



# South Korea: Guest Workers' Ability to Change Employers

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# South Korea: Guest Workers' Ability to Change Employers

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**SUMMARY** South Korea has two types of guest worker programs. One is designed for ethnic Koreans with foreign citizenship (H-2). The other is for general foreigners from countries that have entered into special agreements with South Korea (E-9). Both can change employers under specified circumstances and for limited periods of time. Either status holder must obtain admission from a job center under the Employment Permit System. E-9 status holders must obtain an additional permit under the Immigration Act. Hiring of professional foreign employees is beyond the scope of this report.

## I. Visas for Unskilled Foreign Workers

South Korea has two types of guest worker programs. One is designed for ethnic Koreans with foreign citizenship; the other is for general foreigners from countries that have entered into special agreements with South Korea.

### A. Working Visit (H-2) Visas

The Working Visit (H-2) visa grants multiple entries and work permits for ethnic Koreans with foreign citizenship. H-2 visa holders do not have to have a job offer when they enter Korea,<sup>1</sup> and once employed are not tied to their employer. Persons twenty-five years of age or older who previously emigrated abroad and their lineal descendants are eligible for this visa.<sup>2</sup> Employment is permitted only in the industry sectors specified in the Enforcement Decree of the Immigration Act, such as agriculture, small- and medium-sized manufacturing, construction, or the service industry.<sup>3</sup>

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<sup>1</sup> *Overseas Korean Policy Manual*, in KOREA IMMIGRATION SERVICE, MINISTRY OF JUSTICE, THE SOJOURN GUIDE FOR FOREIGNERS 258 (Aug. 17, 2015), [http://www.hikorea.go.kr/pt/NtcCotnDetailR\\_en.pt?pageSpec=&targetRow=&lafjOrderBy=&sRange=&sKeyword=&bbsGbCd=BS10&bbsSeq=2&ntccttSeq=45&pageCode=list&langCd=EN&bbsNm=Notice](http://www.hikorea.go.kr/pt/NtcCotnDetailR_en.pt?pageSpec=&targetRow=&lafjOrderBy=&sRange=&sKeyword=&bbsGbCd=BS10&bbsSeq=2&ntccttSeq=45&pageCode=list&langCd=EN&bbsNm=Notice) (click “150817 Sojourn Guide For Foreigners (English).pdf”), archived at <https://perma.cc/CKL6-MFPW>.

<sup>2</sup> Immigration Act, Act No. 4522, Dec. 8, 1992, amended by Act No. 14106, Mar. 29, 2016, art. 18, para. 1, [http://elaw.klri.re.kr/kor\\_service/lawView.do?lang=ENG&hseq=39669&joseq=JO0018000](http://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=39669&joseq=JO0018000), archived at <https://perma.cc/5QZY-SMRM>; Enforcement Decree of the Immigration Act, Presidential Decree No. 13872, Mar. 30, 1993, amended by Presidential Decree No. 27303, July 5, 2016, art. 23 & Table 1, item 31, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=39273&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=39273&lang=ENG), archived at <https://perma.cc/ZVB5-LXG8>. See also Act on Immigration and Legal Status of Overseas Koreans, Act No. 6015, Sept. 2, 1999, amended by Act No. 14173, May 29, 2016, art. 2, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=38886&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=38886&lang=ENG), archived at <https://perma.cc/TM5L-8PJM>.

<sup>3</sup> Enforcement Decree of the Immigration Act, Table 1, item 31.

## B. Non-professional Employment (E-9) Visa

Unskilled foreign workers may obtain a Non-professional Employment (E-9) visa<sup>4</sup> under the Employment Permit System (EPS),<sup>5</sup> which is governed by the Foreign Workers' Employment Act.<sup>6</sup> Under the EPS, small businesses that have 8 billion won (about US\$7.1 million) or less of capital, or less than three hundred full-time employees, are allowed to hire foreigners.<sup>7</sup> However, these employers must try to hire local workers first.<sup>8</sup>

Only foreign workers from countries that have signed a Memorandum of Understanding (MOU) with the Korean government are eligible.<sup>9</sup> The registration and selection of foreign workers are administered based on these MOUs. There is no intermediation by recruitment agencies.<sup>10</sup> Fifteen countries have signed MOUs with Korea: the Philippines, Mongolia, Sri Lanka, Vietnam, Thailand, Indonesia, Uzbekistan, Pakistan, Cambodia, China, Bangladesh, Nepal, Kyrgyzstan, Myanmar, and East Timor.<sup>11</sup>

## II. Employment Procedure

The Foreign Workers' Employment Act provides for an employment permit system for those holding E-9 visas and an "exceptionally permissible employment confirmation system"<sup>12</sup> for those holding H-2 visas.<sup>13</sup>

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<sup>4</sup> *Id.*, Table 1, item 25-3.

<sup>5</sup> MIN JI KIM, INTERNATIONAL LABOUR OFFICE, THE REPUBLIC OF KOREA'S EMPLOYMENT PERMIT SYSTEM (EPS): BACKGROUND AND RAPID ASSESSMENT (International Migration Papers No. 119, 2015), [http://www.ilo.org/wcmstp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_344235.pdf](http://www.ilo.org/wcmstp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_344235.pdf), archived at <https://perma.cc/6XXU-YTE4>.

<sup>6</sup> Act on the Employment, Etc. of Foreign Workers (Foreign Workers Employment Act), Act No. 6967, Aug. 16, 2003, amended by Act No. 13908, Jan. 27, 2016, art. 11, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=37592&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=37592&lang=ENG), archived at <https://perma.cc/7D7W-VJF8>.

<sup>7</sup> THE SOJOURN GUIDE FOR FOREIGNERS, *supra* note 1, at 153.

<sup>8</sup> Foreign Workers Employment Act arts. 6 & 8, para. 1.

<sup>9</sup> *Introduction of Employment Permit System*, EMPLOYMENT PERMIT SYSTEM, <https://www.eps.go.kr/eo/NatCntnViewR.eo?natNm=ph&hiMenuId=6&menuId=29> (last visited July 18, 2017), archived at <https://perma.cc/9MVZ-UUXR>.

<sup>10</sup> Foreign Workers Employment Act art. 8, para. 6.

<sup>11</sup> *Employment Procedures Concerning Non-professional Employment (E-9) Visa Holders*, MINISTRY OF GOVERNMENT LEGISLATION (Apr. 15, 2017), <http://www.easylaw.go.kr/CSM/SubCnpclsCmd.laf?csmSeq=665&ccfNo=3&cciNo=2&cnpClsNo=1>, archived at <https://perma.cc/LR3R-SAHH>.

<sup>12</sup> The exceptionally permissible employment confirmation system is a special employment permit scheme aimed at redressing discrimination against ethnic Koreans in China and the former Soviet Union. *Employment Procedures Concerning Working Visit (H-2) Visa Holders*, MINISTRY OF GOVERNMENT LEGISLATION (Apr. 15, 2017), <http://www.easylaw.go.kr/CSM/SubCnpclsCmd.laf?csmSeq=665&ccfNo=3&cciNo=2&cnpClsNo=2>, archived at <https://perma.cc/3K2L-8QGX>.

<sup>13</sup> *Employment of Foreign Workers under the Act on Foreign Workers' Employment, Etc.*, MINISTRY OF GOVERNMENT LEGISLATION (Apr. 15, 2017), <http://www.easylaw.go.kr/CSM/SubCnpclsCmd.laf?csmSeq=665&ccfNo=1&cciNo=1&cnpClsNo=2>, archived at <https://perma.cc/P826-ZRY9>.

## A. Hiring

### 1. H-2 Status

The employment procedure for H-2 status holders is as follows:<sup>14</sup>

- A foreigner completes employment training provided by the Human Resources Development Service (HRDS) or other designated institution.<sup>15</sup>
- If a health examination was not included in the foreign worker's training course with HRDS, the employer must have the foreign worker undergo a health examination, as required by the Occupational Safety and Health Act.<sup>16</sup>
- The foreign worker submits his or her job search application to the job center and the application is added to the list of available foreign workers.<sup>17</sup>
- After an eligible employer<sup>18</sup> selects a foreign worker, an employment agreement is concluded between them.<sup>19</sup>
- The foreign worker completes alien registration at the immigration office.<sup>20</sup>

### 2. E-9 Status

The Ministry of Employment and Labor annually announces a foreign worker introduction plan, which includes the number of foreign workers to be hired and the corresponding industry sectors.<sup>21</sup> The total number of foreign workers (E-9) to be allowed into Korea in 2016 was 58,000.<sup>22</sup>

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<sup>14</sup> *Employment Procedures Concerning Working Visit (H-2) Visa Holders*, *supra* note 12.

<sup>15</sup> Foreign Workers Employment Act art. 11; Enforcement Decree of the Act on the Employment, Etc. of Foreign Workers, Presidential Decree No. 18314, Mar. 17, 2004, *amended by* Presidential Decree No. 27751, Dec. 30, 2016, art. 18, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=42655&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=42655&lang=ENG), archived at <https://perma.cc/WC98-K5AG>.

<sup>16</sup> Occupational Safety and Health Act, Act No. 4220, Jan. 13, 1990, *amended by* Act No. 13906, Jan. 27, 2016, art. 43, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=37590&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=37590&lang=ENG), archived at <https://perma.cc/R6XU-EMGV>.

<sup>17</sup> Foreign Workers Employment Act art. 12, paras. 1 & 2; Enforcement Decree of Foreign Workers Employment Act art. 19.

<sup>18</sup> Foreign Workers Employment Act art. 8.

<sup>19</sup> *Id.* art. 9.

<sup>20</sup> Immigration Act art. 31, para. 1. If an alien intends to stay in Korea for more than ninety days from the date of entry, the alien must file for alien registration.

<sup>21</sup> Foreign Workers Employment Act art. 5, para. 1.

<sup>22</sup> Press Release, Ministry of Employment and Labor, 58,000 Foreign Workers to Be Brought into Korea in 2016 (Dec. 15, 2015), [http://www.moel.go.kr/english/poli/poliNewsnews\\_view.jsp?idx=1181](http://www.moel.go.kr/english/poli/poliNewsnews_view.jsp?idx=1181), archived at <https://perma.cc/8LDW-QYSJ>.

The procedure for employing nonprofessional foreign workers is as follows:<sup>23</sup>

- The Ministry of Employment and Labor prepares a list of foreign job seekers in consultation with the head of the governmental agency responsible for the administration of labor affairs in the dispatching country.<sup>24</sup>
- Foreign job seekers take a required Korean language test for the evaluation of their language proficiency.<sup>25</sup>
- An employer applies to the head of an employment security office for permission to employ foreign workers.<sup>26</sup>
- The head of the employment security office recommends eligible persons to the employer.<sup>27</sup>
- The employer selects a person and obtains a permit.<sup>28</sup>
- The employer and the foreign worker sign a labor contract.<sup>29</sup>
- The employer files, on behalf of the foreign worker, an application for a certificate of visa issuance with the Minister of Justice.<sup>30</sup>
- The foreign worker enters the country.
- The foreign worker completes the foreign employment training within fifteen days from the date of entry.<sup>31</sup>

Foreign workers are limited to three years of employment.<sup>32</sup> The employment period can be extended only once, for up to two additional years.<sup>33</sup>

## B. Change of Workplace

An H-2 or E-9 status holder may change his or her workplace if it is difficult to maintain normal employment relations, such as in the following cases:

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<sup>23</sup> *Employment Procedures Concerning Non-professional Employment (E-9) Visa Holders*, *supra* note 11.

<sup>24</sup> Foreign Workers Employment Act art. 7, para. 1.

<sup>25</sup> *Id.* art. 7, para. 2.

<sup>26</sup> *Id.* art. 8, para. 1.

<sup>27</sup> *Id.* art. 8, para. 3.

<sup>28</sup> *Id.* art. 8, para. 4.

<sup>29</sup> *Id.* art. 9, paras. 1–3.

<sup>30</sup> *Id.* art. 10.

<sup>31</sup> *Id.* art. 11; Enforcement Rule of Foreign Workers' Employment Act, Ministry of Labor Ordinance No. 209, Apr. 30, 2004, *amended by* Ministry of Employment and Labor Ordinance No. 117, Dec. 31, 2014, art. 10, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=38750&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=38750&lang=ENG), archived at <https://perma.cc/6RWS-RE4W>.

<sup>32</sup> Foreign Workers Employment Act art. 18.

<sup>33</sup> *Id.* art. 18-2.

- An employer seeks to terminate an employment agreement during its term or refuses to renew it after expiration for a justifiable reason.<sup>34</sup>
- The foreign worker cannot continue to provide labor services at the workplace due to temporary suspension or closure of the business, or for any other reason not attributable to the foreign worker.<sup>35</sup>
- The foreigner's employment permit is revoked, or restrictions are imposed on the employment of foreign workers.<sup>36</sup>
- The working conditions at the workplace are not consistent with the terms and conditions of the employment agreement, or it is deemed difficult under social conventions to maintain the employment agreement for such reasons as a violation of working conditions or unreasonable treatment by the employer.<sup>37</sup>
- A foreign worker cannot continue to work for the business or workplace for such reasons as an injury, but can work for another business or workplace.<sup>38</sup>

In these cases, a foreign worker who wishes to change his/her employment must apply to a job center for a change of business or workplace within one month from termination or expiration of the employment agreement.<sup>39</sup> In addition, a foreign worker with E-9 status must apply to the competent immigration office for a permit to change workplace prior to starting new employment.<sup>40</sup> A foreign worker with E-9 status who fails to obtain such a permit for a workplace change within three months from the date of an application for a change of employment must depart from Korea.<sup>41</sup>

Further, if a foreign worker who completed alien registration changes his or her business or workplace, he or she must report such change of workplace to the immigration office within fourteen days from the date of such change.<sup>42</sup>

A foreign worker cannot, in principle, change workplaces more than three times during the first three years, and two times during any extension period. However, if a foreign worker has changed his or her workplace for a reason attributable to the employer, one more change may be allowed.<sup>43</sup>

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<sup>34</sup> *Id.* art. 25, para. 1, subpara. 1.

<sup>35</sup> *Id.* art. 25, para. 1, subpara. 2.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Enforcement Decree of the Foreign Workers Employment Act art. 30, para. 1.

<sup>39</sup> Foreign Workers Employment Act art. 25, para. 1.

<sup>40</sup> Immigration Act art. 21, para. 1.

<sup>41</sup> Foreign Workers Employment Act art. 25, para. 3.

<sup>42</sup> Immigration Act art. 35.

<sup>43</sup> Foreign Workers Employment Act art. 25, para. 4.