

# Employment Permits (Amendment) Act 2014

Number 26 of 2014

## EMPLOYMENT PERMITS (AMENDMENT) ACT 2014

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## EMPLOYMENT PERMITS (AMENDMENT) ACT 2014

An Act to amend the Employment Permits Act 2003 , to provide a defence to a foreign national in certain proceedings under that Act, to provide for civil proceedings to recompense certain foreign nationals for work done or services rendered in certain circumstances; to amend and extend the Employment Permits Act 2006 ; to make further provision for the grant of employment permits; to amend the Illegal Immigrants (Trafficking) Act 2000 ; to amend the Immigration Act 2004 ; to amend the Aliens Order 1946; to amend the Taxes Consolidation Act 1997 ; and to provide for related matters. [27 th July, 2014]

Be it enacted by the Oireachtas as follows:

### PART 1

#### Preliminary and General

##### Short title, collective citation, construction and commencement

1. (1) This Act may be cited as the Employment Permits (Amendment) Act 2014.
- (2) The Employment Permits Acts 2003 to 2013 and this Act, other than Parts 4 and 5, may be cited together as the Employment Permits Acts 2003 to 2014.
- (3) The Employment Permits Acts 2003 to 2013 and this Act, other than Parts 4 and 5, shall be construed together as one.
- (4) This Act, other than Parts 4 and 5, shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (5) Parts 4 and 5 shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

##### Interpretation

#### 2. In this Act-

- "Act of 2003" means the Employment Permits Act 2003 ;  
"Act of 2006" means the Employment Permits Act 2006;  
"Minister" means the Minister for Jobs, Enterprise and Innovation.

### PART 2

#### Amendment of Act of 2003

##### Amendment of section 2 of Act of 2003

#### 3. Section 2 of the Act of 2003 is amended-

- (a) in subsection (1A), by inserting the following paragraph after paragraph (a):  
"(aa) the foreign national being employed outside the State by a foreign employer and being required by the foreign employer to carry out duties for, or participate in a training programme provided by, a person in the State who is connected to the foreign employer,"
- (b) by inserting the following subsection after subsection (2B):  
"(2C) A person shall not permit a foreign national who is employed outside the State by a foreign employer to carry out duties for, or participate in a training programme provided by, that person where that person is connected to the foreign employer, except in accordance with an employment permit granted by the Minister under section 8 of the Employment Permits Act

2006 that is in force.",

(c) in subsection (3) -

(i) by substituting ", (2) or (2C)" for "or (2) ", and

(ii) in paragraph (b), by substituting "(2) or (2C)" for "(2) ",

(d) by inserting the following subsection after subsection (3):

"(3A) It shall be a defence for a person charged with an offence under subsection (3) consisting of a contravention of subsection (1) to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with subsection (1).",

(e) in subsection (4), by substituting "subsection (2) or (2C)" for "subsection (2) " in each place where it occurs,

(f) by inserting the following subsections after subsection (10A):

"(10B) Without prejudice to any other provision of this Act, this section does not apply-

(a) to a foreign national who is in the State pursuant to the Diplomatic Relations and Immunities Act 1967 , and

(b) where the Minister for Foreign Affairs and Trade has certified in writing that the foreign national referred to in paragraph (a) falls within a reciprocal arrangement that permits a foreign national who is a member of the family of an assigned person, forming part of his or her household, to be in employment in the State.

(10C) A foreign national referred to in subsection (10B) shall be entitled to be in employment in the State without an employment permit for the duration of the assignment to official duties in the State of the assigned person concerned.

(10D) In subsections (10B) and (10C)-

‘assigned person’ means a person who is assigned, by a government of another state, to carry out official duty in the State on behalf of the government of that other state;

‘reciprocal arrangement’ means an arrangement (whether in the form of a memorandum of understanding or otherwise) that is entered into by the Government with another state.",

and

(g) by substituting the following subsection for subsection (15):

"(15) In this section-

‘connected’ has the meaning assigned to it by the Employment Permits Act 2006 ;

‘foreign employer’ has the meaning assigned to it by the Employment Permits Act 2006 ;

‘place’ includes any dwelling or any building or part of a building."

Insertion into Act of 2003 of new sections 2B and 2C

4. The Act of 2003 is amended by inserting the following sections after section 2A:

"Civil proceedings

2B. (1) This section applies to a foreign national who, in contravention of section 2(1) -

(a) had entered the service of an employer in the State, or

(b) was in employment in the State,

without an employment permit granted by the Minister under section 8 of the Act of 2006 that was in force and who is no longer in such service or employment.

(2) Where an employer referred to in section 2(1)(a) or, in the case of employment referred to in section 2(1)(b), a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b) -

(a) has not paid a foreign national to whom this section applies an amount of money in respect of work done or services rendered during the period for which the foreign national was in the

employment or service without an employment permit, or

(b) has paid an amount of money that was, having regard to the work done or services rendered during such period, an insufficient amount of money,

the foreign national or, in accordance with subsection (5), the Minister, may institute civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.

(3) Where, in proceedings under subsection (2), a court before which the proceedings are brought is satisfied that the foreign national took all steps as were reasonably open to him or her to comply with section 2(1), it may make an order that in recompense for such work done or services rendered an amount of money shall be paid to the foreign national by the employer who employed the foreign national, or, as the case may be, the person referred to in section 2(1A)(a) or the contractor referred to in section 2(1A)(b).

(4) The amount of money to be paid, pursuant to an order under subsection (3), to a foreign national in recompense for work done or services rendered shall be-

(a) in a case where no amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the greater of-

(i) an amount calculated by reference to the national minimum hourly rate of pay, or

(ii) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment,

or

(b) in a case where an amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the difference between-

(i) the amount paid, and

(ii) an amount equal to the greater of-

(I) an amount calculated by reference to the national minimum hourly rate of pay, or

(II) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment.

(5) The Minister may, at his or her discretion, institute civil proceedings under subsection (2) in the name, and on behalf, of the foreign national with the consent of that foreign national.

(6) Subject to subsection (10), proceedings under this section shall not be brought after the expiration of 2 years from the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or contractor referred to in section 2(1A)(b).

(7) Proceedings under this section shall not be brought in respect of any work, or services, done or rendered more than 6 years prior to the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b).

(8) Subsection (7) shall apply to proceedings under this section whether the work was done or the services were rendered before or on or after the coming into operation of section 4 of the Employment Permits (Amendment) Act 2014.

(9) Without prejudice to subsection (6), proceedings under this section shall not be brought where-

(a) the foreign national, in respect of any right of action he or she may have and whether such right of action arises pursuant to any enactment or otherwise, has-

(i) instituted proceedings in relation to the same, or substantially the same, work done or services rendered as referred to in this section, or

(ii) otherwise commenced an action or other claim in relation to the same, or substantially the same, work done or services rendered as referred to in this section,

and

(b) those proceedings have, or that action or claim has, not been finally determined or have, or has, not been discontinued before being finally determined.

(10) Where-

(a) before the day on which this section comes into operation a foreign national had instituted proceedings or otherwise commenced an action or other claim for work done or services rendered that are, or is, wholly or substantially in respect of work done or services rendered-

(i) during the period in which the foreign national was in the service of an employer in the State, or in employment in the State, without an employment permit referred to in subsection (1), and

(ii) for which he or she has not been paid or has been paid an insufficient amount of money,

and

(b) the foreign national-

(i) has, on or after the day on which this section comes into operation, discontinued the proceedings, action or claim before those proceedings are, or that action or claim is, finally determined, or

(ii) has not, when those proceedings are, or such action or claim is, finally determined, been awarded any amount of money in recompense for such work done or such services rendered, the foreign national may institute proceedings under this section not later than 2 years from the day on which the proceedings were, or the action or claim was, discontinued or on which such determination was made in respect of such work done or such services rendered during a period of 6 years prior to the day on which he or she ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b).

(11) In proceedings instituted by the Minister under this section the court shall not award costs in favour of the foreign national but may award costs in favour of the Minister.

(12) The amount of money paid to a foreign national pursuant to an order under subsection (3) shall not be treated as reckonable emoluments within the meaning of the Social Welfare Consolidation Act 2005 for the purposes of that Act.

(13) In proceedings instituted by the Minister pursuant to subsection (5), the foreign national shall not be liable for costs but the court before which the proceedings are brought may order that any costs that might otherwise have been awarded against the foreign national shall be paid by the Minister.

(14) Subsection (5) shall not be in derogation of any right of a foreign national to institute proceedings under this section on his or her own behalf.

(15) In this section-

‘Act of 2006’ means the Employment Permits Act 2006 ;

‘enactment’ has the meaning assigned to it by the Act of 2006;

‘national minimum hourly rate of pay’ has the meaning assigned to it by the Act of 2006.

Section 2B: supplemental provisions

2C. (1) The District Court has jurisdiction to hear and determine proceedings under section 2B

where the amount claimed in the proceedings does not exceed €15,000.

(2) The jurisdiction of the District Court under this section shall be exercised by the judge of the District Court for the time being assigned to the district court district in which the person against whom the proceedings are brought resides or carries on business.

(3) The Circuit Court has jurisdiction to hear and determine proceedings under section 2B where the amount claimed in the proceedings does not exceed €75,000.

(4) The jurisdiction of the Circuit Court shall be exercised by the judge of the Circuit Court for the time being assigned to the circuit in which the person against whom the proceedings are brought resides or carries on business."

### PART 3

#### Amendment of Act of 2006

#### Amendment of section 1 of Act of 2006

5. Section 1(1) of the Act of 2006 is amended-

(a) by inserting the following definitions:

‘Act of 1963’ means the Registration of Business Names Act 1963 ;

‘Act of 1967’ means the Redundancy Payments Act 1967 ;

‘Act of 1997’ means the Taxes Consolidation Act 1997 ;

‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ;

‘civil partner’ means a civil partner within the meaning of the Act of 2010;

‘civil partnership registration’ has the meaning assigned to it by the Act of 2010;

‘connected’, in relation to the connection between a connected person and a foreign employer, means-

(a) the connected person is a subsidiary of the foreign employer,

(b) the foreign employer is a subsidiary of the connected person,

(c) the connected person and the foreign employer are both subsidiaries of a holding company that carries on business in the State or outside the State, or

(d) the connected person and the foreign employer have entered into an agreement with another person whereby each of them agree to carry on business or provide services with each other in more than one state and to carry on business or provide services in the manner provided for in the agreement;

‘connected person’ means a person carrying on business in the State who is connected to a foreign employer;

‘contractor’ shall be construed in accordance with section 2(1A)(b) of the Act of 2003;

‘contract service agreement’ means the agreement referred to in section 2(1A)(b) of the Act of 2003;

‘date of dismissal’, in relation to a foreign national who is dismissed by reason of redundancy, has the meaning assigned to it by section 2 of the Act of 1967;

‘dependant’ means a foreign national who-