

# BUSINESS IMMIGRATION



FRENCH LAW: A FEW SUMMER DEVELOPMENTS  
AND PRACTICAL CONSIDERATIONS

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## I. Summer developments – Exemptions for certain foreign non-EU nationals

Pursuant to the Decree no. 2009-477 dated April 27, 2009, as of June 1, 2009, certain categories of foreign non-EU nationals, wishing to remain in France for more than 3 months, are exempt from the obligation to apply for a *carte de séjour* (a type of residency permit) upon their arrival in France.

This exemption is generally valid for the duration of the validity of the long stay visa and is generally limited to one year.

The categories of persons concerned are:

- visitors (staying up to 12 months),
- *saliariés* (employees with an employment contract of up to 12 months),
- temporary workers with an authorization to work or an employment contract (for less than 12 months),
- students (studying up to 12 months), and
- spouses of French nationals.

Certain conditions must be met to benefit from this exemption:

- these persons are holders of valid long stay visas<sup>2</sup>, and
- within 3 months of their arrival in France, they contact the OFII<sup>3</sup>.

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<sup>2</sup> A long stay visa allows a foreign non-EU national to legally enter France and remain therein for longer than 3 months for purposes of applying for and obtaining a *carte de séjour*. The visa is not a residency or work permit.

<sup>3</sup> The OFII (*Office Française de l'Immigration et de l'Intégration*) is the French Bureau of Immigration and Integration created in April 2009 to welcome and assist foreign nationals arriving in France and oversee certain aspects of migration.

Specifically, the following procedure should be carried out:

- (1) While applying for the long stay visa, the applicant will also complete a *Demande d'Attestation OFII* that is provided by the French consulate. The consulate will also provide a one-page explanatory note on the procedure.

This *Demande d'Attestation* is a two-page document requesting information such as name, date of birth, address in France, passport number and date of entry in France. A copy may be downloaded at <http://www.ofii.fr/IMG/gif/facsimile.gif>.

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- (2) Within 3 months of arrival in France, the applicant must send to the competent OFII office by registered mail return receipt requested the completed *Demande d'Attestation* along with a copy of his passport, long stay visa, and the Customs and Immigration stamp indicating his date of entry into France.

The competent OFII office is located in the applicant's place of residence. A list of offices can be found on the OFII's website.

The competent OFII office registers the application in a database and the foreign non-EU national receives an *attestation de dépôt* (certificate of filing).

- (3) The OFII will then convene the applicant to a meeting to validate the exemption by stamping his passport accordingly. The applicant will be required to bring certain documents such as proof of residence in France (e.g. a signed lease, water or electric bill or telephone bill) and a passport photograph. A medical visit may be organized by the OFII depending on the purpose of the residency.
- (4) The applicant will need to pay the following fee, generally on the same day as the OFII meeting:

- |                                      |         |
|--------------------------------------|---------|
| (a) for visitors:                    | EUR 300 |
| (b) for <i>salariés</i> :            | EUR 70  |
| (c) for temporary workers:           | No fee  |
| (d) for students:                    | EUR 55  |
| (e) for spouses of French nationals: | EUR 300 |

## II. Practical considerations

Should the foreign non-EU national wish to remain in France beyond the one-year exemption, the renewal process is the same as for those with a *carte de séjour*. In other words, the extension is treated as a request for renewal of a *carte de séjour*. Specifically, in accordance with the aforementioned Decree, at a minimum of 2 months prior to the expiration of the exemption, the

foreign non-EU national must contact the *préfecture* for a renewal application. Upon renewal, he will receive a *carte de séjour* corresponding to the purpose of his stay.

Please note that with a renewal for any *carte de séjour*, if this 2 month period is not respected, the late filing of the renewal application alone is not adequate grounds for refusal of such application (Court of Appeals of Douai, April 7, 2009, decision no. 08DA01244, in which a student renewed his *carte de séjour* 16 months after it had expired, but had continued his studies throughout this period and had enrolled in an additional year at the time of the refusal).

Foreign non-EU nationals may apply for a *carte de résident*, a residency permit valid for 10 years that confers the holder the right to work in France (Articles L. 314-1 *et seq.* of the French Immigration Code). It is generally available for persons who have resided in France for at least 5 years, have sufficient means of sustainability, and are not a threat to the public (Articles L. 314-8 *et seq.* of the French Immigration Code). Pursuant to the Circular NOR IMIM0900067C dated May 29, 2009, the year spent in France by virtue of the exemption will be taken into account for purposes of obtaining *carte de résident*.

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A holder of this new type of visa should have the same rights as a holder of the equivalent *carte de séjour*. For example, the visa stamped “*visiteur*” will not allow the holder to work in France. Students will be authorized to work in the limit of 964 hours per year in addition to their studies after informing the labor administration thereof. Spouses will have a visa stamped “*vie privée et familiale*” (family and private life) which will allow them to work in France if they wish. And the mention of “*salarié*” or “*travailleur temporaire*” (temporary worker) allows the holder to work and reside in France for the duration of the visa. Please note, however, that the procedure authorizing a foreign non-EU national to work in France remains unchanged – only the document attesting to such authorization changes.

However, with regard to social benefits and other rights available to holders of *cartes de séjour*, a decree should be published in the near future specifying what is available to those under the exemption. In principle, there should be no difference, as this new measure was introduced to simplify the authorization procedure for entry into and stays in France for both the French administration and the foreign non-EU national.

### III. Summer developments – Work permits for non-EU foreign interns

A Decree dated May 29, 2009 relating to internships in France for non-EU nationals sets forth the conditions of implementing the Law no. 2006-911 dated July 24, 2006, which introduced the concept of a work permit for non-EU interns (*carte de séjour mention “stagiaire”*). The Decree was published in the Official Journal of May 31, 2009.

The aforementioned Law simply states that non-EU interns may obtain the appropriate work permit if an internship agreement is entered into, the labor administration approves the agreement, and

the intern has the financial means necessary to subsist while interning (Article L. 313-7-1 of the French Immigration Code).

The Decree goes a step further and defines foreign interns, sets forth the content of the internship agreement and details what constitutes financial means. On a more practical level, it describes the labor administration's approval process and completes the list of required documents for the internship work permit application.

Foreign non-EU interns are defined as:

- Students interning with a company for the purposes of obtaining a diploma, degree or other professional qualification from their home country; or
- Employees of a foreign company sent (i) to a training, or (ii) sent to intern with (a) a company belonging to the same group as their employer or (b) a company with which their employer has a commercial relationship.

Sufficient financial means is defined as:

- For a student, it is an amount defined by inter-ministerial order based on a specific formula. The labor administrations of each city may increase this amount. For example, for students interning in Paris, based on the information on the Paris labor administration's website, sufficient financial means currently corresponds to a minimum of 450 Euros per month.
- For an employee, it currently corresponds to a minimum of 1,321.02 Euros gross per month, taking into account any salary, bonus or allowances to be paid by the employer during the internship.

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The internship relationship is created by an internship agreement, which is generally a three-party agreement. It must be entered into by the intern, the training establishment (i.e. university or trade school) or employer in the home country, and the company or training establishment located in France.

The internship agreement must contain a remuneration clause, if applicable. For internships exceeding 3 months, the intern must receive a minimum remuneration as defined by the applicable industry agreement (*accord de branche*), professional agreement (*accord professionnel*) or, if neither, by decree. The current minimum remuneration set forth by decree is 398.13 Euros per month.

Internships are generally limited to a period of 6 months (renewal, if any, included) for students, and 12 months for employees (with a possibility to renew once for an additional 6 months).

#### **IV. Practical considerations**

Once signed by all three parties, the host company must send the internship agreement to the competent labor administration by registered letter return receipt requested at least 2 months prior to the start date of the internship.

The labor administration has 30 days upon receipt thereof to approve or refuse the agreement. Failure to respond within this time period is deemed a refusal.

In the event of renewal or extension, the host company must send the amended agreement by registered letter return receipt requested at least 15 days prior to the end of the initial internship. Failure of the labor administration to respond within 15 days of receipt is deemed, in this case, an approval.

The following documents must be provided to the labor administration to obtain a *carte de séjour mention "stagiaire"*:

- Signed internship agreement approved by the labor administration;
- Proof of financial means (i.e., in practice, letter from parent attesting that the intern will be financially supported, letter from employer attesting that intern will continue to be paid his salary, proof of a scholarship, grant or other financial aid, etc.);
- Information on civil status;
- Proof of legal entry into France (i.e. entry visa);
- Long-stay visa (for stays longer than 3 months);
- Medical certificate;
- 3 photographs; and
- Proof of domicile in France.

While the intern has signed an internship agreement and may be remunerated, this does not confer upon the intern the status of employee of the host company.

#### **V. Summer developments – Fees owed by the employer for hires now paid to the OFII**

Pursuant to Article L. 313-15 of the French Immigration Code, any employer hiring a foreign non-EU national coinciding with his first entry into France or at the time of his first receipt of a *carte de séjour* with the indication "*salarié*" must pay a type of entry fee to the ANAEM (*L'Agence Nationale de l'Accueil des Etrangers et des Migrations*).

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However, with the creation of the OFII, the ANAEM was replaced. As such, the following one-time, non-refundable fees owed by the employer are paid directly to the OFII:

For a hire equal to exceed 12 months:

Gross monthly salary equal to or less than EUR 2,0006.59:	EUR 900
Gross monthly salary greater than EUR 2,0006;59:	EUR 1,600

For a hire for a duration between 3 months and 12 months:

Gross monthly salary equal to or less than EUR 1,337.73:	EUR 70
Gross monthly salary greater than EUR 1,337.73:	EUR 200
Gross monthly salary greater than EUR 2,0006;59:	EUR 300

The employer is prohibited from requesting reimbursement of this fee from the employee or to withhold such amount from his salary (Article L. 5222-2 of the French Labor Code).

## **VI. Practical considerations**

In the event that the hiring process is postponed or cancelled for any reason, it is advisable that the employer send a letter by registered mail return receipt requested to the OFII and the competent *préfecture* or labor administration office informing them that the procedure concerning such prospective employee has been put on hold or cancelled.

If the OFII fee has not been invoiced upon the receipt of this letter, the employer should not, in principle, have to pay the aforementioned fee.