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GES NewsFlash

Belgium — New Responsibilities and Sanctions For Employers of Third-Country Nationals

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Summary

On 4 March 2013, a new Belgian law has entered into force, focusing on new formalities with which employers of third-country nationals will have to comply. This new law partially implements European Union Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally present third-country nationals; standards which should, in fact, already have been implemented by all member states before 20 July 2011. Furthermore, the law is one of the Belgian government's many new rules and regulations in the battle against social fraud.

The new Belgian law prohibits the employment of third-country nationals without a valid residence title, in line with the already-existing prohibition on illegal employment of third-country nationals in the Law of 30 April 1999, on the employment of foreign nationals.

Employers are currently obliged to obtain a valid work authorization for third-country nationals who they wish to employ before the start of their work activities in Belgium. In addition, a Limosa or Dimona declaration must be filed with the Belgian social security authorities. However, from 4 March 2013, onwards, employers who wish to employ a third-country national are also obliged to:

- Verify that each foreign employee has a valid residence permit or another authorization to reside in Belgium before the start of the activities in the country
- During the foreign national's employment, maintain a copy of the employee's residence permit or other authorization in their files for inspection purposes

In cases of noncompliance, in addition to the due salary, social security contributions, taxes on said salary, and repatriation costs (among others), the employer can be sanctioned with a prison sentence (from six months up to three years), a fine of €3,600 to €36,000, and/or an administrative fine of €1,800 to €18,000.

Apart from these new obligations regarding the verification and keeping of residence documents, the law also foresees the extension of the several liability for due salary of illegally employed third-country nationals. Depending on the situation, the principal, the main contractor, or the intermediary contractor can become severally liable to the payment of due salary, unless they are in possession of a written declaration in which the subcontractor declares that no illegal third-country nationals are employed.

Deloitte Belgium's immigration and social security team is already assisting many international clients with obtaining work permits and keeping track of validity dates of the employees' work and residence permits. The team is readily available to provide more detailed information.

People to contact

If you have any questions concerning the issues in this *GES NewsFlash*, please contact one of the GES professionals at our Deloitte offices as follows:

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