Seasonal employment: conditions of entry and stay of third-country nationals

2010/0210(COD) - 26/02/2014 - Final act

PURPOSE: to introduce a special admission procedure for entry and stay of third-country nationals for the purpose of seasonal work and define their rights as seasonal workers.

LEGISLATIVE ACT: Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

CONTENT: this Directive determines the **conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers** and defines the rights of seasonal workers. Member States will keep the right to determine volumes of admission and reject applications if EU workers are available. The main points of the Directive are as follows;

Scope: the Directive applies to third-country nationals who reside outside the territory of the Member States and who apply to be admitted, or who have been admitted under the terms of the Directive, to the territory of a Member State for the purpose of employment as seasonal workers. It does not apply to third-country nationals who at the time of application reside in the territory of a Member State, with certain exceptions detailed in the text.

For stays not exceeding 90 days: in the case of Member States applying the Schengen acquis in full, Regulation (EC) No 810/2009 (Visa Code), Regulation (EC) No 562/2006 (Schengen Borders Code), and Council Regulation (EC) No 539/200 apply in their entirety. Accordingly, for stays not exceeding 90 days, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen acquis in full are regulated by those instruments, while **this Directive only regulates the criteria and requirements for access to employment.** In the case of Member States not applying the Schengen acquis in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies.

The Directive defines criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days as far as employment as a seasonal worker is concerned.

Stays of longer than 90 days: for seasonal workers who are admitted for stays of longer than 90 days, this Directive defines **both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in Member States**.

Conditions for admission for stays not exceeding three months: the Directive sets out the criteria and requirements for admission to employment as a seasonal worker for stays not exceeding three months. It lists the supporting documents needed, which include: (i) a valid work contract or, a binding job offer which specifies the place and type of the work, duration of employment, the remuneration and the working hours per week; (ii) evidence of having applied for sickness insurance; (iii) evidence that the seasonal worker will have adequate accommodation.

Conditions for admission for stays exceeding three months: for these applicants, the documents required are the same as those documents that must be provided by applicants staying less than three months, but the former must also have sufficient resources during his/her stay to maintain him/herself without having recourse to Member States' social assistance systems.

Grounds for refusal: the Directive lists the grounds upon which an application may be rejected, inter alia: (i) where the employer has been sanctioned in conformity with national law for undeclared work and /or illegal employment or where the employer's business is being or has been wound up under national insolvency laws; (ii) where the employer has been sanctioned in accordance with the rules applicable under the directive; (iii) where the principle of Union preference applies; (iv) where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, or if within the 12 months immediately preceding the date of the application, the employer has eliminated a full-time position in order to create the vacancy he/she is trying to fill by use of the Directive.

Similar provisions are made for withdrawal of the authorisation for the purpose of seasonal work. The authorisation for the purpose of seasonal work granted may also be withdrawn if the third-country national applies for international protection.

Duration of stay: Member States shall determine a maximum period of stay for seasonal workers which shall be **not less than five months and not more than nine months in any 12-month period.** After the expiry of that period, the third-country national must leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work.

Extension of stay: in cases where a seasonal worker has been admitted for a stay not exceeding 90 days and where the Member State has decided to extend the stay beyond 90 days, the short-stay visa should be replaced either by a long-stay visa or by a seasonal worker permit. Seasonal workers will have the right to extend their stay once to be employed with the same employer or with a different employer provided that they fulfil the entry conditions and no grounds for refusal apply. Member States may allow them to extend their stay more than once provided that the maximum duration of stay is respected.

Facilitation of re-entry: Member States must facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays. That facilitation may include: (i) exemption from submitting some documents (ii) the issuing of several seasonal worker permits in a single administrative act; (iii) an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; (iv) priority in examining applications for admission as a seasonal worker.

Equal treatment: seasonal workers shall be entitled to equal treatment with nationals of the host Member State in terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace. This also applies to branches of social security such as sickness benefits, invalidity benefits and benefits in respect of accidents at work and occupational diseases.

Member States **may restrict equal treatment** on family benefits and unemployment benefits, education and vocational training, and tax benefits.

Accommodation: seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority will have to be informed of any change of accommodation of the seasonal worker. Where the accommodation is arranged by or through the employer:

- the rent must not be excessive compared with the net remuneration of the seasonal worker and compared with the quality of that accommodation;

- the seasonal worker’s rent must not be automatically deducted from his or her wage;

- the employer must provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and

- the employer must ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

Enforcement: to ensure the proper enforcement of the Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms are in place for the monitoring of employers and that, where appropriate, effective and adequate inspections are carried out on their respective territories. The selection of employers to be inspected should be based **primarily on a risk assessment** to be carried out by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.

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