

Foreign Workers in the Grand Duchy of Luxembourg

1. Principle of Non-discrimination

Luxembourg labour laws apply without distinction to all salaried workers on Luxembourg territory, regardless of nationality.

The validity of a work contract is not affected by the absence of a work authorisation¹.

2. Nationals of the European Union and the European Economic Space

A work permit is not required for workers who are nationals of European Union member countries and countries that are part of the agreement on the European Economic Space².

3. Third-country Nationals

3.1. Introduction

The employment of foreign labour is governed by the law of 28 March 1972 (“loi du 28 mars 1972”) concerning foreign labour and by the Grand Ducal regulation of 12 May 1972 setting out the applicable measures for the employment of foreign workers in the Grand Duchy of Luxembourg.

Article 26 of the law of 28 March 1972 provides that: “*No foreign National may work in Luxembourg territory without a work permit*”.

Article 1 of the Grand Ducal regulation of 12 May 1972 provides that: “*No foreigner may take up a paid, intellectual or manual employment in the territory of Luxembourg, unless they have obtained permission to do so in accordance with the provisions of the regulation*” and that “*moreover, they may not change occupation or employer without authorisation*”.

3.2. Procedure for the Employer

Prior to the worker commencing employment, the employer must submit a statement relating to the position to be filled in duplicate, and countersigned by the worker, to the Employment Administration (“ADEM”).

¹ C.S.J., 15.10.1987, s.a Quincaillerie de Mondercange/Dinis, F. 2000, p. 16

² Article 28 of the law of 28 March 1972 and article 1 of the Grand Ducal regulation of 12 May 1972

This statement is equivalent to applying for or renewing a work permit, in cases where: the worker is not yet in possession of a work permit; or the work permit has expired; or the work permit is restricted to a specific employer and occupation.³

For workers recruited from abroad and who apply through an international workers agreement or with the prior written agreement by the Employment Administration, the statement may be submitted three days prior to the employee commencing employment.

The granting of a work permit may also be subject to the negotiation of a contract between the employer and the worker.

The work permit will only be issued once the employer has forwarded a bank guarantee, from a duly approved financial establishment, for any repatriation expenses of the worker for which the work authorisation is requested.

The sum of the guarantee is calculated by a special commission and may not be less than approximately €1,487.36.

Article 5 of the Grand Ducal regulations of 12 May 1972 provides that “*when an employer hires a worker already in possession of a work permit authorising him to change employer or work for several employers, he must first present a statement to the Employment Administration in regard to the work position to be occupied*”.

3.3. Procedure for the Salaried Employee

The salaried employee must present an identification document to the Employment Administration, which may verify whether the interested party possesses the necessary aptitudes to carry out the occupation in question.

The salaried worker may in these cases submit any diplomas or other appropriate credentials. If these documents are judged to be inadequate, the Employment Administration may require the salaried worker to pass a professional aptitude test.

The work permit is issued and renewed upon payment, by workers, of a tax that shall not exceed approximately €4,957.87. All or some specific workers may be exempt from paying this tax by virtue of a Grand Ducal regulation, which considers their nationality, profession, recruitment method, type or duration of their work activity⁴.

Article 7 of the Grand Ducal regulation of 12 May 1972 provides that the following are not required to obtain a work permit:

³ Article 4 of the Grand Ducal regulation of 12 May 1972

⁴ Article 30 of the law of 28 March 1972 on the employment of labour

- 1) technical and administrative personnel from embassies and consulates whose senior officer is a career civil servant.
- 2) domestic staff working for an accredited diplomatic agent in Luxembourg.
- 3) persons occupied in activities not undertaken nationally or benefiting from international status.
- 4) the personnel of fairground attractions, circuses, theatres, revues and other itinerant establishments provided that the period of stay in Luxembourg territory is less than one month.

3.4. Issuance of the Work Permit

Work permits are issued, refused or withdrawn by the Ministry of Labour, on the recommendation of a special commission or on the recommendation of the Employment Administration. Recommendations from both bodies take into account the current state, development and organisation of the labour market.

In exceptional cases, a group work authorisation may be issued for foreign workers posted temporarily to the Grand Duchy of Luxembourg on behalf of a national or foreign company⁵.

Permit A has a maximum duration of one year and is valid for a single occupation with a specified employer; it is issued to workers not included in the other worker categories. It can be validly extended to several employers when the holder undertakes part-time work with several employers within the same occupation⁶.

Permit B has a duration of four years and is valid for a single occupation with any employer; it is issued to workers able to justify at least one year of uninterrupted residence in the Grand Duchy of Luxembourg. Foreign workers may obtain a B permit after one year's uninterrupted residence in the Luxembourg territory⁷.

Permit C has an unlimited duration and is valid for any occupation with any employer; it is issued to workers able to justify at least five years of uninterrupted residence in the Grand Duchy, as well as workers born in the Grand Duchy and having resided uninterruptedly for at least two years before applying for a work permit. The permit is rendered invalid in cases where the holder is absent from the territory of Luxembourg for more than a year. Cross-border workers may obtain permit C following uninterrupted residence of five years on the territory of Luxembourg⁸.

Permit D is issued to apprentices or trainees. It is valid for the duration of the apprenticeship or training period.

⁵ Article 9 of the Grand Ducal regulation of 12 May 1972

⁶ Article 2 of the Grand Ducal regulation of 12 May 1972

⁷ Articles 2 and 3 of the Grand Ducal regulation of 12 May 1972

⁸ Articles 2 and 3 of the Grand Ducal regulation of 12 May 1972

3.5. Legal Provisions

The law provides legal sanctions in cases where the employer, or the salaried worker, implement a work contract which falls outside the terms and conditions of the work permit⁹.

3.6. Renewal - Withdrawal

Article 27 of the law of 28 March 1972 provides that “*the granting and renewal of work permits to foreign workers may be refused for reasons pertaining to the state, development or organisation of the labour market. Work permits may be withdrawn from foreign national who 1) with fraudulent intent, resort to dishonest practices and inaccurate statements to obtain a work permit; 2) who work in an occupation other than that authorised by the work permit.*”.

Article 10 of the Grand Ducal regulation of 12 May 1972 provides that the granting and renewal of work permits to foreign workers may be refused due to reasons linked to the state, development or organisation of the labour market, taking into account the hiring priority which benefits nationals of European Member States and States that are part of the agreement on the European Economic Area, in accordance with Article 1 of EEC Regulation 1612/68 concerning the free circulation of workers.

Pierre Thielen and Olivier Rodesch
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⁹ Article 31 of the law of 28 March 1972 on the employment of foreign labour