with the offence took all reasonable steps to comply with this requirement.
- The parties to an employment permit (the permit holder, employer, connected person, foreign employer, relevant person, contractor, and subcontractor) must notify the Minister in the case of a change of address.

## RETENTION OF RECORDS BY EMPLOYERS

Employers must retain employee records for **five years** and make them available to the Department if requested. Such records include the relevant employment, its duration, the remuneration paid, the nature of the business, the nationality of the permit holder, records of any board, accommodation, and health insurance in the case of Intra-Company Transfer/Contract for Service Employment Permit types. This part is amended to include UK nationals for the purposes of record keeping, to address their changed status following Brexit.

## GRANTING EMPLOYMENT PERMITS

- The Bill grants regulation-making power to the Minister in various operational aspects of the employment permit system ranging from the maximum number of employment permits that may be granted in respect of a particular class of employment permit to minimum experience needed for an employment. For example, Section 40, Subsection (10) in respect of a GEP or a seasonal employment permit, provides that the Minister may specify conditions for the grant of an employment permit, such as: "*(a) any accommodation, training or expenses that shall be provided to a foreign national, and (b) any measures that shall be taken by the employer of the foreign national to increase the skills, knowledge, qualifications or experience of employees, or to reduce the employer's reliance on the employment of foreign nationals in respect of the employment concerned, including by way of the introduction of technical changes to work processes.*"
- Once a permit is granted, the foreign national **must start employment within a certain period from which the permit is granted or comes into force**; that period will be prescribed in regulations. It is anticipated that this period will be 3 months from the issue date or the date the permit comes into force.
- A dependent permit shall remain in force for a maximum period prescribed in regulations or for the duration of the primary permit, whichever is the lesser.

## RENEWING EMPLOYMENT PERMITS

Renewals are exempt from the LMNT and the Ineligible Occupations List assessments.

## REFUSAL OF EMPLOYMENT PERMIT APPLICATIONS

The Bill proposes to separate the grounds for refusal of initial applications for employment permits and the refusal of renewal applications, which is combined in the current system. Section 32 provides for further discretionary grounds, in addition to the grounds for refusal under sections 25 and 26 (subsection (5)), on which the Minister may refuse to renew an employment permit. These, among others, include where: the foreign national has spent **a continuous period of not less than 3 months outside the State** during the period for which the employment permit has been in force that was not connected to his or her employment. This in practice means renewals will undergo more scrutiny than new applications.

## REVOCATION OF EMPLOYMENT PERMIT

The Bill lists grounds for the revocation of an employment permit including where *"the foreign national has not commenced employment in accordance with the employment permit within a prescribed period beginning on the date of issue of the employment permit."*

## MORE REGULATION-MAKING POWERS TO THE MINISTER

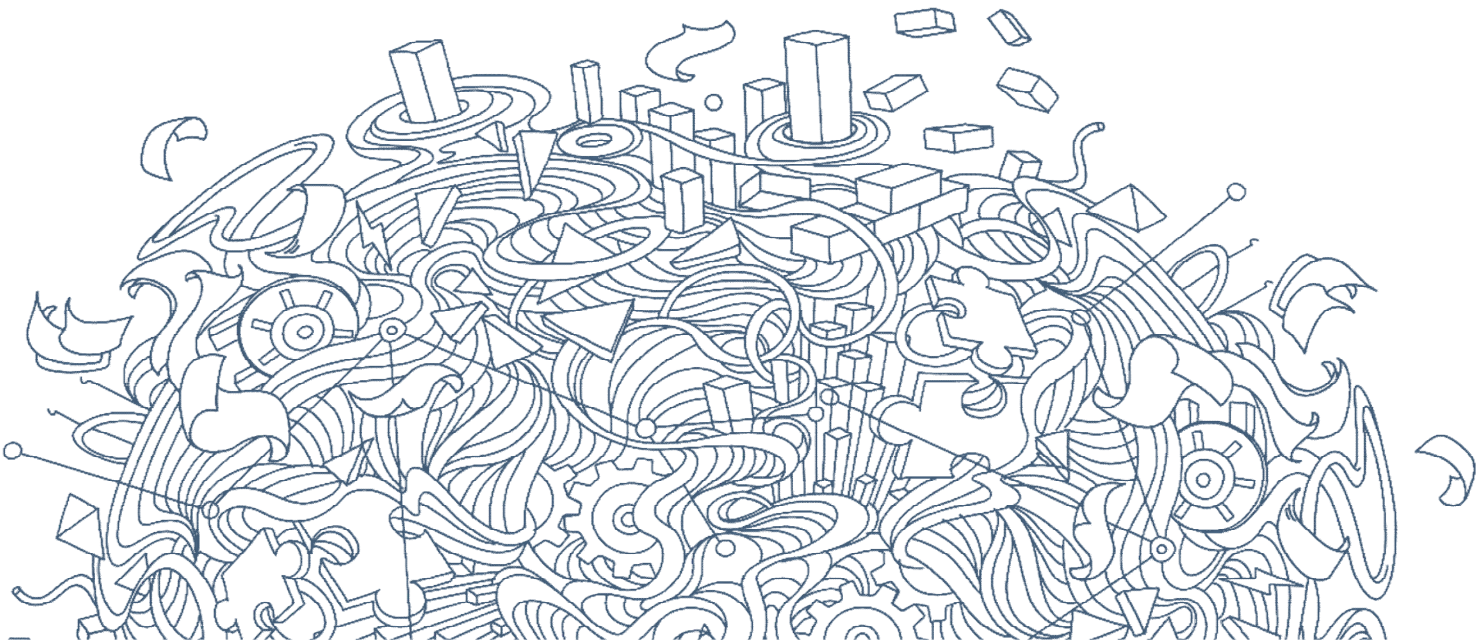
- The Bill proposes to enable the Minister to amend an application, at the request of an applicant, as prescribed in regulations. This is to avoid requiring an applicant to re-submit a new application and reduce the administrative burden on users of the employment permit system.
- The Bill proposes to allow the enterprise development agencies (IDA and Enterprise Ireland) to make a recommendation to the Minister in writing in support of the grant or renewal of an employment permit. The Minister must regard the recommendation but is not bound by it.

This Bill is being examined section by section by the parliament; further amendments may be made.

## CHANGES TO THE ATYPICAL WORKING SCHEME (AWS)

These changes are effective from 1 January 2023 and include:

- Revising the salary threshold for the AWS to align with the published salary requirement for a General Employment Permit (€30,000 at the time of publication which is a significant increase from the national minimum wage of €11.30 per hour).
- The 90 days of permission under the AWS can be spread over six months to allow intermittent travel into and out of Ireland.
- Changes to the cooling-off period: The waiting time to apply for a new AWS permission after the initial six-month period is reduced from 12 months to one month. The applicant must show compliance with the terms of previous permission through passport stamps. This change only applies to the "general" category of applications and not to frontline medical personnel or other types of permission under the Scheme.



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