

1. Introduction

As a general rule, an alien must have a work permit to be allowed to take work in Denmark. That follows from Section 13 of the Danish Aliens (Consolidation) Act.

The provisions of Section 14 of the Danish Aliens (Consolidation) Act and Section 24 of the Executive Order on access for aliens to Denmark set out a number of situations where foreign nationals are exempt from the requirement of a work permit.

Section 24(1), para (10), of the Executive Order on access for aliens to Denmark provides:

24.-(1) The following aliens are exempt from the requirement of a work permit:

(10) Foreign nationals employed in a company established abroad, which is part of the same group as a company with at least 50 employees established in Denmark, who will carry out work for the company established in Denmark for up to two separate working periods of a maximum duration of 15 working days each in any 180-day period. The working periods must be separated by a stay outside Denmark of at least 14 days. The first sentence shall not apply to sectors within the construction, agriculture, forestry and horticulture, cleaning (including window cleaning) and hotel and catering industries, or to the carriage of goods by road, unless the persons concerned are going to carry out work at management level, work requiring knowledge at the highest level or work requiring knowledge at intermediate level.

The rule on exemption strikes a balance whereby the Danish business sector's need for flexibility is met, while still ensuring a delineation of the rule that renders it unsuitable for abuse. The rule must, among other things, support the needs of affiliated companies to work across the group. The rule is not intended for skilled or unskilled manual labour.

The employer and the alien are responsible for submitting proof/documentation that the alien is covered by the rule on exemption, cf. Section 40(1) of the Danish Aliens (Consolidation) Act.

The provision of Section 24(1), para (10), of the Executive Order on access for aliens to Denmark covers foreign nationals who enter Denmark legally, either as a visa exempt person or as the holder of a valid visa – including with an already issued Schengen visa – and who satisfy the conditions.

It should be noted that the provision is not relevant for other foreign nationals, i.e. for nationals of a Nordic country, EU citizens and third-country nationals with a residence permit or right of residence in Denmark. Moreover, the provision is not relevant for third-country nationals posted to Denmark for the purpose of providing a service on behalf of a service provider established in the EU, the EEA or Switzerland, as they have the right to residence and work in Denmark, cf. Section 8(2) of the Executive Order on EU Residence¹.

This guidance is intended to support the case-handling authorities when assessing whether visa applications submitted by foreign nationals seeking to enter Denmark in accordance with Section 24(1), para (10), of the Executive Order on access for aliens to Denmark, may be granted; the guidance may also be used to obtain advisory opinions from the Agency for International Recruitment and Integration (SIRI) as to whether a foreign national falls within the scope of the provision. In addition, the guide is intended to support the police in their work, e.g. in connection with border control or workplace inspection.

¹ Executive Order No. 1457 of 6 October 2020 on the right of residence in Denmark of foreign nationals who are covered by the European Union's rules on the right of free movement (Executive Order on EU Residence).

It should be noted that the rule merely provides that a work permit is not required in the situations described in that provision. Accordingly, requirements imposed on employees and employers that are subject to other rules are not affected by the rule. That is to say, inter alia, that the requirements under the visa rules are not altered as a result of the rule on exemption. An alien who is subject to a visa requirement must therefore satisfy the general conditions for obtaining a visa, i.e. he or she must be able to justify the purpose and conditions of his or her stay. Please refer to the Guideline for processing an application for a Danish visa (the Visa Guideline) (Guide No. 9565 of 28 June 2021) where the conditions are described in more detail. Moreover, the rule on exemption does not alter rules on taxation or the rules on notifications to the Register of Foreign Service Providers (RUT). In case of questions from companies about notifying RUT, please refer to www.workplacedenmark.dk or to the Danish Working Environment Authority. Similarly, rules and requirements in the field of transport, including requirements in terms of pay and working conditions etc. in connection with carriage of goods by road, cabotage etc., shall not be amended.

2. Foreign nationals who are employed in a company established abroad

In order to fall within the scope of the provision of Section 24(1), para (10), of the Executive Order on access for aliens to Denmark, the foreign national must be employed in a company established abroad. Proof that this condition is met may, for example, be provided by presenting a signed declaration from the company established abroad stating the date when the foreign national was employed, when his/her contract expires and the post for which the foreign national was recruited. Proof of the employment relationship can also be provided by presenting a copy of the foreign national's employment contract.

The authorities will only initiate a more thorough assessment of the foreign national's employment abroad if the particulars of the case specifically indicate that the employment relationship is not genuine but is established for the purpose of applying the rule on exemption. To that effect, the authorities may consider e.g. whether the foreign national has been employed shortly before the planned trip to Denmark, whether the employment contract with the foreign company is short-term, or whether employment will be terminated shortly after the visit in Denmark, but such information will not in itself lead to the assumption that the employment relationship is not genuine. For example, a fixed-term contract or a new appointment will not in themselves lead to the rule being inapplicable.

3. Part of the same group as a company established in Denmark

Moreover, in order to fall within the scope of the provision, the company established abroad must be part of the same group as a company established in Denmark. Affiliated companies mean companies that are part of the same group. It is not a requirement that the parent company is located in Denmark.

As a clear principle, it will be assumed that it is a group if the parent company and subsidiary have the same name. If the foreign company has a different name than the company established in Denmark, or if there is doubt as to whether the two companies are part of the same group, the Danish company must provide proof of the group relationship. This may include, for instance, a link to the group's website from which it is apparent that the companies are part of the same group, or accompanied documentary proof that the companies have the same owner or group of owners. It may also include proof that the Danish and the foreign company are considered to belong to the same group within the meaning of the tax or company laws. In that case, it will also be assumed that the companies are part of the same group within the meaning of Section 24(1), para (10).

A foreign company that is set up with the sole purpose of applying the group exemption rule, e.g. to send temporary agency workers to Denmark, will not fall within the scope.

4. Requirement of 50 employees

It is also a condition that the company established in Denmark has at least 50 employees. However, there are no requirements in terms of the size of the company abroad. There is no requirement that employees of the company established in Denmark must be full-time employees.

The current number of employees must be evidenced by the company established in Denmark providing details on the number of employees registered in the Central Business Register (CVR). This will, as the overriding principle, be assumed by the authorities; however, it can be further verified through the authorities conducting a search in the Central Business Register or, where appropriate, submitting a request to the Danish Customs Agency who can provide information about the number of employees in a company.

5. Duration of the stay etc.

A foreign national who falls within the scope of the provision of Section 24(1), para (10), has the right to carry out work for the company established in Denmark for up to two separate working periods of a maximum duration of 15 consecutive working days each in any 180-day period. The working periods must be separated by a stay outside of Denmark of at least 14 calendar days. The stay outside of Denmark could be a holiday stay in another country, including in another Schengen state. The stay outside of Denmark could also be a working visit or a training course, e.g. at a local branch of the company in another EU/EEA country. Each working period shall not exceed 15 consecutive working days.

The foreign national may stay in Denmark on the basis of a visa (or as visa exempt) for more than 15 days, but the work for the company established in Denmark must only be carried out for up to two separate working periods of a maximum duration of 15 consecutive working days each with the foreign national staying outside of Denmark for at least 14 days. This can be evidenced in various ways. See section 7.

The period of 180 days is based on a rolling calculation. This implies that the foreign national has the right to work in Denmark for two separate working periods of a maximum duration of 15 consecutive working days each in any 180-day period, meaning that the 180-day period preceding each day of the stay will be taken into account.

The two separate working periods shall not exceed 15 consecutive working days each. Thus, the foreign national does not have the right to work in Denmark for 10 plus 20 working days in the 180-day period, as each working visit, in isolation, shall not exceed 15 working days. As such, any excess number of working days up to 15 days – e.g. if the first stay has a duration of 5 working days – cannot be used to extend a subsequent stay.

It should be understood that the first and the last working day are included in the calculation of the 15 consecutive working days. Saturdays, Sundays and public holidays are not included, unless the foreign national also carries out work on weekends/public holidays. A prior lawful residence in Denmark on another basis, including, inter alia, residence of an alien holding a residence permit based on family reunification, is not included in the calculation of the 15 working days. The same also applies to residence of an alien holding a residence permit granted by the Agency for International Recruitment and Integration, even if the work may have been carried out for the Danish company. Likewise, a prior visa stay of an alien will not be included in the calculation of the 15 working days if the purpose has been other than work - including if the applicant has visited the group's affiliated company in Denmark while holding a visa for a stay but without having carried out any work.

If the foreign national is going to perform an activity that is not defined as work within the meaning of the Danish Aliens (Consolidation) Act, this will not be included in the calculation of the 15 consecutive working

days. This could be, for instance, if the foreign national is going to participate in a training at the Danish company. Training could, for example, include a newly hired employee who is going to Denmark in connection with onboarding or to improve their product knowledge, etc.

Further, the requirement that the working days be consecutive means that any interruption in the working days (other than weekends and public holidays) will have the effect that the foreign national must stay outside Denmark for at least 14 days before resuming work in the second working period. For example, a training course in Denmark scheduled between two working periods means that the foreign national must stay outside Denmark for at least 14 days before he or she begins the second working period. Similarly, a foreign national will not have the right in accordance with the rule to enter Denmark to work every Monday for a period of 15 weeks, as this will constitute 15 separate working periods of one day. It should be noted that there is nothing to prevent a foreign national from attending a training course (which does not require a work permit) before or after the period of maximum 15 consecutive working days.

Unless proof is provided in connection with a new visa application, that a previously issued visa has not been used, the authorities will assume, that the foreign national has carried out the work described in that previous visa, after it was issued. This applies regardless of whether the working visit is cancelled, e.g. because the foreign national is ill or because a strategy meeting is cancelled. The working visit will thus be regarded as exhausted, regardless of the reason for the failure to carry out the work.

A foreign national seeks to enter Denmark on the basis of a visa (or as visa exempt) in the period from 2 July 2023 to 16 July 2023 (10 working days) in order to carry out work for the affiliated company and subsequently in the period from 13 August 2023 to 27 August 2023 (10 working days) in order to carry out work for the affiliated company. The foreign national has not been in the Schengen area since 2019.

The foreign national may – provided that other conditions are also satisfied – be granted a visa for 30 days within a period of 90 days (reckoned from 2 July 2023).

A foreign national seeks to enter Denmark on the basis of a visa in the period from 3 July 2023 to 17 July 2023 (11 working days) in order to carry out work for the group's affiliated company and again in the period from 27 November 2023 to 16 December 2023 (15 working days). The foreign national has recently been issued with a 1-year visa to Denmark on 29 December 2021.

The foreign national may – provided that other conditions are also satisfied – be granted a multiple-entry visa for 2 years (due to the cascade rules).

A foreign national seeks to enter Denmark on the basis of a visa in the period from 2 July 2023 to 30 July 2023 in order to attend a 5-day training course (no working days) in the group's affiliated company and to carry out work for the group's affiliated company for 15 days (i.e. 15 working days).

The foreign national may – provided that other conditions are also satisfied – be granted a visa for 28 days.

A foreign national seeks to enter Denmark on the basis of a visa in the period from 2 July 2023 to 17 July 2023 (11 working days) in order to carry out work for the groups affiliated company and again in the period from 7 August to 11 August 2023 (5 working days). In the period from 18 July 2023 to 7 August 2023, the foreign national is going to stay in Germany on holiday/in a German sister company.

The foreign national may – provided that other conditions are also satisfied – be granted a visa for 40 days.

6. Nature of the work

The provision of Section 24(1), para (10), shall apply, in principle, regardless of the type of work the foreign national will be carrying out in Denmark. However, the rule is not intended for skilled or unskilled manual work.

In principle, the foreign national may only carry out work-related tasks for the group. Thus, the programme cannot be used to send temporary agency workers from a temporary work agency abroad to companies in Denmark. Moreover, the provision cannot be used to send foreign nationals who are eligible under this rule to companies in Denmark from a Danish temporary work agency. However, the foreign national has the right to participate in work-related activities of third parties as long as the purpose is to assist representatives from the company established in Denmark. This could be, for instance, meeting activities with the clients of the company established in Denmark or professional advisers.

In terms of the type of work, the provision contains specific limitations that apply to the following sectors:

- Construction;
- Agriculture, forestry and horticulture;
- Cleaning, including window cleaning; and
- Hotel and catering
- Carriage of goods by road.

Within the sectors of construction, agriculture, forestry and horticulture, cleaning (including window cleaning), hotel and catering and the carriage of goods by road, only 1) management-level work, 2) work requiring knowledge at the highest level and 3) work requiring knowledge at intermediate level, fall within the scope of the provision.

This means, as a general guideline, that work of *an advisory nature* within the above sectors will fall within the scope of the provision, while manual work of *a performing nature* will not fall within the scope.

Below are a number of fictitious examples within the above sectors that fall within the scope of the provision. It is assumed that the specific tasks constitute work as defined within the meaning of Danish immigration law. The type of work involved is indicated in brackets:

- An employee from the foreign branch of a cleaning group is going to Denmark to discuss a strategy for the Danish part of the group (management work or work requiring knowledge at the highest level).
- An employee from a foreign branch of a construction company (within the construction sector) is going to Denmark to participate in the group's tax planning for the next financial year (management work or work requiring the highest level of knowledge).
- An employee from a foreign branch of an entrepreneurial firm (within the construction sector) is going to Denmark to participate in the group's tax planning for the next financial year. In connection with this, the employee, together with representatives from the company established in Denmark, will also participate in meetings with the company's external tax advisors (management work or work requiring knowledge at the highest level).
- An employee from the foreign branch of a group which designs and manufactures agricultural machinery is going to Denmark to demonstrate how a new component of an agricultural machine must be assembled. The new component is to be used in the Danish part of the group (work requiring knowledge at the highest level or work requiring knowledge at intermediate level).

- An employee from the foreign branch of a cleaning group is going to Denmark to give guidance on how to perform a special type of specialised cleaning service. The employee is not going to carry out any manual cleaning work; only give guidance (work requiring knowledge at intermediate level).
- A bricklayer from the foreign branch of a group is going to Denmark to give guidance on how to make and use a special type of mortar. The employee is not going to carry out any manual construction work; only give guidance (work requiring knowledge at intermediate level).

Below are a number of fictitious examples within the above sectors that do not fall within the scope of the provision:

- An employee from the foreign branch of a hotel group is going to Denmark to assist in cooking at a large joint event in Denmark for the entire group.
- An employee from the foreign branch of a construction group is going to Denmark to help with a major renovation project to be performed in Denmark. The employee is going to help replacing windows in connection with the renovation.
- An employee from the foreign branch of a construction group is going to Denmark to support the CEO of the Danish company minute-taking, calendar organisation, etc.
- An employee from the foreign branch of a cleaning group is going to Denmark to support the Danish managers as a driver.

The company established in Denmark which belongs to a sector within the construction, agriculture, forestry and horticulture, cleaning (including window cleaning), or hotel and catering industries, or to the carriage of goods by road, must provide proof that the foreign employee is going to carry out work that falls within the scope of the rule on exemption. This must be done by a thorough and detailed description of the tasks that the foreign national is going to perform for the Danish company. The employer's disclosures and proof will, as a general rule, be taken into account, see also section 7 below.

7. Documentation

The foreign national and the company established in Denmark must demonstrate that the foreign employee falls within the scope of the rule on exemption. This applies regardless of whether the foreign employee is visa-exempt or subject to a visa requirement. It is therefore – as is the case today – an entry condition for visa-exempt foreign nationals that they are able to provide proof of the purpose of their stay.

It is recommended that the company established in Denmark prepare an invitation/programme for the foreign employee (regardless of whether the employee is subject to a visa requirement or is visa-exempt) and that the invitation/programme contains the information from the bullet points listed below. The company could use the related invitation form, which is available on the website www.newtodenmark.dk, under the section business visa, invitation of a visa applicant or follow the link [New to Denmark \(nyidanmark.dk\)](http://nyidanmark.dk)

The invitation/programme can be used where an employee subject to a visa requirement applies for a visa, and the invitation can be used by a visa-exempt foreign national who, in connection with a police check, is asked to provide proof of the purpose of his or her stay, including proof that he or she has the right to work in Denmark.

- Information about the foreign employee's employment in the foreign branch. For example, a copy of the employee's employment contract or a signed declaration from the company established abroad stating the date when the foreign national was employed, when his or her contract expires

and the post for which the foreign national was recruited, could be enclosed as documentation or included as information in the invitation/programme.

- Information about the group relationship stating the name of the Danish and the foreign company. This information must be up-to-date. If the foreign branch has a different name than the company established in Denmark, or if there is doubt as to whether the two companies are part of the same group (affiliated), the Danish company provide proof of the group relationship by means of a link to the group's website stating that the companies are part of the same group or have the same group of owners, or by providing proof that the Danish company and the foreign company are considered to belong to the same group within the meaning of tax or company laws.
- Details about the current number of employees in the company established in Denmark. This may, for instance, be evidenced by an extract from the Central Business Register or www.virk.dk.
- Details about the period in which the employee is going to carry out work in Denmark. The period shall be indicated by the dates of the first day and the last day when the employee is to carry out work. If the employee is going to carry out work for more than one period, the dates for all periods must be indicated, and information about the period during which the employee is going to stay outside Denmark shall be provided. If the stay outside Denmark is a holiday stay, a copy of, for example, a contract for renting a holiday home can be enclosed. Similarly, a copy of the confirmation of a training course or an invitation to a working visit outside Denmark may constitute sufficient documentation and, similarly, a flight ticket together with a boarding pass will provide proof of entry and exit.
- Details on whether the employee is going to work within one of the sectors of construction, agriculture, forestry and horticulture, cleaning (including window cleaning), hotel and catering or the carriage of goods by road.

Specifically regarding the sectors of construction, agriculture, forestry and horticulture, cleaning (including window cleaning), hotel and catering and the carriage of goods by road

For work within the sectors of construction, agriculture, forestry and horticulture, cleaning (including window cleaning), hotel and restaurant and the carriage of goods by road, the following must be enclosed:

- Details about the specific tasks which the employee is going to carry out during the stay. General descriptions (such as "meetings", "seminar", "workshop", etc.) are not sufficient. It must be indicated what the employee's role is going to be during the meetings, seminar or workshop, insofar as this is the activity that is going to be performed during the stay in Denmark.

It should be noted that the details provided by the companies in advance, when a foreign national who is subject to a visa requirement applies for a business visa – including e.g. details about the title, tasks/activities to be carried out during the stay in Denmark, or why this specific foreign national is needed in the Danish company – will also be taken into account in the authorities' assessment as to whether the work to be carried out falls within the scope of the rule on exemption.