

# IMMIGRATION LAW

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## Implications of non-EU citizens working from home in Denmark for a foreign employer

By Michael Møller Nielsen & Anna Lindencrone Lundin



Many companies operate internationally and on a global scale, and with marriages of the work force often across borders, there are numerous benefits to establishing a global workforce.

While the emergence of the new and alternative work and living arrangements – such as remote work and cross border work etc. – is broadly accepted in Danish law, there are some restrictions in Danish immigration law which limit the access to the Danish labour market for third country nationals who wish to migrate to Denmark while continuing working for a foreign employer.

For instance, a third country national may only qualify for a work and residence permit to Denmark based on an employment relationship with a foreign company if the employer is either registered in Denmark or if the employee is posted to work for a Danish based company.

Therefore, the process of obtaining a residence and work permit to Denmark for a third country national, which allows them to reside and work in Denmark after the expiry of the term of a short-term visa or visa free stay (up to 90 days within a 180 day-period), may be challenging, especially in working

arrangements where the third country national is not working directly for a Danish company. Further, it is prohibited to work in the visa free period as this is a “tourist” period.

Furthermore, it is a general requirement that a third country citizen holds a valid work and residence permit to work in Denmark, irrespective of the length of the stay. In principle, it is required for third country citizens to apply for a work permit to Denmark, which can be a lengthy process, to be allowed to work in Denmark even if it is just for one day. However, this rule is not without exemptions.

It may be that the activity in Denmark is not defined as work, that the type of work falls within rules of exemptions in the Danish Immigration Act or that the foreign worker holds a residence permit to Denmark based on a different scheme (e.g., as a family

reunified spouse or other accompanying family member), which entitle them to work in Denmark.

This article will be examining the implications of a global workforce working from home in Denmark for foreign employers with a focus on third country citizens migrating to Denmark yet continuing to work for the non-Danish employer.

### Is the employment covered by one of the work and job-based residence permits?

There are different schemes which third country citizens may apply when relocating to Denmark while continuing being employed by a foreign employer. The most commonly used schemes are the pay limit scheme and the positive lists.



As mentioned above, a Danish company needs to be involved in the application process as the work and job-based schemes are aimed at third country citizens working for Danish companies either as the employer or as the recipient of services from the foreign company.

In case of the latter, an agreement between the foreign employer and the Danish company (e.g. a service provider agreement or subcontractor agreement etc.) establishing the necessary link between the third country citizen and the Danish company needs to be submitted with the application.

When applying under either one of these two schemes, the work permit is job specific – meaning if the third country citizen is changing employer or starts working for a different customer in Denmark, he or she needs to submit a new application.

### **Can the third country citizen work while the application is being processed?**

In this context, it is of particular interest that third country citizens migrating to Denmark

in certain cases can continue to work for an employer in the home country during a procedural stay in Denmark (the procedural stay is the period in which the applicant is allowed to stay in Denmark while the application is being processed) as this makes the relocation to Denmark smoother.

To be allowed to work remote for a foreign employer in Denmark on a procedural stay, it is a requirement that the third country citizen does not directly or indirectly work for a Danish company or the employer's Danish customers, including attending customer visits etc.

It is also taken into consideration whether the work for the employer in the home country is something that can be done remotely – in which case it usually will be allowed provided that the activity does not in any way interfere with the Danish labour market. Therefore, working from home can be done without a permit from the state if for instance a third country citizen is awaiting approval of family reunification.

### **Which activities are considered “work” in relation to the Danish Immigration Act?**

As previously mentioned, third country citizens are, as a rule, required to hold a valid work and residence permit to work in Denmark.

In relation to Danish immigration law, an activity is defined as work if the foreigner performs tasks on Danish territory which entails an output for a company or recipient.

Some activities fall outside this definition. For instance, it is not considered work if a foreigner merely participates in a meeting or an education session in Denmark for a short period (less than 90 days). These activities may, therefore, be performed in Denmark without a work permit.

Other activities such as peer-to-peer training in the workplace will require a work permit if it takes place in the production environment as it thereby directly, or indirectly, contributes to the company's production and output.

### **The rules of exemption from the requirement of a work permit**

Certain groups of third country nationals may be exempt from the requirement of a work permit due to their professional field or specific situation.

Foreign diplomats living in Denmark and their family members, staff on board foreign trains, motor vehicles and commercial ships in international traffic are in general exempt from the requirement of a work permit.

Guest teachers do not need a work permit if, within a 180 day-period, they will be teaching



for up to five days at an educational institution under the Ministry of Higher Education and Science or the Ministry of Culture.

Musicians, performers, etc., and associated staff can be exempted from the requirement of a work permit if they are of importance for a significant artistic event in Denmark. The event must be short term (i.e., normally with a duration of less than 14 days).

Board members are exempt from the work permit requirement to perform duties as a board member in Denmark for a maximum of 40 days per year.

Foreigners employed in a company established abroad that is part of the same group as a company established in Denmark can be exempted from the work permit requirement for two separate periods of a maximum of 15 working days each in any 180-day period, provided that (i) the company in Denmark employs a minimum of 50 employees and that (ii) the foreigner is working for the affiliated company in Denmark. The rule of exemption does not apply to certain sectors such as construction, agriculture, cleaning, hotel and



catering unless the work is at management level or requires knowledge at intermediate or highest level.

Certain professionals are allowed to carry out specific types of work without a work permit if the stay lasts no more than 90 days from the date of entry. This for instance includes:

- ▶ Researchers and lecturers invited to teach in Denmark
- ▶ Representatives of foreign companies or organisations which do not have a branch office in Denmark who are on business trips in Denmark (if the representative is carrying out work for a Danish company, a residence permit is required)
- ▶ Fitters, consultants, or instructors hired to fit, install, or repair machines, equipment, computer programmes or similar items,

or provide information on the use of such items, provided that the person is employed by the firm that manufactured the equipment (this exemption is also known as the “fitter rule”)

- ▶ Professional athletes and coaches who are to participate in a particular athletic event or a try-out for a Danish sports club

Read more about the exemptions from the work permit requirement here.

Finally, the EU law permits free movement, yet for posting of workers there are certain registration requirements. Acting in contravention with the rules for foreigners working in Denmark can have severe consequences and may lead to sanctions such as fines and being prohibited from entering the Schengen area.



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