



The “Sarkozy II” Act
New Enforcement Decrees Regarding
Work Permits and Foreigners Doing Trade

! New information concerning “employees on assignment” !

June 2007

In application of the Sarkozy II Act, two new decrees and one ruling were published in May 2007. Decree no. 2007-801 dated 11 May 2007 concerns work permits and modifies article R. 341 of the Labour Code. Decree no. 2007-912 of 15 May 2007 concerns foreigners doing trade, and modifies article R. 313 of the Entry and Residence in France and Right of Asylum Code. The ruling of 15 May 2007 concerns humanitarian and cultural stays.

In relation to the 11 May decree, some enforcement circulars are still to come for all of the new measures to be put into practical application. However, here is an overview of the two decrees and the ruling.

1. Work permit exemptions:

(article R 341-1-1 to of the Labour Code)

Nationals from the following countries are exempt for needing work permits: the fifteen original European Union member countries, Cyprus, Malta, Switzerland, Liechtenstein, Iceland and Norway (EEA). All nationals from third countries or EU Member States subject to a transition period must get a work permit to work in France, ***except if they are employed by an EU firm and seconded in France as part of a provision of services.*** Another exception: nationals from Member States subject to a transition period ending their studies in France at a level at least equal to a Master’s degree are also exempt from needing a work permit.

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2. Different types of work permits:

(article R 341-2 to of the Labour Code)

There are several types of work permits that give the right to get the following residence permits: resident card (valid ten years), “skills and talents” residence permit (valid three years) and the “student”, “scientist”, “artistic and cultural profession”, “employee”, “temporary worker”, “seasonal worker”, “worker on assignment”, “private and family life” and “European Community” temporary residence permits (valid one year). The official receipt received at the time of first or renewal application for one of these permits also gives the holder the right to work.

3. Foreign students:

(article R 341-4-3 to of the Labour Code)

Foreign students are authorized to work “within the annual working hour limit of **964 hours**”. This confirms the new limit of 60% of a full time position, versus the 50% previously authorized. This limit also applies to students holding the new “temporary residence authorization” (APS), until they change their status to “employee”. Employers of foreign students must declare that they are hiring the student to the Prefect at least two days before the beginning of the contract. This declaration can be sent by registered mail with acknowledgement of receipt or by email.

4. Seconded workers:

Despite what the laws seem to imply, **the new status of “employee on assignment” that will soon be implemented will not replace the status of seconded worker.**

All existing formalities linked to secondment remain in force, with the following precisions: “seconded workers” bring expertise to a French company but have no subordinate relationship to that company ; they must have been hired by the foreign company at least six months prior to the secondment ; they must receive payment at least equal to 1.5 times the legal minimum wage and in any case equivalent to the wages in force in the occupation (taking into consideration the collective agreement and the market wages).

5. “Employees on assignment”:

The new formalities for “employees on assignment” do not apply to seconded workers. They apply, according to article R 341-4-5 of the Labour Code, to:

“1. Aliens proving monthly remuneration at least equal to one and a half times the minimum monthly wage, as well as a work contract dating from at least six months prior with a corporate firm based outside of France and having real and significant business activity abroad, who comes as part of a temporary assignment lasting at least three months either to provide expertise to a French firm of the same corporation or to follow specific training for implementing a project abroad;”

“2. Aliens proving monthly remuneration at least equal to one and a half times the minimum monthly wage, as well as a work contract lasting at least three months with the French firm belonging to a corporation when the introduction is carried out among firms of the same corporation or establishments of the same firm.”

Therefore, “employees on assignment” can have a subordinate relationship with the French firm and, as a result, can work on behalf of that French firm. In the second case, they are not necessarily required to have six months of seniority. On the other hand, and in all cases, the person’s remuneration must be at least equal to 1.5 times the legal minimum wage and equivalent to those practiced in the occupation.

Even though “employees on assignment” are not “seconded workers”, they can remain covered by their country of origin social security system, if the latter has signed a bilateral agreement with France. In this case, they will be “seconded” as far as social security laws are concerned, but “employees” as far as labour laws are concerned. In such cases, any social security contributions paid in the country of origin can be deducted from those paid in France. This deduction appears on the pay slip.

6. Temporary residence permit renewal in case of loss of employment:

(article R 341-5 to of the Labour Code)

Foreign workers who, at the time of residence permit renewal, have involuntarily lost their job (made redundant) can renew their residence permit for one year. If, at the end of that year, they have still not found work, their work permit will only be renewed for the period of time that they continue to be entitled to unemployment benefits. On the other hand, foreign workers who voluntarily leave their job (resign) will **NOT** have their residence permit renewed.

7. Prior verification:

a. For the employer:

(article R 341-6 to of the Labour Code)

French employers who want to hire a foreign worker must be given a copy of the individual's work permit or residence permit. Employers must send this copy to the Prefect to verify that it is authentic. They must do so at least two days before the beginning of the contract, either by registered mail with acknowledgement of receipt, or by email. If there is a doubt, the Prefect could ask the foreign national to present the original permit.

b. For the ANPE unemployment agency:

(article R 341-7-1 to of the Labour Code)

When foreign nationals who have been made redundant register with the ANPE unemployment agency, the latter must send a copy of their work permit to the Prefect to verify that it is authentic. If there is a doubt, the Prefect could ask the foreign national to present the original permit.

c. For contracting partners:

(article R 341-30 and 30-1 to of the Labour Code)

Any firm signing a contract with another firm who employs foreign workers must verify that the latter are legal. When the contract is signed, and every six months thereafter until the end of the contract, the contracting firm must receive from the contracting partner firm a list of names of foreign workers with the date they were hired and their work permit number. This applies whether or not the foreign workers are legally employed in France or are seconded.

8. Contributions due to the ANAEM (National Agency for the Reception of Foreigners and Migration) in case of offences:

(article R 341-28-1 and 32-1 to of the Labour Code)

Employers who have foreign nationals who do have valid work permits work run the risk of various penalties, including a contribution to the ANAEM to cover the cost of escorting the illegal worker back to the border. To be sure to receive this contribution, the ANAEM could require partial payment (40%) even before the employer has been officially sentenced. If several employers are involved, the ANAEM distributes this 40% proportionally. If the employer in question is not, in the end, sentenced, the ANAEM must return the money it received.

9. Foreigners doing trade

(art. L 313-10, R 313-3-1, R 313-16 and following, R 313-36 of the Entry and Residence in France and Asylum Rights Code)

As they are not employees, foreigners doing trade are not subject to the work permit requirement. However, they must apply for authorization to carry out their commercial activity in France. In the past, they received a “business and commercial permit”. This no longer applies since decree no. 2007-912 of 15 May 2007 replaces the former permit with a new temporary residence permit that bears the designation of the commercial activity carried out.

As a result, the holder is no longer a “tradesperson” in the broad sense, independent of the nature of the trade. The individual’s temporary residence permit will now be linked to the precise activity carried out in France. To apply, one needs to apply with the French consulate in one’s home country or at the government administrative offices of one’s place of residence in France. The application must include proof that the activity is economically viable and that the applicant can earn at least the equivalent of the legal minimum wage for full-time work. The residence permit must be renewed every year.

10. Humanitarian and cultural stays

(art. R 212-3 of the Entry and Residence in France and Right of Asylum Code)

Generally speaking, foreign nationals must provide an “accommodation certificate”, except if they are in France for a humanitarian or cultural stay organized through an accredited association. The recent ruling of 15 May 2007 makes the non-profit association “Fédération échanges France-Ukraine”, which is based in Bonny-sur-Loire (Loiret) an accredited association. Ukrainian nationals coming to France through this association for humanitarian or cultural stays are exempt from having to present an accommodation certificate.