

## **1. Employment of foreigners in Poland**

Recent changes regarding the principles of employment of foreigners in Poland strive towards opening up the labour market for foreigners, with such being demonstrated above all in the expansion of the group of persons that may perform work without a permit as well as the simplification of procedures associated with the securing of appropriate permits.

Recent changes are related to the new Foreigners Act of 12 December, 2013 coming into effect on 1st May, 2014 (Journal of Law of 2013, No. 1650 as amended, “**Foreigners Act**”), defining principles and conditions for entry, transit and departure of foreigners from Poland together with manners of proceedings and regulations relating to authorities responsible for such matters.

The Foreigners Act contains regulations relating to the employment of foreigners foreseeing a single procedure for the securing of a temporary residence permit to work in Poland. Up until now, an employer intending to hire a foreigner in Poland had to apply for a work permit and, on the basis of such, the foreigner could apply for a permit to live in Poland for a fixed period of time. On the basis of current regulations a foreigner working in Poland has the possibility apply for a residence and work permit at the same time under a single procedure. The employer continues to retain the right to obtain a work permit that will allow him to i.a. apply for a visa for a foreigner wishing to undertake work in Poland.

The above regulation does not apply to seconded employees who shall be able to apply for a temporary residency permit according to principles described in the section relating to temporary residency permits.

The Act contains a number of regulations that simplify and create more objective criteria for examination of the meeting of prerequisites allowing for the securing of a temporary residency permit in order to conduct business operations.

## **2. Legal grounds**

The fundamental act regulating principles associated with the employment of foreigners within the Republic of Poland is the Employment Promotion and Labour Market Institutions Act of 20 April 2004 (unified text in Journal of Law of 2016, item 645; the “**Act**”).

## **3. Fundamental definitions**

A **foreigner** entitled to perform work in the Republic of Poland, as defined in the Act, is considered to be a person not being a Polish national and meeting premises laid out in Article 87 par. 1 of the Act.

**The performance of work by a foreigner** on the other hand is considered to be the hiring, the performing of other paid for work or the holding of a function in the management boards of legal entities that have been entered into the commercial register pursuant to the provisions of the National Court Register or are commercial (capital) companies being organised.

#### **4. Principles concerning the performance of work in the Republic of Poland by foreigners**

Pursuant to the provisions of Article 87 par. 1 of the Act, a foreigner is entitled to perform work in the Republic of Poland if at least one of the following criteria is met:

1. holds the status of a refugee granted in the Republic of Poland;
2. has been granted supplementary protection in the Republic of Poland;
3. holds a permit allowing for settlement in the Republic of Poland;
4. holds a long-term European Union resident permit in the Republic of Poland;
5. holds approval for residence due to humanitarian reasons
6. holds approval for tolerated stay in the Republic of Poland;
7. is taking advantage of temporary protection in the Republic of Poland;
8. is the citizen of a Member State;
9. is the citizen of a European Economic Area country not being a member of the European Union;
10. is the citizen of a country not being a party to the European Economic Area agreement and entitled to take benefit of freedom of movement on the basis of an agreement between such country and the European Community and its Member States;
11. is a family member of a foreigner referred to in items 7-9 or is the descendent of spouse of such foreigner, aged 21 or less or being dependent on such a foreigner or his/her spouse or is the ascendant of such a foreigner or his/her spouse and being dependent on such a foreigner or his/her spouse;
12. is a person referred to in Article 19 pars. 2-3 of the Act of 14th July 2006 concerning the entry into the Republic of Poland, the stay and exit from the territory of the Republic of Poland by citizens of the Member States as well as their family members (unified text in Journal of Law of 2014, item 1525);
13. holds a temporary residency permit referred to in Article 114 par. 1, Article 126, Article 127 or Article 142 par. 3 of the Act on Foreigners of 12th December, 2013 – in accordance with principles defined in such permit;
14. **holds a work and residency permit in the Republic of Poland:**
  - a. on the basis of a visa, with the exception of a visa issued for the purpose referred to in Article 60 par. 1 item 1, 22 or 23 of the Act on Foreigners of 12th December, 2013, or
  - b. on the basis of Article 108 par. 1 item 2 or Article 206 par. 1 item 2 the Act on Foreigners of 12th December, 2013 or on the basis of the stamp affixed in the travel document confirming submission of an application to obtain a permit for the long-term stay of an EU resident if such person immediately prior to the submission of such an application was entitled to perform work in the Republic of Poland, or
  - c. on the basis of a temporary residency permit, with the exception of a permit issued in conjunction with circumstances referred to in Article 181 par. 1 of the Act on Foreigners of 12th December, 2013, or
  - d. on the basis of a visa issued by another Schengen country, or
  - e. on the basis of a residency document issued by another Schengen country, or
  - f. on the basis of visa-less travel.

Foreigners, under a single procedure, have the possibility to obtain a residency permit as well as a work permit. To date, an employer intending to hire a foreigner in Poland was required to

first secure a work permit for the foreigner and, only after such had been obtained, the foreigner could apply for a residence permit.

The above regulation does not apply to seconded employees who are able to apply for a temporary residency permit according to principles described in the section relating to temporary residency permits.

## **5. Grounds for issuing work permits to foreigners**

Principles and manner for issuing work permits to foreigners are regulated by the Act and its executive regulations. Pursuant to the Act and the Regulation of the Minister of Labour and Social Policies of 1<sup>st</sup> April, 2015 concerning the issuance of work permits to foreigners (Journal of Law of 2015, item 543), a work permit is required if the foreigner:

1. performs work in the Republic of Poland on the basis of a contract with an entity whose registered office, place of residence or branch, plant or other form of organised activities are found within the Republic of Poland (type A permit);
2. fills the function of a member of the Management Board of a legal entity entered into the commercial register or being a commercial company being organised within the Republic of Poland and for a period of no more than 6 months in total during a subsequent 12-month period (type B permit);
3. performs work for a foreign employer and has been sent to the Republic of Poland for a period exceeding 30 days during a calendar year to work in a branch office or plant of the foreign entity, its affiliated entity within the meaning of the Personal Income Tax Act of 26 July 1991 (Journal of Law of 2012, item 361 as amended), with the foreign employer (type C permit);
4. performs work for a foreign employer not having a branch office, plant or other organised form of business activities within the Republic of Poland and has been sent to Poland in order to perform services of a temporary or ad hoc nature (export service) (type D permit);
5. performs work for a foreign employer and has been sent to the Republic of Poland for a period not exceeding 3 months within a subsequent 6-month period for purposes other than those indicated in item 2-4 above (type E permit).

Procedures associated with the issuance of a work permit foreseen in the Act allow the employer to secure a work permit for foreigners being outside of Poland and intend to come to Poland on the basis of a visa or in accordance with visa-less travel or other residency permit and, additionally, intend to undertake work in Poland. A separate procedure for the issuance of work permits for seconded employees sent by an entrepreneur having registered offices in a non-Member State has been retained.

The Foreigners Act foresees that the foreigner intending to stay and work in Poland for a period exceeding 3 months may also apply for a temporary residency and work permit. The authority responsible for the issuance of a work permit and temporary residency permit shall be the regional governor [*wojewoda*] who, in most cases, is the regional governor of the region in which the filing entity has its registered office or place of residence or is the location of the registered office of the entity that the foreigner is being sent to. The 2nd instance authority in respect to work permits shall continue to be the minister responsible for labour issues whereas, in respect to temporary residency permits and work permits, the Head of the Foreigners' Office.

## **6. Terms and conditions for the issuance of a work permit**

An employer filing for the issuance of a work permit shall:

1. in the case of a type A work permit - ensure remuneration for the foreigner that shall not be lower than that paid to employees carrying out similar work or working at a similar position; carry out a so-called market demand test, i.e. obtain information from the county administrator [*starosta*] having jurisdiction over the registered office or place of residence of the entity wishing to hire a foreigner as to the inability to meet staffing requirements on the basis of the register of unemployed or seeking work registers or of an unsuccessful outcome of a recruitment process carried out for the employer (the above requirement states that the employer must strive towards maximum use of local resources by seeking out employees among Polish nationals);
2. in the case of type B work permit - demonstrate an appropriate level of revenues in the tax year preceding the submission of the application as well as the appropriate level of employment as well as the possession of resources or conducting activities allowing for the future meeting of income criteria by the employer;
3. in the case of type C, D and E type work permits - ensure the foreigner employment terms and conditions no less beneficial than those arising from the provisions of the labour code and other laws regulating employee rights and obligations as well as remuneration no more than 30% lower than the average monthly salary in the given province [*województwo*].

The regional governor shall not issue a work permit if the employer does provide such information or does not comply with detailed requirements related to the obtainment of a work permit. The regional governor shall also refuse to issue a permit if the employer during proceedings has provided false testimony or concealed the truth, has filed false documents or is attempting to hire a foreigner whose qualifications do not reflect the nature of work being given to him/her in the case of a regulated profession.

Additionally, an employer that has been found guilty of the illegal employment of foreigners and has once again been found guilty of a similar offence within a two-year period, cannot count on obtaining a permit.

Also foreigners whose stay in Poland is not tolerated cannot count on obtaining a work permit within the Republic of Poland.

A work permit is issued to a given foreigner. Additionally, it defines the entity hiring the foreigner to carry out work as well as the position or nature of work that is to be carried out by the foreigner and the term of validity of the work permit.

Extension of the permit under the provisions of the new Act takes place at the written request of the entity employing the foreigner, with such request being submitted no sooner than 90 and no later than 30 days prior to the lapse of validity of the permit.

## **7. Simplified procedures for the issuance of work permits**

The issuance of a work permit in respect to certain groups of foreigners does not require the carrying out of proceedings associated with the requirement to first seek out employees from among the local unemployed workforce or to meet other detailed terms associated with the

issuance of such permits. The list of persons that shall obtain a work permit even if candidates for the given post may be found from among the local workforce is defined in the Act as well as the Regulation of the Minister of Labour and Social Policies dated 29 January 2009 regarding defining circumstances in which a work permit is issued to a foreigner regardless of detailed terms defined for the issuance of a work permit to a foreigner (unified text in Journal of Law of 2015, item 97).

These include, i.a.:

- 1) the family members of diplomatic and international organisation personnel as well as their private house servants,
- 2) those authorised on the basis of legal acts issued by authorities appointed pursuant to the Agreement establishing an Association between the European Economic Community and Turkey.

Furthermore, the following persons are exempt from having to obtain information from the county administrator [*starosta*] concerning the situation on the labour market:

- 1) persons authorised to represent a foreign entrepreneur in his branch or representative office;
- 2) persons being nationals of the Republic of Armenia, the Republic of Belorussia, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine and carrying out nursing-care work or working as household servants for natural persons;
- 3) persons being nationals of the Republic of Armenia, the Republic of Belorussia, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine who, in the period directly preceding the filing of an application for the issuance of a work permit, have - for a period of no less than three months - carried out work for the same entity on the basis of a representation of intent to entrust such a person with the performance of work and registered with the appropriate county [*powiat*] labour office having jurisdiction over the registered office or place of residence of the entity (person) submitting such a representation;
- 4) sports trainers or sportsmen;
- 5) doctors and dental doctors undergoing training or carrying out a specialisation programme.

## **8. Term of a work permit**

**A work permit is issued for a fixed period of time, however no more than 3 years and may be extended.**

In the case of foreigners:

- 1) holding a position in the Management Board of a legal entity that, as at the date of submission of the application, employed more than 25 persons, a work permit may be issued for a period of no more than 5 years,
- 2) that have been sent out by a foreign employer to carry out the export of services, the regional governor [*wojewoda*] shall issue the work permit for the term of the assignment.

A work permit shall remain valid if the entity entrusting the foreigner with the performance of work within 7 days informs of the regional governor that issued the work permit of the following circumstances:

- 1) the foreigner has started to carry out work other than that defined in the work permit or is assigned to a different post,
- 2) the registered office or place of residence, the name or legal form of the entity entrusting work with a foreigner changes or the place of work or its part thereof has been acquired by another employer,
- 3) the employer, or its part thereof, is taken over by another employer,
- 4) the entity representing the employer has changed,
- 5) the foreigner has not started work within a period of 3 months from the beginning of the validity period of the work permit,
- 6) the foreigner has interrupted work for a period of more than 3 months;
- 7) the foreigner has ended work earlier than 3 months prior to the lapse of the validity of the work permit.

## **9. Exemption from the obligation to obtain a work permit**

Provisions concerning the hiring of foreigners in the Republic of Poland in certain cases foresee an exemption from the obligation to obtain a work permit. Such, pursuant to the provisions of the Act, relate to i.a. foreigners:

- 1) holding a temporary residency permit in the Republic of Poland issued in conjunction with circumstances referred to in Article 144, Article 151 par. 1 or 2, Article 158 par. 2 item 1 or 2, Article 161 par. 2, Article 176 or Article 186 par. 1 item 3 or 4 of the Foreigners Act of 12th December, 2013;
- 2) being the spouse of a Polish citizen or foreigner referred to in item 1 and par. 1 items 1-6 and holding a temporary residency permit in the Republic of Poland in conjunction with marriage
- 3) being a descendent referred to in Article 2 par. 1 item 8 b), of a Polish citizen or foreigner referred to in item 1 and par. 1 items 1-6 and holding a temporary residency permit in the Republic of Poland;
- 4) holding a temporary residency permit in the Republic of Poland issued on the basis of Article 159 par. 1 of the Foreigners Act of 12th December, 2013;
- 5) residing in the Republic of Poland on the basis of Article 108 par. 1 item 2 or Article 206 par. 1 item 2 of the Foreigners Act of 12th December, 2013 or on the basis of the stamp affixed in the travel document confirming submission of an application to obtain a permit for the long-term stay of an EU resident if such person immediately prior to the submission of such an application was not required to hold a work permit under items 1-4;
- 6) holding a valid Polish Card [*Karta Polaka*];
- 7) seeking refugee status or who is the spouse in whose name it has claimed refugee status provided they have a certificate issued pursuant to Article 36 of the Act of 13 June, 2003 on Granting Protection to Aliens within the territory of the Republic of Poland;
- 8) authorised to live and work in a Member State of the European Union or the European Economic Area countries not belonging to the European Union and the Swiss Confederation, who is employed by an employer established in that Member State and

temporarily employed by that employer to provide services within the territory of the Republic of Poland;

- 9) in respect to whom international agreements or separate provisions foresee the performance of work without the need to hold a permit.

Additionally, the regulation of the Minister of Labour and Social Policies of 21 April, 2015 concerning cases in which the carrying out of work by foreigners without the need to obtain a work permit is allowed without the need to obtain a work permit (Journal of Law of 2015 item 588) lists categories of persons that an employer, due to the specific nature of tasks being carried out by them or their status, may hire without the need to obtain a work permit to work in Poland for such persons. These are, i.e.:

- 1) persons who organise trainings,
- 2) participating in professional internships or supervising the performance of European Union programmes or other international aid programmes,
- 3) teachers of foreign languages,
- 4) members of armed forces or of civilian staff who work in international military structures,
- 5) permanent correspondents of foreign mass media,
- 6) those giving occasional lectures, papers or presentations,
- 7) athletes performing work for an entity having its registered offices in the Republic of Poland, in conjunction with sports competitions,
- 8) full-time students or persons participating in full-time doctorate studies,
- 9) students sent to perform professional internship
- 10) students sent to perform work as part of professional internship,
- 11) persons performing work as scientific personnel in entities referred to regulations relating to research institutes,
- 12) citizens of the Republic of Armenia, the Republic of Belorussia, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine who work during a period not exceeding 6 months in 12 consecutive months on the basis of employer's declaration on the intention to employ such nationals registered in the district employment agency competent for the place of residence or registered office of the entity submitting such declaration.

## **10. Visas**

The right to carry out work in the Republic of Poland by a foreigner requires that the foreigner, in addition to obtaining a work permit, must obtain an appropriate visa unless the foreigner stay in Poland is regulated by provisions regarding visa-less travel.

Procedures associated with the granting of a visa to foreigners is covered by the Foreigners Act. Pursuant to the provisions of this act, a foreigner entering the territory of the Republic of Poland is issued a visa being:

- 1) a Schengen visa, or
- 2) a domestic visa.

A Schengen visa grants permission granted by a Schengen State for transit to another Schengen State or planned stay in a Schengen State and including the performance of work

for a period not exceeding three months in a given six-month period starting from the date of entry into a Schengen country.

A domestic visa allows for entry into the territory of the Republic of Poland and uninterrupted stay or multiple stays one after the other for an aggregate period of no more than 90 days during the validity period of the visa. The validity of a domestic visa starts no later than 3 months from the date of its issuance and may not exceed 1 year.

A Schengen visa or domestic visa may be issued, i.a. to allow the foreigner to carry out research activities, to conduct commercial activities or to undertake work. Such a visa may be issued to a foreigner who intends to carry out work in the Republic of Poland and who presents a Polish work permit or a written statement from the employer confirming the intent to give work to the foreigner if the securing of a work permit is not required.

A visa for the performance of work is issued for the term of the stay indicated in the work permit or statement of the employer intending to give work to a foreigner, however, it may not exceed the period foreseen for the given type of visa starting from the date of the first border crossing into Poland in the case of a unified residence visa or, in the case of a domestic visa, more than one year during the validity of the visa.

A work visa is issued, or refusal to grant such is given, by the consul in the country of permanent residence of the foreigner or, if the foreigner is already residing legally in a Member State or EFTA country, by the consul having residence in such country. The decision of the consul regarding the issuance of a visa is final.

## **11. Employer obligations towards foreigners**

The entity hiring a foreigner that requires a work permit is required to, i.a.:

- 1) conclude an agreement with the foreigner in written form on terms and conditions defined in the application for the issuance of a work permit,
- 2) present to the foreigner, prior to the signing of such an agreement, a translation of such into a language understood by the foreigner,
- 3) present to the foreigner one copy of the work permit,
- 4) inform the foreigner of actions being undertaken in conjunction with proceedings relating to the issuance or extension of a work permit as well as decisions concerning the issuance, refusal to issue or the revokement of such a permit,
- 5) exercise due diligence in proceedings associated with the issuance of and extension of a work permit for the foreigner.

## **12. The effects of work entrusted to foreigners illegally residing on Polish territory**

The Act of 15 June 2012 on the consequences of delegating work to foreigners illegally residing on Polish territory (Journal of Law of 2012 item 769) imposes new obligations on entities entrusting the performance of work to foreigners who are citizens of third countries. These relate to verification of the foreigner's residency permits. As indicated in previous chapters, foreigners may work in Poland if they have a work permit unless by virtue of special provisions they don't need such permission as well as are staying legally in the Republic of Poland. Documents for a stay on Polish territory may be valid visa (eg visa national) or Schengen visa or residency permit (and issued on the basis of such residency permit).

Information regarding templates of documents entitling to stay in the territory of the Republic of Poland are available on the website of the Public Information Bulletin of the Office for Foreigners: [www.bip.udsc.gov.pl](http://www.bip.udsc.gov.pl).

In accordance with the provisions of the said Act, an employer wishing to employ a foreigner, both under the contract of employment as well as of civil law agreement (e.g. contracts of mandate, specific-task contracts) will be obliged to verify it before taking up work by him whether he holds a valid document entitling the foreigner to stay in the Republic of Poland, to make a copy of such document and store such copy for the entire period of service by a foreigner. The Act though does not relate when the employed foreigner is:

1. a citizen of the European Union (EU),
2. a citizen of Iceland, Lichtenstein or Norway (EEC country),
3. a citizen of the Swiss Confederation (CH)
4. a family member of the person referred to in items 1-3, i.e.:
  - a. spouse of a citizen of the EU (EEC, CH)
  - b. direct descending (child) of citizen the EU (EEC, CH) or his wife, in of age to 21 years or the citizen staying on holding it back or of him wife,
  - c. direct preliminary (parent) of a citizen of the EU (EEC, CH) or his spouse, remaining dependent of such citizen or spouse.

The filling of the duties mentioned above and the application of the foreigner for social insurance (provided it is required) allows for avoidance of a penalty for employment illegal aliens, e.g. in the case, if it turns out that the foreigner is staying in Poland illegally, and his residence document has e.g. been forged.

### **13. Summary**

The Foreigners Act has been in force for a period of more than 2 years. The Office for Foreigners in its summary report after the first year of the Act being in force, comparing it to the last year of the “old” Foreigners Act being in force (1.05.2013-30.04.2014) and the first year of the “new” act being in force (01.05.2014-30.04.2015) stated that it had noticed a 76% increase in respect to all applications regarding legalisation of stay.

In addition, the Act has introduced numerous facilitations for foreigners including:

- 1) granting the right to obtain a single permit for work and stay as part of one procedure;
- 2) simplifications for foreigners studying in Poland and alumni of Polish schools;
- 3) the ability for foreigners holding a Polish Card [*Karta Polaka*] to apply for permanent residency in the Republic of Poland;
- 4) extending the time for filing of motions for the extension of a visa or residency permit;
- 5) extending the maximum time for which a temporary residency permit may be issued from 2 to 3 years;
- 6) simplification and objectification of criteria for the examination of meeting of premises allowing the receipt of a temporary residency permit to conduct business activities;

- 7) introduction of new premises for the granting of a permanent residence permit for persons of Polish descent or holding a valid Polish Card and intending to settle in Poland permanently;
- 8) introduction of institutional approval for tolerated stay and approval for stay in the Republic of Poland due to humanitarian reasons;
- 9) simplification of procedures relating to the granting of temporary and permanent residency permits to victims of trafficking.

#### **14. Sources of law**

- Foreigners Act of 12 December, 2013 (Journal of Law of 2013, No. 1650 as amended);
- Employment Promotion and Labour Market Institutions Act of 20 April 2004 (unified text in Journal of Law of 2016, item 645);
- Regulation of the Minister of Labour and Social Policies of 1<sup>st</sup> April, 2015 concerning the issuance of work permits to foreigners (Journal of Law of 2015, item 543);
- Regulation of the Minister of Labour and Social Policies dated 29 January 2009 regarding defining circumstances in which a work permit is issued to a foreigner regardless of detailed terms defined for the issuance of a work permit to a foreigner (unified text in Journal of Law of 2015, item 97);
- Regulation of the Minister of Labour and Social Policies of 21 April, 2015 concerning cases in which the carrying out of work by foreigners without the need to obtain a work permit is allowed without the need to obtain a work permit (Journal of Law of 2015 item 588);
- Act of 15 June 2012 on the consequences of delegating work to foreigners illegally residing on Polish territory (Journal of Law of 2012 item 769).

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*Last update: October, 2016*