

Alert on Immigration

November 2022



In parallel with a tightening approach towards the issue of visas for business visitors, recent development/ challenges from certain provincial labour authorities indicate that the authorities are also enhancing the review process for work permit applications for foreign workers in Vietnam.

Highlighted below is more detail on a few specific issues currently affecting immigration procedures for foreign employees coming to Vietnam.

1. **Work permit regulations are being stringently interpreted with further evidence requested to support applications**

In accordance with current labour regulations, businesses can only employ foreigners to hold the position of manager, executive director, expert and technical worker for roles where a Vietnamese individual cannot meet the requirements for the role.

Recently certain provincial labour authorities have requested further evidence to support that a Vietnamese individual cannot fill a role. As a result, in addition to a strong written justification on why a foreign employee must fill the role as previous practice, businesses must further provide evidence that the need for the use of foreign labour is real and the businesses cannot find a suitable candidate among the local talent pool to fill the role.

The evidence requested has included the following:

- Advertisement for the recruitment for the specific position is required to prove that businesses have tried to recruit local talent
- Supporting documents to prove that local talent was recruited but could not meet the requirements for the role or have terminated their labour contract and businesses must find foreign talent to fill the role
- Supporting documents evidencing that businesses propose to recruit local talent through labour supply vendor or job center but could not find suitable candidates

Other than the above, provincial labour authorities may request the following documents supporting the demand for talent for the operation of the business and that the business has a plan to train local talent to replace foreign labour in the applied positions in the future:

- a foreign employee usage plan and a training plan which shows a succession plan for a Vietnamese employee to take over the position of the foreign employee
- documents describing project progress and demand for talent to prove that the demand for the applied position is real

These changes may create challenges to businesses intending to recruit foreign employees to work in Vietnam and in turn prolong the work permit application process.

2. **The application of Resolution No.105 on the mobility of foreign labour with a valid work permit moving from one province to another is not consistently implemented among provinces**

Resolution No.105 allows foreign workers who have been granted work permits that are still valid to be sent, dispatched or seconded to work in another province for a period not exceeding six months without having to re-apply for a new work permit in the other province.

However, in practice certain provincial labour authorities still request a new work permit to be applied for in order for the foreign employees to work in these provinces and disregard the notification of dispatch from businesses as regulated in Resolution No. 105.

The requirement, which is not in line with guideline of Resolution No. 105, is not just an additional administrative burden for businesses who want to mobilise their foreign labour to work on different projects in Vietnam, but can also trigger certain challenges as to which entity will sponsor the new work permit, what type of work permit is suitable and if a social insurance liability will arise as a result of a new work permit.

3. Provincial authorities are exchanging information among foreign labour management authorities to enhance the management of foreign labour

Recently, some provincial labour management authorities are enhancing the management of foreign labour, namely:

- Danang Peoples Committee on 14 September 2022, issued Decision No. 2425/QDD-UBND about Rules on co-operation among related labour management authorities to enhance the management of foreign labour in the province, including reporting on status of management of foreign labour staying and working in the province and the audit and post work permit issuance check at businesses to ensure compliance in recruiting and use of foreign labour. In addition, Danang DOLISA is authorized to co-ordinate with other related authorities to build a single software to manage foreign labour in the province which can be accessed by all related authorities for foreign labour management purposes
- Certain districts in Hanoi are also carrying out labour audits for businesses using foreign labour to check the compliance status of the businesses using foreign labour

KPMG's opinion

As labour practices are changing over-time without prior notice and the relevant immigration and labour regulations are being applied stringently, businesses are recommended where possible to plan for personnel and business travel well in advance to avoid disruption to operations due to shortage of suitable personnel. Also, mobility and recruitment procedures should be revisited to capture the changes in work permit application practices.

In addition, as more mechanisms are introduced to manage and supervise the use of foreign labour working in Vietnam and foreign labour audits are likely to be in depth and more frequent, businesses should review their internal foreign labour compliance.

Please contact KPMG for further consultation on your organisation's business travel planning and compliance.

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