

## 91.01.21 總統令：修正「就業服務法」

參考法務部網站 <http://law.moj.gov.tw/fn/fn4.asp?id=4287>

第 51 條 雇主聘僱下列外國人從事工作，得不受第四十六條第一項、第三項、第四十七條、第五十二條、第五十三條第三項、第四項、第五十七條第五款、第七十二條第四款及第七十四條規定之限制，並免依第五十五條規定繳納就業安定費：

- 一 與在中華民國境內設有戶籍之國民結婚，且獲准居留者。
- 二 獲准居留之難民。
- 三 獲准在中華民國境內連續受聘僱從事工作，連續居留滿五年，品行端正，且有住所者。
- 四 經獲准與其在中華民國境內設有戶籍之直系血親共同生活者。
- 五 經取得永久居留者。

前項第一款、第二款、第四款及第五款之外國人得不經雇主申請，逕向中央主管機關申請許可。

外國法人為履行承攬、買賣、技術合作等契約之需要，須指派外國人在中華民國境內從事第四十六條第一項第一款或第二款契約範圍內之工作，於中華民國境內未設立分公司或代表人辦事處者，應由訂約之事業機構或授權之代理人，依第四十八條第二項及第三項所發布之命令規定申請許可。

**Legislative History:** based on the draft versions of the Employment Services Act in the Legislative Yuan in the Spring of 2000, these stipulations were proposed by Richard W. Hartzell in a Legislative Yuan Public Hearing on June 20, 2000, with the attendance of KMT and NP Legislators, several labor groups, as well as NPA, MOI, EY, CLA, and MOFA officials.

- \* Sponsored as law by 35 Legislators.
- \* Adopted into the CLA draft revisions of the Employment Services Act, as Article 51.
- \* Adopted into the Executive Yuan draft revisions of the Employment Services Act, as Article 51.
- \* Legislative Yuan first reading: April 13, 2001.
- \* Legislative Yuan second and third readings: December 21, 2001.
- \* Promulgated by President Chen: January 21, 2002.

# 就業服務法 Employment Services Act

Promulgated 21 January 2002

中華民國九十一年一月二十一日公布

## Article 51 第五十一條

Employers who employ the foreign persons listed below are not subject to the restrictions in Articles 46.01, 46.03, 47, 52, 53.03, 53.04, 57.01.05, 72.01.04, and 74, and are exempt from payment of the employment stabilization fees under Article 55:

1. Foreign persons who are married to citizens with household registration within the territory of the Republic of China and who have obtained residency status.
2. Refugees who have obtained residency status.
3. Foreign persons who have been engaged in authorized employment continuously and have resided for five years within the territory of the Republic of China, who are of good moral character, and who have a place of residence in the Republic of China.
4. Foreign persons who have obtained approval to live with their lineal blood relatives with household registration in the territory of the ROC.
5. Foreign persons who have obtained permanent residency.

The foreign persons listed sub-paragraphs 1, 2, 4, and 5 of the preceding paragraph may, without application by the employer, apply directly to the competent authority for a work permit.

Foreign companies/enterprises or other juristic persons [1] who need to send foreign persons to the Republic of China to engage in work that falls under the scope of the contracts provided for under Article 46.01.01 and 46.01.02 for purposes of contracting, business, or technical cooperation and [2] who have not appointed a representative or established offices in the Republic of China shall apply for a work permit through the contracting enterprise or agency, or the enterprise's or agency's authorized agent, in compliance with the orders and regulations issued under Article 48.02 and 48.03.

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Here is a summary of the restrictions that ESA **Article 51** lifts for the five types of foreigners mentioned therein:

Foreigners can be only hired to do the following kinds of work in the ROC:

1. professionals/specialists, or those with technical skills
2. executives in overseas-Chinese invested companies or in foreign companies
3. three categories of teachers in certain public or private schools
4. buxiban teachers
5. coaches and athletes
6. religious workers, artists, performers
7. sailors
8. fishermen
9. household maids
10. laborers on central government approved construction projects
11. other specially talented persons in special fields, as approved by the central government

(Hereinafter referred to as Types 1-11)

#### Article 46.03

A contract is required for Types 8-10. The period of contract will be equal to the period of the work permit.

#### Article 47

Employers must actively recruit domestically before applying for permission to hire foreigners for Types 8-11. Employers may not refuse to employ suitably qualified ROC citizens without good reasons.

#### Article 52

The contractual period for Types 1-7 and Type 11 may not exceed three years. The contractual period for Types 8-10 may not exceed two years. Extensions may be granted according to the relevant regulations, but a limitation of six cumulative years of work in the ROC applies. Types 8-10 who leave the country must wait ten days before returning.

#### Article 53.03

Type 1-7 employees cannot change to Types 8-11.

#### Article 53.04

Types 8-11 cannot change employers or work except under the four circumstances provided for in Article 59.01.

#### Article 55

Employers who employ foreign workers are required to make contributions to the central government's employment stabilization fund according to the prescribed fee schedule.

#### Article 57.01.05

Employers may not exclude employees from mandatory health tests.

#### Article 72.01.04

Employers can have their quota of laborers revoked if they fail to have employees take health tests.

#### Article 74

Foreigners must leave Taiwan immediately after their work permits have expired or are cancelled/revoked.

# Instructions and Comments

## Employment Services Act Article 51 Work Permit

### 就業服務法第 51 條工作許可證

個人申請工作許可證

Individual Application

Notes: (a) I suggest using a black pen when filling out these forms. Everything is pretty straightforward. (b) Don't fill in anything for the name of the Employer or Manpower Agency. (c) As you can see, the "Memo" is a Chinese document. You should write your Chinese name in the blank space in the first line. Then fill out the bottom half of the page. (d) Get an NT\$100 bill and use a small piece of tape to tape it on the form provided. (e) When you have all the application materials together, put everything in an envelope, and send it by registered mail to:

Employment and Vocational Training Administration  
Council of Labor Affairs  
No. 83 Yen Ping North Road, Sec. 2  
Taipei 103, TAIWAN

This address is given in Chinese at the top of the "Application Procedures" page. Expect to wait a week or ten days before you receive the work permit. It will be mailed to the "mailing address" you indicate.

This document contains all the procedures. What you see is the result of extensive consultations with the Council of Labor Affairs' officials during the January 22 – 25, 2002, period. Note: There are a lot of volunteer girls at the CLA counters. They are not 100% aware of the new procedures! Hence, I encourage you to submit your application by registered mail! I advise against going there in person!

If there are additional problems, I would hope to get them straightened out as soon as possible. That will require your input. Specifically, I will need to have a number of processed work permits on hand in order to initiate further discussions with the CLA, to insure that all regulations are being carried out correctly, and to the best advantage of the foreign spouse community.

Hence, after you receive your work permit, I would appreciate it if you would snailmail me a photocopy for reference.

Please mail to:

Richard W. Hartzell 何瑞元

1<sup>st</sup> Fl., No. 158 Hsing Yun Street, Nei Hu District, Taipei 114, TAIWAN

台北市(114)星雲街 158 號一樓

Additional comments mail be emailed to [richard@oriented.org](mailto:richard@oriented.org)

## Liberalized regulations for foreign spouses

In order to understand how the new version of the Employment Services Act (promulgated on 2002.01.21) is supposed to work, consider the way the old version (promulgated 1992.05.08) worked. Based on the original formulation, the Council of Labor Affairs (hereinafter called CLA) was supposedly in charge of overall policy implementation, but myriad of other government departments also got involved in the screening and issuing of work permits, including the Ministry of the Interior, Ministry of Education, Council of Agriculture, Ministry of Economic Affairs, Ministry of Finance, Atomic Energy Council, Ministry of Justice, etc., etc. As a result, they added in a lot of additional restrictions, in terms of a foreigner's eligibility for various types of employment.

One of the goals of this most recent (and extensive) revision to the ESA was to further simplify and standardize this vast spread of jurisdictional authority. However, as to how the new rules are really going to be implemented, no one can say for sure at this point. In fact, it appears that the city governments in Taipei and Kaohsiung will still have some jurisdictional authority under this new ESA version.

Who has overall authority for implementation and regulation of this law? As specified in Article 6, it is the CLA. In English we might say that the CLA is the "relevant central government authority."

What are the important considerations for foreigners? The crux of the matter is here: ESA Article 43 states "Except where otherwise specified in this law, a foreigner whose employer has not obtained a work permit in authorization of his/her employment, may not engage in work in the Republic of China."

In plain language that means that in order to work legally in the ROC, you have to find an employer who wants to hire you, and then the employer has to apply with the appropriate government agency for your work permit. However, Article 46 further specifies that foreigners are only allowed to work in eleven types of jobs in the ROC. So, if you want to do anything else, your employer does not even go through the trouble of applying, because it will never be approved. In the opinion of many observers, that is pretty restrictive.

Well, you ask, are there exceptions? Article 51 specifies five types of foreigners who are not restricted by those Article 46 categories. For those foreigners who have resided and worked continuously in the ROC for five years or more, and have all the necessary documentation to prove it, their employer(s) still need to apply for a work permit for their employment. For the other four types of foreigners, they can apply for the work permit themselves. Application is made to the "relevant central government authority".

After sending in their paperwork by registered mail, what these four types of foreigners receive back is effectively an Open Work Permit, which enables them to work in the ROC.

What does "work in the ROC" mean? According to our understanding, it means that you can do anything which a local citizen can do. So, can you work in a street stand? I fully believe that the answer is yes. Can you sell sweaters on the sidewalk? I fully believe that the answer is yes. Can you rent three rooms, put up a sign, and teach children's English classes? I fully believe that the answer is no. After all, Taiwanese citizens can't do that either, unless they apply for the appropriate license and other registrations. At our Public Hearing on June 20, 2000, the top CLA official in attendance said: "When this is passed, a foreigner who obtains a work permit under this Article could sell sausages in the street." He also noted that in his opinion there was nothing wrong with that.

We will now turn to a discussion of the purpose of a work permit. Question: What is a work permit necessary for anyway? Answer: It is necessary so that you can prove you are working legally in the ROC. If you are in a company, a work permit is necessary to prove that the employer is employing you legally. After all, according to ESA Article 1, one of the major purposes of the ESA is to promote the employment opportunities of ROC citizens. If you are a foreigner working in the ROC illegally, then many local people would argue that *you are taking employment away from local citizens.*

Obviously, there is a certain amount of xenophobia here on the part of the local labor unions.)

Well, as I have stated many times, the tax authorities are not interested in seeing your work permit. The local hospitals and clinics certainly never ask to see it, such as when you go get a health checkup or whatever. The President won't ask to see it if you get some award or something. So, generally speaking there are two types of officials to whom the work permit is important: the Police and the CLA representatives. If the Police have a raid on a factory, a school, an office building, etc., they will ask for I.D.s, and in the case of foreigners, work permits. It is also possible that representatives of the CLA could go anywhere and inspect work permits.

In fact, I have heard of foreigners in a nightclub who were performing one song on stage (during the regular band's break time), when the Police walked in and asked to see ARCs and work permits. As you would guess, they did not have work permits to perform there, and so they were taken down to the Police Station for interrogation. It was a major hassle, even though they were legally resident in the ROC and had work permits through other organizations.

Now, however, we come to an important consideration. Who has the final authority to say if a foreigner is working legally in the ROC? Clearly, it is the CLA who has the final interpretation. Remember this: if the CLA says you are legal, you are legal.

Now, with an Article 51 work permit, you can do any kind of work you want in the ROC. Your work permit (which is in the form of a letter) proves that you have official permission to work here. Of course there is the precondition that you have to be able to produce a valid ARC or APRC for examination as well. That proves that you have residency rights, and your work rights are subsidiary to that.

But, does another government official in another department have the authority to say that you need additional permission in order to "work legally" in the ROC? If he/she does say so, what should you do? Of course there may be some complications involved. Does the work you are doing actually require a license? In order to be a doctor, accountant, or geologist, there may be a separate licensing procedure involved. That applies to many professional fields. But for other types of work? Again, I go back to our Public Hearing of June 20, 2000, where we talked about all these matters in detail. The consensus was – if the local citizens can do it then you can do it.

And at the present time, you have to remember one other important point. The revised ESA is very, very new. It is really impossible to expect all the other officials in other departments to be aware of all the new procedures. It is quite possible that they are stating their view of the ROC legal environment based on the regulations of the old ESA.

*January 27, 2002*