

GUIDE TO HIRE FOREIGN EMPLOYEES IN PERU

What should we know to properly hire foreign citizens?



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INTRODUCTION

In October 2016, we prepared the first "Guide to Hire Foreign Employees in Peru", taking into consideration the regulations in effect as of such date, and aiming to provide the general guidelines which all employers must adhere to when hiring a foreign citizen.

However, due to recent changes to employment and immigration laws, we believe it is necessary to adapt and update the referred guide, adapting such regulations to those in effect as of February 2017.

This document contains information referred to the employment, social security and tax matters relating to this type of hiring. In addition, it includes the immigration aspects relating to the hiring of a foreign citizen, which are explained based on the legal framework currently in force as of the date of publication of this guide.

Finally, we will also explain the administrative penalties which may be imposed on the employers who fail to comply with the provisions set out in applicable legislation.



I. EMPLOYMENT MATTERS

Foreign Employee Hiring Regime

The hiring of foreign employees is regulated by the provisions set forth in Legislative Decree N° 689, Law on the Hiring of Foreign Employees, recently modified by Legislative Decree N° 1246, as well as in its regulations, Supreme Decree N° 014-92-TR.

This regulation establishes, as a general principle, the preference for hiring local employees. Consequently, the hiring of foreign employees is subject to the following limitations:

Limitations on hiring foreign employees	Related to the number of foreign employees	→ The total number of foreign employees must not exceed 20% of the total headcount.
	Related to salaries	→ The total of the salaries paid to foreign employees must not exceed 30% of the total payroll.

Notwithstanding the aforesaid, Peruvian legislation allows employers to hire foreign employees without being required to comply with the limitations above, when hiring specialized technical or professional employees, directors and/or managers of a new business activity, or in any other cases that justify their hiring.

The employment contracts of foreign employees are fixed-term contracts which have a maximum term of 3 years (which may be extended), and must be approved by the Labor Administrative Authority (*Autoridad Administrativa de Trabajo* or *AAT in Spanish*).

Finally, all foreign employees shall be required to obtain the required business immigration status, or otherwise request a special permit to execute contracts, from the National Immigration Superintendence, to be legally authorized to sign any employment contract.

Special cases excluded from the Foreign Employee Hiring Regime

There are cases where, even though the person to be hired is a foreign citizen, their hiring is not subject to the provisions set out by the Law on the Hiring of Foreign Employees, but it is rather exclusively regulated by the provisions set out in the Homologized Text of the Productivity and Labor Competitiveness Law (*Ley de Productividad y Competitividad Laboral* or *LPCL in Spanish*), which was approved by Supreme Decree N° 003-97-TR.

Such cases are the following:

- Foreign employee with a Peruvian spouse, or Peruvian ancestors, descendants or siblings.
- Foreign employee with an Immigrant Visa.
- Foreign employee whose country of origin has a Reciprocal Employment or Dual Citizenship Agreement in place with Peru.
- Foreign employee who provides services in our country under bilateral or multilateral agreements entered into by the Peruvian government.

In addition to the aforementioned cases, there are 3 special cases which are explained below:

1. Hiring of Spanish Employees

Any Spanish citizen interested in working in Peru may be hired as if they were local employees; i.e., under a fixed-term or open-ended employment contract. Therefore, their hiring is not subject to compliance with the limitations established on the Law on the Hiring of Foreign Employees.

2. Hiring of Foreign Employees from the Andean Community

There is a special hiring regime for Andean immigrant employees (classified into: Individually Transferred Employee, Company Employee, Seasonal Employee and Frontier Employee), who are defined as those citizens from the member countries of the Andean Community who are transferred for work purposes under a temporary or permanent subordinate relationship. Their hiring process may be similar to that of local employees; i.e., under a fixed-term or open-ended employment contract.

3. Hiring of Foreign Employees from MERCOSUR Member Countries

Foreign employees from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay and Uruguay, who are interested in working in Peru, are not subject to the scope of the Law on the Hiring of Foreign Employees, as these may be hired as if they were local employees; i.e., for a fixed or open-ended term.

Even though the citizens from Spain, Bolivia, Colombia, Ecuador, Argentina, Brazil, Chile, Paraguay and Uruguay may be hired as local employees, such condition does not exempt them from the obligation to complete the corresponding immigration procedures to obtain the immigration status required to work in Peru, as explained in the following chapter.

II. IMMIGRATION MATTERS

Immigration Status System

The Peruvian Immigration Superintendence (hereinafter, the "Immigration Authority") is the entity in charge of granting a variety of immigration statuses to foreign citizens, as established in Legislative Decree N° 1350. In that sense, an immigration status is the condition granted by the referred authority to foreign citizens according to their personal situation or to the activities to be performed in Peruvian territory. The immigration statuses to be considered for hiring foreign employees explained below:

1. Immigration Statuses

The Immigration Legislative Decree (Legislative Decree N° 1350), in effect as from March 1, 2017, establishes the immigration statuses granted to foreign individuals entering Peru with the purpose of performing subordinated or freelance work activities or for training purposes.

Such immigration statuses are explained below:

- "Worker" Immigration Status

Granted to those foreign individuals who perform lucrative activities under a subordinate relationship or as freelancers for the public or private sector, pursuant to an employment contract previously approved by the AAT, an administrative relationship or a service agreement.

It is also granted to those foreign individuals who are employees of multinational companies or international corporations and are transferred to Peru to work at a company pertaining to the same economic group or holding company, to hold a managerial or confidential position, or as a specialist or specialized employee.

- "Designated Worker" Immigration Status

Granted to those foreign citizens entering Peru with the purpose of performing work activities designated by their foreign employer, to carry out a specific task or job requiring professional, commercial, or specialized technical knowledge.

- "Resident Relative" Immigration Status

Granted to those foreign individuals who form part of the family immigration unit of a Peruvian or a resident foreigner, and who are allowed by this status to perform lucrative activities under a subordinate or freelance relationship.

- "Permanent" Immigration status

Granted to those foreign citizens who have stayed in our country for 3 years as legal residents.

- Immigration status under "International Agreements"

Granted to those foreign citizens of countries with which the Peruvian government has international treaties or agreements in place, which establish the possibility of granting such status. As of today, we have entered into the following treaties or agreements:



- **Peru - Argentina Residency Agreement:** Argentinean citizens may be granted a "temporary residency" for a non-extendable period of 2 years. In case such foreign citizens later wish to maintain their residency in Peru, they may obtain a "permanent residency" for an indefinite period.
- **Residency Agreement for member states of MERCOSUR:** Intended for the citizens from Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay and Uruguay, who will obtain a "temporary residency" for 2 years, and later a "permanent residency" for an indefinite period.
- **"Training" Immigration Status**

Granted to those foreign citizens wishing to pursue regular studies on higher education, basic education, arts or trades, including the foreign individuals participating in exchange programs, internships for university undergraduates or graduates, or any other form of training. In principle, they are allowed neither to work nor to perform paid or lucrative activities, unless they previously obtain an Extraordinary Work Permit granted by the Immigration Authority.

2. Types of Immigration Statuses: "Temporary" and "Resident"

The Immigration Legislative Decree classifies the immigration statuses according to the period of stay granted and the intention of the foreign citizens to reside in our country. Consequently, the referred decree establishes 2 types of immigration statuses:

- **Temporary:** Authorizes the entry and stay of a foreign citizen who has no intention to reside in our country.
- **Resident:** Authorizes the entry and/or residency of a foreign citizen in Peru. These immigration statuses may be extended and/or may allow multiple entries into our country.

Considering the aforesaid, the referred decree establishes the periods of stay and number of entries permitted for each immigration status, which may be temporary or resident, as specified below:

Immigration status	Type of visa	Period of stay	Number of entries permitted
Worker/Designated worker	Temporary	183 days	Multiple entries
	Resident	1 year	
Resident Relative	Resident	2 years	Multiple entries
Permanent	Resident	Indefinite	Multiple entries
International Agreements (Peru - Argentina and Mercosur)	Temporary residency	2 years	Multiple entries
	Permanent residency	Indefinite	
Training	Temporary	90 days	Single entry
	Resident	1 year	Multiple entries

Procedures to obtain an immigration status: "Obtain Visa" and "Change Immigration Status"

In order to obtain the immigration status of "Worker", "Designated Worker", "Resident Relative", "Permanent", "International Agreements" or "Training", foreign citizens may choose between 2 procedures: the "Obtain visa" procedure or the "Change Immigration Status" procedure. Foreign citizens may choose between these 2 procedures based on their location when submitting their request to the Immigration Authority; i.e, whether they are abroad or in our country.

1. Procedure to obtain an immigration status through the "Obtain Visa" procedure, whether it is a Temporary or Resident visa

Foreign citizens who are located abroad and are interested in entering Peru to perform work activities under an employment contract previously approved by the AAT, an administrative relationship or a service agreement, or those who are transferred to Peru by their foreign employer under a service agreement, a technical cooperation agreement or any other similar document entered into between them and a Peruvian natural or legal entity, as well as those who are interested in pursuing regular studies on higher education, basic education, arts or trades, and those who participate in exchange programs or internships for university undergraduates or graduates, may request the "Worker", "Designated Worker" or "Training" immigration status from the Immigration Authority through the "Obtain Visa" procedure.

It is worth mentioning that this procedure must be carried out at the administrative offices of the Immigration Authority in Peru; therefore, foreign citizens shall need to grant powers so that a third party may submit the corresponding documentation on their behalf. Once the request has been approved, the visa will be sent to the Peruvian Consulate located in the country of residence of the foreign citizens, so they can receive it and use it to enter Peru.

2. Procedure to obtain an immigration status through the "Change Immigration Status" procedure, whether it is a Temporary or Resident visa

Foreign citizens who are located in Peru with a "Tourist", "Business" or any other immigration status, and are interested in performing work activities under an employment contract previously approved by the AAT, an administrative relationship or a service agreement, or those who are transferred to Peru by their foreign employer under a service agreement, a technical cooperation agreement or any other similar document entered into between them and a Peruvian natural or legal entity, as well as those who are interested in pursuing regular studies on higher education, basic education, arts or trades, and those who participate in exchange programs or internships for university undergraduates or graduates, or those who have stayed in our country for 3 years as legal residents, may request the "Worker", "Designated Worker", "Resident Relative", "Permanent", "International Agreements" or "Training" immigration statuses from the Immigration Authority through the "Change Immigration Status" procedure.

This procedure is entirely carried out at the administrative offices of the Immigration Authority.

As in the "Obtain Visa" procedure, the type of immigration status to be granted to foreign citizens ("Temporary", "Resident", among others) shall depend upon the supporting documentation submitted and the evaluation made by the Immigration Authority.

Obligations applicable to foreign citizens once they have obtained the required immigration status

1. Extension of Residency

Foreign citizens whose residency will expire soon and wish to continue residing in our country shall be required to complete the "Extend Residency" procedure.

2. Extension of Stay

Foreign citizens who have the "Worker", "Designated Worker" and "Training" immigration status with a temporary visa, and are interested in staying in Peru, shall be required to complete the "Extend Stay" procedure.

3. Annual Foreigner's Tax

During the first 3 months of each year (January, February, March), all foreign citizens with a resident immigration status in our country shall be required to pay the Annual Foreigner's Tax (*Tasa Anual de Extranjería* or *TAE* in Spanish).

4. Special permit to stay outside Peru for more than 183 days

Foreign citizens with a "Resident" immigration status, except the "Permanent" immigration status, shall not be allowed to leave our country for more than 183 consecutive days during a 365-day period, as their absence may result in the loss of their residency.

On the other hand, the foreign citizens who hold a "Permanent" immigration status will not be allowed to leave our country for more than 365 consecutive days. However, in case those individuals need to stay outside Peru exceeding such period, it will be necessary to request the corresponding authorization from the Immigration Authority.

5. Cancellation of Residency

Foreign citizens with an immigration status may request the Immigration Authority to cancel their immigration status when definitely leaving our country.



III. SOCIAL SECURITY MATTERS

In Peru, social security related to healthcare services is provided through EsSalud (National Healthcare System) and the Private Healthcare Providers (*Entidades Prestadoras de Salud or EPS in Spanish*). Social security related to pension plans is provided by the Pension Plan Administration (*Oficina de Normalización Previsional or ONP in Spanish*) in charge of the National Pension System (*Sistema Nacional de Pensiones or SNP in Spanish*) and the Pension Fund Administration Entities (*Administradoras de Fondo de Pensiones or AFP in Spanish*) which are part of the Private Pension System (*Sistema Privado de Pensiones or SPP in Spanish*).

Social Security Agreements

Depending on the nationality of the foreign employee working in Peru, such employee shall be entitled, when applicable, to the benefits granted under the Social Security Agreements which may have been entered into between Peru and their country of origin.

Concerning social security matters, Peru has entered into bilateral agreements with Spain, Chile, Uruguay, Argentina, Bolivia, Ecuador, Colombia, Brazil, El Salvador, Paraguay and Portugal. These agreements stipulate the regulations applicable to economic and healthcare benefits, and regulate the granting of benefits like pension continuity, preservation of vested rights and export of pensions, aggregation of quoted Periods, and transfer of pension funds.



IV. TAX MATTERS

Jurisdictional Basis of Income Taxation Applicable to Foreign Employees

Income Tax is applicable to natural or legal entities "domiciled" in our country on their "worldwide-source" income (i.e., "Peruvian-source" and "foreign-source" income).

According to Peruvian tax regulations, the income earned from personal work performed by foreign employees in favor of an employer in Peruvian territory is considered as "Peruvian-source" income.

"Domiciled" and "Non-domiciled" Condition

Foreign citizens are considered to be domiciled or non-domiciled in our country depending upon their condition at the beginning of every taxable year; i.e., as of January 1 of every year.

Therefore, foreign citizens who have resided or stayed in our country for more than 183 calendar days during any 12-month period, shall be considered as "domiciled" individuals. On the contrary, those foreign citizens who have resided or stayed in our country for less than 183 calendar days shall be considered as "non-domiciled" individuals, and shall be subject to a 30% income tax rate.

Work-derived Income and Applicable Tax Rates

According to local tax legislation, the income earned by domiciled foreign citizens from performing freelance services (self-employment Income), as well as the income earned from performing work activities under a subordinate relationship (payroll) are considered as work-derived income, and are subject to the following income tax rates:

Work-derived Income Tax Rates	
Type of Taxpayer	Rate
Domiciled	Up to 5 tax units: 8% Between 5 tax units and 20 tax units: 14% Between 20 tax units and 35 tax units: 17% Between 35 tax units and 45 tax units: 20% Over 45 tax units: 30%
Non-domiciled	30%

Foreign Employees: Double Taxation and Treaties to avoid Double Income Taxation

Depending upon the nationality of the foreign employee working in Peru, such employee shall be entitled to the benefits granted under the Treaties to Avoid Double Taxation entered into between Peru and their country of origin, in the case of double taxation of the income earned and when applicable.

With respect to double taxation matters, Peru has entered into bilateral agreements to avoid double taxation with Chile, Canada, Brazil, Mexico, Korea, Switzerland and Portugal. In addition, Peru has signed the "Statement N° 578", which refers to the Regime to avoid Double Taxation and Tax Evasion in the Andean Community. All these agreements regulate the tax powers granted to the States Parties (Residency State or Source State) in order to avoid double taxation.



V. ADMINISTRATIVE PENALTIES

The employers who fail to comply with the provisions related to the hiring of foreign employees shall be subject to a contingency for committing administrative infractions, which may be classified as minor, serious or very serious infractions, and may be sanctioned by the National Superintendency of Labor Inspections (*Superintendencia Nacional de Fiscalización Laboral or SUNAFIL in Spanish*) with penalties ranging between 0.5 tax units (S/ 2,025) and 100 tax units (S/ 405,000), depending upon the number of employees affected by such failure.

On the other hand, in the event that the Immigration Authority detects that foreign citizens are breaching any of the provisions set out by the Immigration Legislative Decree and any other applicable regulation, such citizens may be sanctioned with any of the following:

- Administrative penalty
- Mandatory exit of foreign employee
- Expulsion of foreign employee from our country

Finally, it is worth pointing out that any public institution in our country may verify the compliance with the general legislation applicable to foreign employees, and may notify the relevant authority in case any breach of such regulations is detected.





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