



AD-HOC QUERY ON POLICY IN RESPECT OF MIGRANT WORKERS WHO ARE MADE REDUNDANT

Requested by IE EMN NCP on 8th June 2009

Compilation produced on 31st July 2009

Responses from Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Slovenia, Spain, Sweden, United Kingdom (18 in Total)

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1. Background Information

Like all Member States Ireland is experiencing an increase in unemployment. Among those losing their jobs are workers from outside the EEA. We would be very interested in learning how colleagues are dealing with the issue of redundancy and we have the following questions.

At present Ireland gives 3 months grace to persons with employment permits during which time they are expected to find another position. However new jobs are subject to a labour market test. Ireland recognises that as migrant redundancy increases a more differentiated approach may be needed reflecting the length of time persons have been working and paying taxes and also the extent to which workers are accompanied by family members.

2. Responses

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| | | Wider Dissemination? ¹ | <p>(1) What is your country's policy in respect of migrant workers who are made redundant?</p> <p>(2) Does the redundant migrant forfeit his/her immigration status and if so at what point? How much time does your country give to the migrant to find new work?</p> |
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| | | | <p>(3) Is the amount of time a migrant has been working in the country taken into account in calculating the amount of time given to them to find new employment?</p> <p>(4) Where the migrant worker is accompanied by family, does this prevent termination of immigration permission?</p> <p>(5) Does your country apply a labour market test in respect of the migrant seeking new employment?</p> |
|  | Belgium | Yes | <p>(1) Migrant workers who receive a work permit B and are allowed to be employed in Belgium (the work permit is valid for one employer only, one position only) also receive a residence permit which is valid for one year. If the migrant worker is made redundant, the work permit B is no longer valid and has to be returned to the municipal authorities.</p> <p>(2) <i>In practice</i>, the migrant worker can stay legally on the Belgian territory until the validity of his/her one year residence permit is expired. After a migrant worker is made redundant, the competent regional administrations <i>could</i> retrieve both work permits and residence permits, but in reality this only happens in case of abuse or fraud. The migrant worker, who is made redundant, can remain legally in Belgium until the expiration of his/her residence permit, and can seek new employment. If the migrant worker finds a new employer that is authorised to employ him, a new work permit B is issued and – if all conditions are fulfilled – a new residence permit is also issued on the basis of Article 25/2 of the Royal Decree of 08.10.1980. Work permits for individuals residing illegally on the Belgian territory are refused (article 34 of the Royal Decree of 09.06.1999 pertaining to employment of foreign workers). Also, if the migrant worker no longer resides legally in Belgium, the person forfeits his/her work permit.</p> <p>(3) No. There is no fixed timeframe for the migrant worker to find new employment. If the migrant worker is made redundant one month before his/her one year residence permit expires, the worker will have only one month to seek employment in Belgium. If he/she is made redundant six months before the validity of the residence permit expires, he/she will have six months to find a new work in Belgium. The one year residence permit cannot be prolonged because the redundant migrant does not fulfil the legal conditions to his/her legal stay anymore (article 13, §3 of the Aliens Act of 15.12.1980).</p> <p>(4) No.</p> <p>(5) Yes, if the labour market test is mandatory in that specific case. Labour market test is applied when employers apply for the authorisation to employ a migrant worker (thus prior to the issuance of a work permit). In many cases, employers are exempted from that labour market test (e.g. highly-skilled migrant workers, Romanian or Bulgarian citizens who have come to seek employment in industry sectors experiencing genuine labour shortages, etc.)</p> |
|  | Bulgaria | Yes | <p>General principle – The immigrants (TCNs) with granted permission for permanent residence in the Republic of Bulgaria or TCNs – family members of an EU citizen enjoy equal rights with the Bulgarian citizens in regard to employment. The answers below concern the <u>TCNs residing in Bulgaria on the ground of issued work permit</u>.</p> <p>1. In case of dismissal of the TCN his/her labour contract is terminated. Thus there are no more grounds for the work permit and therefore no grounds for residence permission. The TCN shall leave the territory of Bulgaria within 30 days.</p> <p>2. a) Yes, the redundant migrant loses the granted residence permission since there are no more grounds for staying in the country. The national legislation does not allow any change of the grounds for stay in the country stated by the TCN in his/her application for residence</p> |

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| | | | <p>permission.</p> <p>b) The national legislation does not provide the possibility for the migrant to find new employment. The principle is that the employer applies for issuance of a work permit to the TCN before the latter has entered the country. So if the TCN wants to start a new job in Bulgaria he/she has to leave the country first. Then the new employer applies for work permit to be issued to that TCN.</p> <p>3. Not applicable – see answer to 2.</p> <p>4. No.</p> <p>5. Not applicable – see answer to 2. (additional comment: In most cases the labour market test is applied in the initial work permit issuance. Its application is not required for some categories of persons who are employed according to a less cumbersome procedure.)</p> |
|  | Cyprus | Yes | |
|  | Czech Republic | Yes | <p>(1) In general, the residence permit for the purpose of employment is bound to a work permit and the work permit is bound to a particular job.</p> <p>In consequence of the economic crisis, the Czech Republic launched a voluntary return programme for third country nationals who lost their jobs including their family members. This programme offers flight tickets free of charge and financial incentive in the amount of 500 EUR per adult / 250 EUR per child. The measure is applicable for third country nationals with temporary residence permit or long term visa.</p> <p>(2) The third country nationals who are holders of temporary residence permit forfeit their permit after termination of their work contract or work permit. They have obligation to report any changes to the competent police authority within 3 working days. Regular administrative procedure applies for withdrawal of the residence permit (legal remedies are allowed). 60 days period to find new job applies in specific circumstances defined by law.</p> <p>(3) The 60 days period relates only to the migrants who resided in the territory of the Czech Republic one year for the purpose of employment, or 3 years continuously.</p> <p>(4) Family reunification permits are dependent on the validity of worker's permit.</p> <p>(5) Yes, the principle of labour market test, as included in the Employment Act, is general.</p> |
|  | Denmark | Yes | |
|  | Estonia | Yes | <p>(1)-(2) In Estonia a residence permit for employment is issued for the period during which the employer guarantees employment to an alien. If the alien loses his/her job s/he needs to leave the country right away. In Citizenship and Migration Board's (CMB) practise the residence permit for employment is revoked in 30 days after the employer informs the CMB that the alien lost his/her job.</p> <p>(3) No.</p> <p>(4) No.</p> <p>(5) Yes.</p> |

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| + | Finland | Yes | <p>(1) There is not clear cut policy enforced in Finland in this respect, even though strictly speaking the law indicates that ‘no work – no permit’.</p> <p>(2) In principle yes, being made redundant could cancel the immigration status. This depends from the type of permit one holds. If the visa sticker has the wording: ‘Eligible to work in tasks stipulated in 79 of the Aliens Act in the tasks given by XXXX (the name of the employer)’ , this person can only work for this employer and after being made redundant the permit is cancelled in principle. However, if the Visa sticker bears the wording: ‘Eligible to work in tasks stipulated in 79 of the Aliens Act’, these persons are allowed to work with any employer offering the types of work that are listed under that Section of the Aliens Act.</p> <p>After being laid off, In practice a person is given a reasonable time to look for other employment. There is not stipulated time limit for this.</p> <p>In cases of first permit, cancelling it is up to the Finnish Immigration Service (MIGRI) , who grants all the first permits. This is always done on case by case basis. MIGRI considers cancelling the permit, if the grounds that existed when it was granted, no longer exist.</p> <p>In cases of continued permits, it is the Police who grant and cancel the permits. For both first-time and continued permits, the continuation upon being made redundant is dependent on the applicant’s ability to have adequate livelihood in the meantime, while looking for another job. Being dependant on social welfare is not considered adequate livelihood, particularly if it is a long term arrangement. Being dependent on social welfare is not always considered a hindrance for continuing the residence permit, if the circumstances of the case are such that being dependant on the state benefits can be foreseen to be of temporary nature only.</p> <p>In cases of being laid off temporarily, if the person is employed on permanent basis (A-status) and becomes laid off temporarily or gets sacked, it is up to the police handling the continuing permit to decide on case by case basis whether to continue the permit. One has to be able to prove that one has the means for living even in cases of being laid off temporarily. Same practice applies also for those persons with a temporary work permit (B-category).</p> <p>The employers are not obliged to let the Finnish Immigration Service or the Police know that they have laid off temporarily, or sacked, certain migrant workers, so it is not always known that these persons are in the country without a valid reason (i.e. the reason they were granted the residence permit for).</p> <p>(3) There is not one-to-one correspondence with the time of previous stay and the time of the grace period for finding new employment. The circumstances of the case in their entirety are taken into consideration when deciding on the feasibility of continuing the permit, not just the time factor. The general feeling is that the persons themselves ought to be able to draw the right conclusions about their realistic possibilities of being re-hired without grave difficulties and make the decision to leave the country by themselves if the situation is bad.</p> <p>There are some cases where the persons have requested cancelling their work permits, announcing that they are going to leave the country.</p> <p>(4) The general consideration is, that having a family living in Finland ought to be considered a lenient factor in these cases, meaning that the person should be given time to look for new employment prior to disrupting family life and children’s schooling for example by cancelling the work permit too abruptly.</p> <p>(5) In principle yes. The system of labour market test is practiced in certain sectors of the labour market. There are plans on the way for</p> |
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| | | | <p>abolishing this practice altogether. Currently they are conducted by the Employment and Economic development Centres, (TE-centres in Finnish) who work in tandem with the local employment offices and provide regional services of the Ministry of Employment and the Economy, the Ministry of Agriculture and Forestry and the Ministry of the Interior. If an immigrant is seeking for new employment in the same field of work for which a labour market test was already conducted when the person first applied for a work permit in Finland, this test is not conducted any more, and the person is allowed to seek for new employment in the same field. Only after a positive decision by the TE-centre can the Immigration Service (first permit) or the Police (continuation permits) make a positive decision for a worker's residence permit. If a person is sacked, the TE-centre naturally can not make a positive decision. If the person is laid off temporarily, it is always a case by case decision by the TE-centre to estimate, how long the temporary period of unemployment is going to last and to assess whether the person is able to support him/herself (and the family if they also reside in Finland) while looking for a new job, thus warranting them to let the Police give a grace period for the residence permit to be continued in the in-between-jobs stage.</p> <p>The legislation concerning labour force (e.g. labour law, law concerning unemployment benefits.) stipulate sanctions for employers who do not notify the authorities that a person is laid off or sacked. Generally speaking the employers comply with this legislation, but there is a certain number ethnically non-Finnish employers who do not always follow this procedure, mainly because they are not familiar with the Finnish legislation concerning this duty or Finnish labour market rules in general. Even though there is information available concerning this on the internet and in the employment offices, many of these types of employers are not familiar with searching such information and they would need targeted training in this field. The TE-Centres have access to national labour administration the electronic data base (called URA for short) and upon the information provided by the employers or the workers themselves enter into it the termination of persons labour contracts. There are plans to scrap the labour market test sometime in the near future.</p> <p>The information of a work contract being terminated can also be gleaned from the local employment offices, when the migrant workers register there to seek new employment and to get the unemployment benefits while seeking new employment. The information from the employment offices and the URA register is also entered into the Alien's registry. Thus the TE-Centres' staff, the Police and the Immigration Service in principle have access to the information concerning the migrant workers work status except for cases where the information is kept from them for some reason or another, either through ignorance or on purpose, for fear that prolonged unemployment would lead to the residence permit being cancelled. There has been an increase in cases where the immigrant worker is working on a 'wrong' permit, i.e. a persons with a permit allowing them to work in the restaurant field are working in the car repair business etc.</p> |
|  | France | Yes | |
|  | Germany | Yes | <p>(1) As a general rule migrant workers are required to produce evidence of a place of employment in order to obtain a residence title for the purpose of employment in Germany. On principle, because of the high number of unemployed persons with low qualifications, a ban on recruitment continues to be in force. This ban on recruitment was imposed as a consequence to the „oil price shock“ of 1973 and the end of the strong economic growth period associated with this “shock”. If migrant workers in Germany become unemployed, this may have consequences regarding their residence title (please see replies to questions 2-6).</p> <p>(2) and (3). The residence permit assumes inter alia that the alien is in a position to cover his/her living costs including sufficient health insurance coverage without claiming from public funds. (§ 5 paragraph 1 no. 1 in connection with § 2 paragraph 3, sentence 1 German Residence Act – Aufenthaltsgesetz/AufenthG). In the case of unemployment, the condition mentioned above will be fulfilled for the</p> |

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| | | | <p>period during which the alien draws unemployment benefit to which he/she is entitled because of his/her contributions paid to the statutory unemployment insurance (please compare § 2 paragraph 3 sentence 2 German Residence Act). The period of entitlement to Unemployment Benefit I (Arbeitslosengeld I) is staggered and as a rule dependent on how long the applicant has been employed under the regulations as set out by the laws governing unemployment benefit insurance during the past five years. The age of the alien will be added as an additional criterion as of an insurance period of 30 months and more.</p> <p>For claims dating 01.01.2008 and later, Unemployment Benefit I will be granted as follows (extract from a table of the Federal Labour Office - Bundesanstalt für Arbeit):</p> <table border="1"> <thead> <tr> <th data-bbox="604 539 929 598">Term of insurance agreement altogether at least ... months</th> <th data-bbox="929 539 1444 598">and the completion of the age of</th> <th data-bbox="1444 539 2112 598">entitlement for months</th> </tr> </thead> <tbody> <tr> <td data-bbox="604 630 929 662">12</td> <td data-bbox="929 630 1444 662">./.</td> <td data-bbox="1444 630 2112 662">6</td> </tr> <tr> <td data-bbox="604 662 929 694">24</td> <td data-bbox="929 662 1444 694">./.</td> <td data-bbox="1444 662 2112 694">12</td> </tr> <tr> <td data-bbox="604 694 929 726">30</td> <td data-bbox="929 694 1444 726">50</td> <td data-bbox="1444 694 2112 726">15</td> </tr> <tr> <td data-bbox="604 726 929 758">36</td> <td data-bbox="929 726 1444 758">55</td> <td data-bbox="1444 726 2112 758">18</td> </tr> <tr> <td data-bbox="604 758 929 790">48</td> <td data-bbox="929 758 1444 790">58</td> <td data-bbox="1444 758 2112 790">24</td> </tr> </tbody> </table> <p>During the period of entitlement, the residence of the alien is secured, however, the alien is also obliged to look for a new place of employment.</p> <p>At the end of the period of entitlement to Unemployment Benefit I the Public Authorities responsible for Aliens decides within the scope of its discretionary authority if the residence of the alien is to be terminated if his/her search for employment has been unsuccessful and if he/she is now no longer in a position to cover his/her living costs without seeking recourse to public funds. Such a discretionary authority also includes the period of legal residence and his/her period of gainful employment as well as other personal circumstances.</p> <p>(4) Within the scope of the discretionary authority of the Public Authority responsible for Aliens about the termination of his/her residence and the assessment of his/her personal circumstances it is especially his/her family circumstances that are taken into consideration. In individual cases - depending on the individual situation of all the family members – this may lead to the fact that the residence of the family will continue to be allowed or that the cancellation of the residence permit is delayed until for example children will have completed the school year. However, also in such cases the living costs without seeking recourse to public funds must be secured by the person concerned. (Please see reply to questions 2 and 3).</p> <p>(5) Before the approval to grant the permission to take up employment, the manpower administration must ascertain that this will not lead to an adverse impact on the employment market, that employees with a priority status are not available and that the approval is justifiable from a point of view of employment market and integration policies. (§ 39 paragraph 2, 3 and 5 AufenthG). The Ordinance Governing the Procedure for the Granting of Approval of Employment (Beschäftigungsverfahrensverordnung – BeschVerfV) provides for exceptions from such an assessment of the employment market depending on the residence status of the alien, on how long the alien has been legally staying or working in the Federal Territory.</p> | Term of insurance agreement altogether at least ... months | and the completion of the age of | entitlement for months | 12 | ./. | 6 | 24 | ./. | 12 | 30 | 50 | 15 | 36 | 55 | 18 | 48 | 58 | 24 |
|--|----------------------------------|------------------------|---|--|----------------------------------|------------------------|----|-----|---|----|-----|----|----|----|----|----|----|----|----|----|----|
| Term of insurance agreement altogether at least ... months | and the completion of the age of | entitlement for months | | | | | | | | | | | | | | | | | | | |
| 12 | ./. | 6 | | | | | | | | | | | | | | | | | | | |
| 24 | ./. | 12 | | | | | | | | | | | | | | | | | | | |
| 30 | 50 | 15 | | | | | | | | | | | | | | | | | | | |
| 36 | 55 | 18 | | | | | | | | | | | | | | | | | | | |
| 48 | 58 | 24 | | | | | | | | | | | | | | | | | | | |

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| | | | You will be able to find the Aufenthaltsgesetz ² in the German and English language on the website www.bmi.bund.de and the Beschäftigungsverfahrensverordnung (BeschVerfV) ³ in the German language on the website www.gesetze-im-internet.de . |
|  | Greece | Yes | <p>(1), (2), (3) In case that migrant workers are made redundant they enjoy the right, like Greek citizens do, to collect an unemployment benefit from the Manpower Employment Organization, if they fulfill the relevant criteria. The duration of this financial support depends on the amount of time they previously had been working. However, by the time of the renewal of the residence permit they have to present a labour contract with a new employer and to prove a minimum number of wages or a minimum time of social insurance during the validity period of the previous residence permit. During the time they receive the unemployment benefit or they are on the unemployment register the above mentioned obligation is reduced respectively.</p> <p>The new labour contract is submitted along with the application for the renewal of the permit and until one month after its expiry.</p> <p>(4) The fact that migrant workers are accompanied by family does not have an impact on their residence permit. Yet, for the renewal of the residence permit, the sponsor must have sufficient resources independent from the country's social assistance system.</p> <p>(5) Greece does not apply a labour market test in respect of the migrant seeking new employment.</p> |
|  | Hungary | Yes | <p>(1) There is no specific policy in this respect, however all persons eligible for employment and all employers have access to the services offered by the employment agencies and these are provided free of charge. As a general rule, third-country nationals need a work permit in Hungary in order to take up employment, exceptions include for instance recognized refugees or third-country nationals with permanent resident status; these persons can take up employment without a work permit obligation. Once a migrant is issued a work permit, and a work contract has been concluded, the Hungarian Labour Code is applicable to him/her and no distinction is made on the basis of nationality, the same rules apply to them as to Hungarian nationals. After the work relationship has been terminated, we try to offer another job or training courses for migrants, but only if they are allowed to stay in the territory of the country. If the migrant worker cannot justify his/her stay on another ground, he/she will not be entitled to the services and will have to leave the country.</p> <p>(2) Regarding the immigration status, in case of third-country nationals with a work permit obligation, the employer of the third-country national has to inform the labour office in 5 days after the employment has been terminated, in which case the labour office withdraws the work permit. In Hungary the residence permit and the work permit are issued as two separate documents and the validity period of the residence permit issued to pursue gainful employment corresponds to the validity period of the work permit, therefore the two permits are linked to each other. If the work permit is withdrawn, the labour office notifies the immigration authority and the third-country national has to justify another reason for stay and has to meet the general conditions (eg. has to have sufficient financial resources) to stay in the territory of Hungary, then a residence permit for other purpose can be issued for him/her. Hungary does not have a specific permit for the purpose of seeking employment. Only Union citizens retain their right of residence when they are registered as job seekers for the period of eligibility for job-seeking assistance, the reasonable period given to them is 6 months to find a new job.</p> <p>(3) Since in Hungary there is no specific permit issued for the purpose of job-seeking, the amount of time spent in employment is not</p> |

² German Residence Act

³ Ordinance on Official Procedures Enabling Resident Foreigners to take up Employment

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| | | | <p>taken into account. The third-country national has to justify another reason to stay in the territory of Hungary.</p> <p>(4) If the work permit and therefore the residence permit issued for pursuing gainful activities is withdrawn, the migrant (or his/her family member) has to justify another reason to remain in the territory of Hungary.</p> <p>(5) Hungary applies a labour market test, however, there is no distinction made whether it is a new job and whether the migrant has once been employed in Hungary.</p> |
|  | Ireland | Yes | <p>(1)At present Ireland gives 3 months grace to persons with employment permits who are made redundant during which time they are expected to find another position.</p> <p>(2) A migrant with an employment permit is given 3 months to find new work. Once that 3 month period is expired, the migrant should contact the immigration authorities to determine their immigration status beyond that point.</p> <p>(3)No.</p> <p>(4)This is linked to question 2 above. The immigration status of the family is linked to the immigration status of the worker.</p> <p>(5)Yes.</p> |
|  | Italy | Yes | <p>As recently recalled by the Ministry of Interior Circular of 6 May 2009 on "residence permits for third country citizens waiting for employment" in this cycle of economic crisis a high number of foreign workers are at risk of unemployment.</p> <p>The legal framework on this matter is regulated by art.22, par. 11, of the Consolidated Text on Immigration (Lgs. Decree no. 286/1998 and successive modifications and integrations), and by art.37 of Implementing Regulation (Presidential Decree no. 394/1999 and successive modifications and integrations).</p> <p>According to art. 22, par. 11 of Consolidated Text on Immigration, the loss of job does not constitute grounds for revocation of residence permit for the worker and his family members. So, in case of this eventuality the residence permit validity lasts until the expected deadline or for a period not less than six months (of course, with the exception of seasonal workers).</p> <p>In turn, art. 37, paragraphs 1 and 2, of the Presidential Decree no. 334/2004, which sets out the application rules of the last Consolidated Text modifications, confirms the above quoted deadline, stating on the following par. 5: "When under the provisions of Consolidated Text and of the same art. 37 the foreign worker has the right to remain in the State beyond the deadline set by the permit, the Police Office renews the residence permit, after application of the current evidences, until six months ... " .</p> <p>In addition art. 37, par. 6, provides: "at the expiry of the residence permit (for reasons of waiting for employment), the foreigner must leave the territory of the State, unless it is the owner of a new contract to stay for work or is entitled to other kind of residence permits, according to the legal requirements in force".</p> |
|  | Latvia | Yes | <p>Latvia does not give any time for a migrant worker to seek for a new employment. Theoretically, if a job is lost, a person and his family should leave Latvia. Practically, sometimes a worker has found a new employment and his residence permit has not been revoked yet or is going to be revoked very soon (procedure has been started already). Then we usually allow to apply for this new status without leaving a country. Regarding family – in some exceptional cases we allow to stay in Latvia, for example, if children have to complete their studies</p> |

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| | | | in school. If a migrant worker is seeking for a new employment, we apply a labour market test. |
|  | Lithuania | Yes | <p>(1) According to the national legislation, if the work contract of the migrants has been terminated (he/she became redundant), a migrant must leave the country.</p> <p>(2) The redundant worker forfeits his/her immigration status if his/her employment contact has been terminated. Unemployment does not provide a ground to stay in the country. If the work contract has been terminated, a migrant cannot look for new employment. Work permit is issued for specific employer/ and specific work position. Labour migrant cannot change employer</p> <p>(3) No.</p> <p>(4) No, unless they are Lithuanian citizens.</p> <p>(5) Yes. A work permit may be issued to an alien if there is no specialist in Lithuania meeting the employer's qualification requirements. Also the Ministry of Labour and Social Affairs publishes every 6 months a list of specialities holders of which can receive work and residence permits in a facilitated procedure.</p> |
|  | Luxembourg | Yes | |
|  | Malta | Yes | |
|  | Netherlands | Yes | <p>(1) The foreign national who has a residence permit to work and who is made redundant will keep his residence permit. Unless involuntary unemployment is concerned, he can look for a new job during the period of validity of his residence permit. However, the foreign national who has a residence permit as a highly skilled immigrant and who is made redundant will be given a period of three months to look for a new job. In both cases the IND will only suspend the residence permit immediately when voluntary unemployment is concerned.</p> <p>(2) The immigrant worker and the highly skilled immigrant will lose his residence permit if voluntary unemployment is concerned. When this is not the case, the migrant worker will forfeit his residence permit (to work) when his residence permit is no longer valid and he did not find a new job during the period of validity of his residence permit. The highly skilled immigrant forfeits his residence permit as a highly skilled immigrant after three months when he did not find a new job.</p> <p>(3) No, this is not relevant. See the answer as above.</p> <p>(4) In general, when the migrant worker is accompanied by family, this will not prevent the termination of immigration permission. However, family who held the same residence permit of family reunification of family establishment for three years running, can change their residence permit for continued residence. If that is the case, the immigrant worker then can apply for a residence for family reunification.</p> <p>(5) If the migrant worker finds new employment during the period of validity of his residence permit and he is not free to work on the labour market, his employer needs a work permit. However, this work permit will be granted without a labour market test. The employer of the foreign national who has a residence permit as a highly skilled migrant do not need a work permit as long as the foreigner works</p> |

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| | | | as a highly skilled immigrant. If the foreign national who is redundant finds a job as a migrant worker than his employer needs a work permit and a labour market test is in the case. |
|  | Poland | Yes | <p>(1) Poland doesn't conduct special policy in respect of migrant workers who are made redundant.</p> <p>(2) It depends on his/her residence status. E.g. redundant worker doesn't forfeit his/her immigration status if he has valid visa issued for the purpose of work. If worker has such valid visa, he/she can looking for new job.</p> <p>(3) See above.</p> <p>(4) See above.</p> <p>(5) Yes, Poland applies a labour market test in respect of the migrant seeking new employment except for these occupations which are on voivodeship's shortage occupations lists.</p> |
|  | Romania | Yes | |
|  | Slovenia | Yes | <p>(1) & (2) Slovenia does not have any specific policy or measures foreseen in its migration system to face the current increase of unemployment rates and redundancy of migrant workers. At the beginning of 2009 Slovenia has adopted yearly quota of employment permits. The number of permits has been, in the light of economic crisis, reduced by 25% if compared with 2008.</p> <p>In principle, every worker is according to Employment and Insurance against Unemployment Act entitled to cash benefit if the worker has been insured on the basis of its employment contract with one or more employers at least 12 months during the last 18 months prior to its termination. The duration of the right to cash benefit can not exceed 3 months for insurance of 1 to 5 years. During this time migrant workers can seek in find new employment.</p> <p>According to Employment and work of aliens Act migrant workers, third country nationals, can obtain three different types of work permit, which also allow them different rights, as follows:</p> <ul style="list-style-type: none"> - Migrant workers with personal work permit, which is renewable or permanent form of work permit, have during its period of validity free access to the labour market. Personal work permits are issued irrespective of the situation and conditions on the labour market. These migrant workers can, if they lose their employment, register at the employment office and receive its assistance in finding new employment. The sole fact that they lost their employment does not mean that they forfeit their immigration status. - Migrant workers with employment permit can be employed only by an employer who has submitted an application for the issuance of the permit and its duration cannot exceed a period of one year. These migrant workers can not register at the employment office and are not entitled to receive assistance. However, they can claim cash benefit for three months if they fulfilled the condition of at least one year insurance prior to the termination of employment. During this time migrant worker can seek employment. After that migrant worker loses its status and have to return to its country of origin. <p>Migrant workers with a permit for work can only be employed or may work in the Republic of Slovenia temporarily (up to nine months) in accordance with the purpose for which the permit was issued. In principle, they are sesonal migrant workers and they have to return to their country of origin when their work permit is expired or employment terminated.</p> <p>(3) Yes, in principle, after two years of continuous employment migrant workers can obtain personal work permit and become free on the labour market.</p> <p>(4) The fact that the migrant worker is accompanied by his family does not prevent withdrawing his temporary residence permit due to his loss of employment. During the period in which he is entitled to seek another employment his permit can stay valid or can be renewed,</p> |

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| | | | <p>however after the loss of his residence permits also his family members' permits can be withdrawn. (5) Slovenia introduced labour market tests for every new employment of third country nationals.</p> |
|  | Spain | Yes | <p>(Question 1) Article 13.1 of the Spanish Constitution sets forth that <i>“in Spain foreigners shall enjoy the public freedoms guaranteed by this Chapter (Chapter I on Fundamental Rights and Duties) under the terms laid down by Treaties and the Law”</i>. On the other hand, Article 3.1 of <i>Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration</i> (henceforth Organic Law on Foreigners) sets forth that <i>“in Spain foreigners shall enjoy the rights and freedoms guaranteed by Chapter I of the Constitution under the terms laid down by international Treaties, this Law and the Regulations on the exercise of each. In general terms, the interpretation of this is that foreigners shall exercise the rights guaranteed them by this Law under the same conditions as Spaniards”</i>. By virtue of Article 14 of Organic Law 4/2000: <i>“1. Foreign residents are entitled to access services and allowances of the Social Security system under the same conditions as Spaniards. 2. Foreign residents are entitled to access general and basic as well as specific social services and allowances under the same conditions as Spaniards. 3. Foreigners, irrespective of their administrative situation, are entitled to basic social services and allowances.”</i> Given the above, it may be concluded that unemployed foreign workers legally in Spain are entitled to the same rights as unemployed Spanish workers. Furthermore, it is necessary to point out that <i>Royal Decree-Law 4/2008 of 19 September, on the possibility of exchanging unemployment benefits jointly by those third country nationals who wish to voluntarily return to their country of origin</i> and <i>Royal Decree 1800/2008 of 3 November</i>, which develops this Royal Decree, regulate the possibility for those foreign workers who lose their jobs to receive unemployment benefits, in advance and cumulatively, if they voluntarily decide to return to their country of origin.</p> <p>Question (2)&(3) Article 36.1 of Organic Law 4/2000 of 11 January sets forth that <i>“foreigners over the age of 16 must obtain the corresponding administrative work permit prior to exercising any lucrative, commercial or professional activity. This work permit shall allow the foreigner to reside in Spain during its period of validity...”</i>. <u>Therefore, being in the situation of unemployment does not change the foreigner’s status when he/she legally resides in Spain until, at least, the expiry of the valid work and residence permit, whereby employment may continue to be sought during the time of its validity.</u> One must not overlook the content of Article 54.1 of the Regulations of Organic Law 4/2000 of 11 January approved by Royal Decree 2393/2004 of 30 December (henceforth the Regulations), <i>“the renewal of the residence and salaried employment permit must be applied for through the official formulary established to this effect during 60 calendar days prior to their expiry. As long as the application is filed within the specified time period, the validity of the previous permit shall be extended until a resolution concerning the procedure is decided. When the application is filed within three months as of the date of expiration of the previous permit, without prejudice to the institution of penalty procedures by virtue of the breaches of legislation incurred, the permit shall also be extended until the resolution concerning the procedure is decided.”</i> In this way, the possibility of counting with 3 additional months to search for employment and apply for the renewal of the work and residence permit is granted. Furthermore, the fact that a foreigner is in the situation of unemployment upon the expiration of his/her valid work and residence permit does not imply the impossibility of applying for and obtaining a renewal, given that Spanish legislation sets forth a series of circumstances</p> |

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| | | | <p>under which renewal is possible and, therefore, the possibility of continuing to search for employment.</p> <p>Thus, Article 38.3 of Organic Law 4/2000 sets forth in paragraphs b) and c):</p> <p><i>“3. A work permit may be renewed upon its expiration:</i></p> <p>.....</p> <p><i>b) when the competent authority in accordance with Social Security regulations has granted contributory unemployment benefits, for the duration of these benefits.</i></p> <p><i>c) when the foreigner is the recipient of a public economic welfare benefit aimed at achieving his/her insertion into society or the labour market, for the duration of these benefits.”</i></p> <p>Article 54.4 of the aforementioned Regulation orders:</p> <p><i>“The permit of a worker who has had a period of activity of at least three months annually shall be renewed as long as he/she certifies:</i></p> <ul style="list-style-type: none"><i>a) That the laboural relation which gave rise to the permit subject to renewal was interrupted due to reasons beyond the foreigner’s will,</i><i>b) That he/she has actively sought employment, participating in actions led by the public employment service or public or private sociolaboural insertion programmes financed with public subsidies.</i><i>c) That at the moment of the application for renewal he/she has a valid employment contract.”</i><p>However, as an exception to the aforementioned, Article 55 of the Regulations sets forth that:</p><p><i>“1. The residence and work permit for salaried employment for a specific duration shall be processed through the procedures foreseen for work and residence permits for salaried employment, with the specializations set forth in this section.</i></p><p><i>2. This permit allows carrying out the activities which follow:</i></p><ul style="list-style-type: none"><i>a) Seasonal work or campaigns. Its duration shall coincide with that of the employment contract(s), having a maximum limit of nine months within a period of 12 consecutive months;</i><i>b) Works or services related with the assembly of industrial or electrical plants, the construction of infrastructures, buildings and electricity, gas, rail and telephone supply networks, the installation and maintenance of manufacturing equipment, as well as their start-up and repair, amongst others;</i><i>c) Temporary work carried out by executive management staff, professional athletes, artists in public shows, as well as other groups as determined by Order of the Ministry of Employment and Social Affairs exclusively for facilitating the issue of this type of</i> |
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| | | | <p>permit;</p> <p>d) Training and the performance of professional internships.</p> <p>3. Under the circumstances foreseen in paragraphs b), c) and d), the duration of this permit shall coincide with that of the employment contract with a limit of one year and shall not be subject to renewal, without prejudice to the possibility of being granted an extension as set forth in laboural legislation.”</p> <p>Therefore, <u>in these type of permits for temporary residence and salaried employment for a specific duration, the period of validity coincides with that of the employment contract, whereby once the period of validity of the latter expires so does that of the former, in addition to not being subject to renewal upon the lapse of 9 months within one year in case a), or of 1 year in cases b), c) and d).</u></p> <p>Finally, it is worth noting that a modification of the Regulation is currently underway and will soon enter into effect, contemplating some important changes in specific circumstances as regards renewal and modification of work and residence permits for foreigners which shall make possible the introduction in new legislation of criteria to facilitate the redeployment of foreigners who become unemployed. In this way, permits are to be modified to eliminate restrictions as to geographical area or activity sector.</p> <p>Furthermore, this amendment of the Regulations shall facilitate permit renewal by those workers who have an employment history which certifies their reinforced laboural link, as is the case with other foreigners who count with a family network that maintains them while in Spain when they do not hold a work contract in effect at the time of the renewal.</p> <p>Question (4) By virtue of Article 18.3 of Organic Law 4/2000: <i>“When an application for family reunification is accepted, the competent authority shall issue a residence permit to the members of the family who are to be reunited, the duration of which shall be equal to the period of validity of the sponsor resident’s residence permit.”</i></p> <p>To this end, <u>the residence permit of the reunited family member shall be of the same duration as the residence permit of the sponsor resident who applies for reunification.</u></p> <p>The foregoing does not prevent that, <u>under specific circumstances, the reunited family members may obtain a residence permit independent to that of the sponsor resident</u> (when having obtained a work permit, whether a spouse or parent; when the spouse is victim of gender-based violence; when the reunited children reach legal age and obtain a work permit).</p> <p>In these cases, the duration of the permit shall no longer be dependent on the sponsor resident’s permit in effect.</p> <p>Question (5) Article 38.3 of Organic Law 4/2000 sets forth in paragraph d): <i>“d) when the circumstances laid down in regulations concur, as of the initial permit granted, subsequent permits shall be granted without any limitation whatsoever as to geographical area, sector or activity”.</i></p> |
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| | | | Therefore, the national employment situation is not considered in the renewal of work and residence permits. The national employment situation may only be considered in the initial application for work and residence permits and exclusively in those cases not exempted by prevailing regulations. |
|  | Sweden | Yes | <p>(1) The permit may be withdrawn.</p> <p>(2) The migrant is given three months to find a new employment. After that the residence permit may be withdrawn and the person concerned is supposed to leave the country.</p> <p>(3) No.</p> <p>(4) No, it does not prevent termination.</p> <p>(5) No. Since December 2008 Labour Market Tests are no longer necessary.</p> |
|  | United Kingdom | Yes | <p>(1) & (2) It depends on the immigration category the migrant worker is in.</p> <p>If they are in a category that allows free access to the labour market (Tier 1 of the Points-Based System for example) then their immigration status is unaffected.</p> <p>However, if they are in a category that restricts them to a specific job (Tier 2 or Tier 5 of the Points-Based System for example), then their leave will be curtailed to 60 days on being made redundant. They may seek new work during this time and must make a new application before they can start in their new job. If they do not make a new application within 60 days they must leave the UK.</p> <p>(3) No. However, if the migrant has six months or less leave remaining, we do not curtail their remaining leave.</p> <p>(4) No. The leave of any dependants is curtailed in line with the main applicant's leave.</p> <p>(5) Yes, unless their new employment is in a recognised shortage occupation or in a category that does not have a resident labour market test (charity workers or sportspeople, for example).</p> |
