

EMPLOYMENT OF FOREIGNERS IN POLAND

1. LEGAL GROUNDS

The fundamental law regulating principles associated with the undertaking and performance of work by foreigners within the Republic of Poland is the Employment Promotion and Labor Market Institutions Law of 20 April 2004 (unified text in Journal of Law of 2017, item 1065, "Law").

From 1 January 2018 the law of 20 July, 2017 amending the Employment Promotion and Labor Market Institutions Law and certain other laws had come into effect (Journal of Law of 2017, item 1543).

The main objective of this amendment is implementation of Directive 2014/36/EU of the European Parliament and of the Council of 26 February, 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. The intention of changes is also to counteract abuses currently taking place, more effective management of labor migration as well as improvement of the working standards of foreigners.

Provisions to date concerning work permits have been changed and a new type of work permit that shall relate to seasonal work being performer by foreigners has been introduced. Additionally, form of legalization of work consisting of the submission of a representation relating to entrusting the performance of work to foreigners from the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia and Ukraine has changed.

2. FUNDAMENTAL DEFINITIONS

A **foreigner** entitled to perform work in the Republic of Poland, as defined in the Law, 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 organized, or running of the affairs of a limited partnership or partnership limited by shares by the general partner, or acting as a proxy.

3. PRINCIPLES CONCERNING THE PERFORMANCE OF WORK IN THE REPUBLIC OF POLAND BY FOREIGNERS

In accordance with the provisions of Article 87 par. 1 of the Law, 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;
- 4a) holds approval for residence due to humanitarian reasons;
- 5) holds approval for tolerated stay in the Republic of Poland;
- 6) is taking advantage of temporary protection in the Republic of Poland;
- 6a) holds a valid certificate issued on the basis of Article 35 par. 1 of the Law of 13 June, 2003 concerning the granting of protection to foreigners within the territory of the Republic of Poland;
- 7) is the citizen of a Member State;
- 8) is the citizen of a European Economic Area country not being a member of the European Union;
- 9) 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;
- 10) is accompanying in the Republic of Poland a foreigner referred to in items 7-9 as a family member within the meaning of the Law of 14 July, 2006 concerning the entry into the Republic of Poland, stay and exit from the territory of the Republic of Poland by citizens of the Member States as well as their family members;
- 11) is a person referred to in Article 19 par. 2-3 of the Law of 14 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 (Journal of Law of 2017 item 900);
- 11a) holds a temporary residency permit referred to in Article 114 par. 1, Article 126, Article 127 or Article 142 par. 3 Law on Foreigners of 12 December, 2013 – in accordance with principles defined in such permit;
- 11b) is staying within the territory of the Republic of Poland on the basis of a residency document referred to in Article 1 par. 2 a) of Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permit for third-country nationals (OJ L 157 of 15.06.2002, page 1 as amended - Special edition in Polish chapter 19 volume 6, page 3 as amended) with the annotation "ICT" issued by another Member State with the purpose of such stay in the Republic of Poland being the performance of work as management employee, specialist or internship employee performing work as part of transfer within a company referred to in Article 3 item 13b of the Law on Foreigners of 12 December, 2013 and for a period not exceeding 90 days over a period of 180 days;
- 12) **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 Law on Foreigners of 12 December, 2013, or
 - b) on the basis of Article 108 par. 1 item 2 or Article 206 par. 1 item 2 the Law on Foreigners of 12 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 Law on Foreigners of 12 December, 2013, or
 - ca) on the basis of a document referred to in Article 61 of the Law on Foreigners of 12 December 2013 defining the status of a family member of a diplomatic mission member or consular post of a foreign country or other person equated with such on the basis of a law, agreements or commonly established international customs and remaining a cohabitant with such person if an international agreement or understanding concerning the performance of for money activities by the family member of a member of a diplomatic mission or consular post has been concluded between the Republic of Poland and such foreign country, 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-free travel.
- 13) is staying within the territory of the Republic of Poland on the basis of Article 108 par. 1 of the Law on Foreigners of 12 December, 2013 and:
- a) just prior to submitting a filing for the granting of a subsequent temporary residency permit referred to in Article 139a par. 1 or Article 139o par. 1 of the Law on Foreigners of 12 December 2013 has been staying in such territory on the basis of such permit and continues to perform work that such person was entitled to perform on the basis of such,
 - b) performs work as a management employee, specialist or internship employee performing work as part of transfer within a company referred to in Article 3 item 13b of the Law on Foreigners of 12 December, 2013 to the benefit of the acquiring entity that has submitted an application for the granting of a temporary residency permit referred to in Article 139o par. 1 of this Law and on terms and conditions stated in such application.

4. GROUNDS FOR ISSUING WORK PERMITS TO FOREIGNERS

Principles and manner for issuing work permits to foreigners are regulated by the Law and its executive regulations. In accordance with the Law and the Regulation of the Minister of Family, Labor and Social Policies of 7 December, 2017 on issuing a work permit for a foreigner and entry of a representation concerning the entrusting of work to a foreigner in the record of representations (Journal of Law of 2017, Item 2345), a work permit is required if the foreigner:

1. performs work in the Republic of Poland on the basis of an agreement with an entity whose registered office, place of residence or branch, plant or other form of organized activities are found within the Republic of Poland (**type A permit**);

2. performs work consisting of the holding of function of member of the Management Board of a legal entity entered into the commercial register or being a commercial company being organized or running of the affairs of a limited partnership or partnership limited by shares as the general partner or in connection with granting such person *procurare* for an aggregate 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 or its affiliated entity within the meaning of the Personal Income Tax Law of 26 July, 1991 (Journal of Law of 2016, item 2032 as amended) with the foreign employer **(type C permit)**;
4. performs work for a foreign employer not having a branch office, plant or other organized 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 30 days within a subsequent 6-month period for purposes other than those indicated in item 2-4 above **(type E permit)**;
6. performs work within the Republic of Poland within the scope of activities defined in regulations issued on the basis of Article 90 par. 9 of the Law on the basis of an agreement with an entity whose registered office or place of residence or branch, plant or other form of organized activities is located within the Republic of Poland (seasonal work), **(type S permit)**.

Procedures associated with the issuance of a work permit foreseen in the Law 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-free 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 employer files for a work permit (type A, B, C, D or E) to the appropriate province governor [*wojewoda*] and, in the case of filing for a temporary work and residency permit for a foreigner already legally staying in the Republic of Poland files to the province governor appropriate for the place of residence of the foreigner. In the case of a seasonal permit (type S) introduced from 1 January, 2018, the employer files with the appropriate county administrator [*starosta*] (county employment office).

The 2nd instance authority in respect to work permits is the minister responsible for labor issues whereas, in respect to temporary residency permits and work permits, the Head of the Foreigners' Office.

5. 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 entrusting the performance of work to a foreigner as to the inability to meet staffing requirements on the basis of the register of unemployed or persons seeking work or of the negative outcome of a recruitment process carried out for the employer (the above requirement means that the employer must strive towards maximum use of local resources by seeking out employees among Polish nationals). A permit is issued for a period of 3 years, however such term may be shortened.

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 and the possession of resources or conducting activities allowing for the future meeting of income criteria by the employer. The permit is issued for a period of 3 years however members of the Management Board of companies employing more than 25 persons may try to obtain a period for a period of 5 years.
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 labor 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*];
4. **in the case of type S work permit** – conduct specified types of activities in the following industries: agriculture, horticulture, tourism as part of activities recognized as seasonal and defined in the Regulation of the Minister of Family, Labor and Social Policy of 8 December, 2017 on regarding subclasses of activities pursuant to the Polish Classification of Activities (PKD), in which permits for seasonal work are issued. If the permit is to apply to a person being the citizen of a country other than the Republic of Armenia, the Republic of Belarus, the Republic of Moldavia, the Russian Federation or Ukraine, then information as to the findings of a market demand test – under the same conditions as for a type A permit – must be collected. The permit is issued for a period of no more than 9 months in a calendar year.

The province governor [*wojewoda*] (in the case of type A, B, C, D or E permits) and the county administrator *starosta*](in the case of type S permit shall not issue a permit if the employer has not provided the above information or has not complied with detailed requirements relating to the granting of a work permit. The province governor/country administrator shall also not grant a permit if, in the course of proceedings, the employer 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 who, prior to the lapse of two years from the date of him being found guilty of the illegal employment of foreigners, has once again been found guilty of a similar offence 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. The work permit defines the entity entrusting the performance of work to a foreigner, the position or nature of work that is to be carried out by the foreigner, minimum monthly remuneration of the foreigner on the given position, working time or number of hours per week or month, the nature of the agreement constituting grounds for the performance of work as well as the period of validity of the permit.

The province governor shall issue a decision regarding refusal to issue a work permit if in the given year the limit on the number of work permits referred to in Article 90b par. 1 has been exceeded.

Extension of the permit under the provisions of the Law takes place at the written request of the entity entrusting the performance of work to a 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.

6. SIMPLIFIED PROCEDURE (SO-CALLED REPRESENTATION PROCEDURE)

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 Law as well as the Regulation of the Minister of Labor and Social Policies of 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 missions, consular missions and international organizations personnel as well as their private house servants,
- 2) those authorized 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 labor market:

- 1) a foreigner authorized to represent a foreign entrepreneur in his branch or agency office located in the Republic of Poland;
- 2) persons being nationals of the Republic of Armenia, the Republic of Belarus, 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 that during the period directly prior to the filing of an application for the issuance of a work permit were employed for a period of no more than 3 months with the same employer and on the same position in accordance with the representation on the entrusting of the performance of work by a foreigner entered into the register of representations referred to in Article 87 par. 3 or 4 of the Law, however under the condition that the representation on entrusting the performance of work by a

foreigner entered into the register of representations is presented together with the contract of employment and documents confirming payment of premiums for social security insurance;

- 4) foreigner – sports trainer or sportsperson performing work to the benefit of sports clubs and other entities whose statutory activities are related to the dissemination of physical culture and sports;
- 5) physician and dental doctor undergoing training or carrying out a specialization program on the basis of laws regarding specializations of physicians and dental doctors.

In the case of a foreigner being a citizen of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine, to the extent not covered by the provisions of the permit for seasonal work, and for a period of no more than 6 months with a period of 12 consecutive months, a work permit shall not be required if the county labor office has, prior to the start of work by the foreigner, entered a representation on the entrusting of work to a foreigner to the register of representations and work is being performed in accordance with terms and conditions defined in such representation.

A mechanism safeguarding against abuse in the case of short-term work for the citizens of six stated countries has been introduced as of 1 January, 2018. New premises for refusal to enter a representation into the register have been added. Such premises include i.a. earlier fine for illegal employment of foreigners, arrears in payment of social security (ZUS) or tax payments.

An important change introduced on 1 January, 2018 is additionally the obligation to conclude a written agreement together with translation with the foreigner. This means that an entity entrusting the performance of work to a foreigner, including the situation of entrusting the performance of work to a foreigner exempt from the obligation to hold a work permit, is required to conclude a written agreement with the foreigner. Prior to signing, a translation of the agreement into a language understood by the foreigner, must be presented to the foreigner.

From 1 January, 2018, the entity entrusting work is also required to inform the county labor office of the actual commencement of work by the foreigner on the date of work commencement. The office shall also be informed in the event of premature termination of work by the foreigner.

The country administrator [*starosta*] shall issue a decision concerning refusal to enter a representation on the entrusting of the performance of work to a foreigner into the register of representations if the limit of representations referred to in Article 90b par. 3 has been exceeded for the given year.

7. 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 [*województwo*] 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 province governor [*województwo*] 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 place of employment, or its part thereof, is taken over by another employer;
- 4) the person/entity representing the employer has changed;
- 5) the foreigner has not commenced work within 3 months of the initial date of validity 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.

8. 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 Law, 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 Law on Foreigners of 12 December, 2013;
- 2) being the spouse of a Polish citizen or foreigner referred to in items 1 and 87 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 items 1 and 2 as well as 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 Law on Foreigners of 12 December, 2013;
- 5) is staying within the territory of the Republic of Poland on the basis of Article 108 par. 1 item 2 or Article 206 par. 1 item 2 the Law on Foreigners of 12 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) authorized 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;
- 8) 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 Labor 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 permitted 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 conducting training sessions;
- 2) participating in professional internships, holding advisory, supervisory functions or positions regarding specific qualifications and skills in conjunction with programs being performed as part of EU actions or other international aid programs;
- 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) performing individual or group artistic services;
- 7) those giving occasional lectures, papers or presentations;
- 8) athletes performing work for an entity having its registered offices in the Republic of Poland, in conjunction with sports competitions;
- 9) clergy, members of religious orders or other persons who perform work in connection with their religious function;
- 10) full-time students or persons participating in full-time doctorate studies;
- 11) students sent to perform professional internship;
- 12) students sent to perform work as part of professional internship;
- 13) persons performing work as scientific personnel in entities referred to regulations relating to research institutes.

Effective 1 January, 2018, § 1 item 20 of the Regulation pursuant to which the entrusting of the performance of work in the Republic of Poland to a foreigner is possible without a work permit for a period of no more than 6 months over a period of 12 consecutive months in the case of citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine is possible on the basis of an employer's representation on the intention to entrust the performance of work to foreigners to the county labor office has been repealed.

Amendment of the regulation in this respect is the consequence of regulations found in the Law of 20 July, 2017 amending the Law on the Promotion of Employment and Labor Market Institutions and certain other laws (Journal of Law, item 1543) regarding principles for permitting foreigners onto the Polish labor market within the scope regulated to date by § 1 item 20 of the amended Regulation. In conjunction with the introduction of a new work permit for seasonal work referred to in Article 88 par. 2 of the Law as well as grounds for the performance of work without a work permit on the basis of a representation concerning the entrusting of work to a foreigner entered into the register of representations referred to in Article 87 par. 3 of the Law.

9. 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-free travel.

Procedures associated with the granting of a visa to foreigners is covered by the Law on Foreigners. 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 means 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 representation entered into the register of representations concerning the entrusting of the performance of work to foreigners or certificate of entry of a filing into the register of filings concerning seasonal work.

A visa for the performance of work is issued for a term of stay that reflects the period indicated in the work permit or representation, however no longer than the time foreseen for the given type of visa.

In the event of a visa issued for the purpose of performance of work on the basis of a representation concerning the entrusting of work to a foreigner, the period of the stay for which the visa is granted may not exceed 6 months over a period of 12 consecutive months from the date of first entry of the foreigner into Poland.

A visa for the performance of work 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.

10. 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 that the work permit relates to one written 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;
- 6) provide to the province governor [*wojewoda*], regional organizational unit of social security office (ZUS), consul, State Labor Inspectorate authority, National Treasury Administration (KAS), Border Guard authority or Police a copy of issued decisions regarding work permits as well as information referred to in Article 88i of the Law.

11. CONSEQUENCES OF ENTRUSTING THE PERFORMANCE OF WORK TO FOREIGNERS ILLEGALLY RESIDING ON POLISH TERRITORY.

The Law of 15 June 2012 on the consequences of delegating work to foreigners illegally residing on Polish territory (Journal of Law of 2012, item 769) defines obligations imposed 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 sections, foreigners may perform work in Poland if they have a work permit unless by virtue of special provisions they don't require such a permit and are legally residing in the Republic of Poland. A document allowing for stay on Polish territory may be valid visa (e.g. domestic visa) or Schengen visa or residency permit (and issued on the basis of such residency card). 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.

In accordance with the provisions of said Law, an employer wishing to employ a foreigner, both under the contract of employment or a civil law agreement (e.g. contracts of mandate, specific-task contracts) will be obliged to check prior to the foreigner undertakes work, if the foreigner holds a valid document entitling him/her 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 the foreigner.

The Law though does not relate to a case in which 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 descendent (child) of a citizen of the EU (EEC, CH) or his/her spouse, of age of up to 21 years or being a dependent of such citizen or his/her spouse;
 - c. direct ascendant (parent) of a citizen of the EU (EEC, CH) or his/her spouse, remaining a dependent of such citizen or his/her spouse.

The fulfillment of the above duties and the application of the foreigner for social insurance (provided it is required) allows for avoidance of a penalty for employment of 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.

Fines for entities illegally employing foreigners have been increased from 1 January, 2018. The maximum limit of the fine for a breach of an employer associated with illegal employment has been increased to PLN 30,000.

12. SUMMARY

Summing up the above:

- 1) **A foreigner that is not, on the basis of law, exempt from the obligation to hold a work permit is required to hold a work permit;**
- 2) **The right to perform work in Poland by a foreigner also requires the securing of, in addition to a work permit, the appropriate type of visa unless the foreigner's legal stay in Poland takes place on the basis of visa-free travel;**
- 3) **The employer applies to the appropriate province governor [*wojewoda*] for a work permit (type A, B, C, D and E) and, in the case of a permit for temporary stay and work, a foreigner legally staying in Poland files to the appropriate province governor.**
- 4) **New type of permit – permit for seasonal work (type S); The employer files to the appropriate county administrator [*starosta*] (county labor office) – change from 1 January, 2018;**
- 5) **A work permit cannot be issued if the entity entrusting the performance of work does not meet requirements concerning the issuance of a work permit or has been fined for certain defined crimes or misdemeanors. Additionally, a work permit cannot be granted if the foreigner does not meet certain defined requirements, if he/she has been fined for certain defined crimes or if his/her personal data has been entered into the list of foreigners whose stay in Poland is not wished;**
- 6) **The possibility for citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia and the Ukraine to perform work on the basis of simplified procedures without the necessity to apply for a work permit, i.e. on the basis of a representation concerning entrusting the performance of work to a foreigner subject to registration in the register of representations. Representations may only be obtained in the event the foreigner**

will be performing work in sectors other than those foreseen for seasonal work permits. The term for the performance of work on the basis of a representation may not exceed 6 months over a period of 12 subsequent months – change from 1 January, 2018;

- 7) **Obligation of the entity entrusting the performance of work and consisting of informing the county administrator [*starosta*] of the start of work by a foreigner no later than the starting day of work as well as informing the county administrator of the foreigner not starting work - change from 1 January, 2018;**
- 8) **The entity entrusting the performance of work by a foreigner, also in the event of entrusting work to a foreigner exempt from the obligation to hold a work permit, is required to conclude an agreement with the foreigner in writing as well as to present to the foreigner a translation of the agreement into a language comprehensible to the foreigner - change from 1 January, 2018;**
- 9) **Possibility to introduce limits in the number of issued representations concerning the entrusting of work to a foreigner as well as work permits in a given year – changes from 1 January, 2018;**
- 10) **Increasing of fines for entities employing illegal foreigners – changes from 1 January, 2018.**

13. SOURCES OF LAW

- Foreigners Law of 12 December, 2013 (Journal of Law of 2017, item 2206 as amended);
- Law on Promotion of Employment and Labor Market Institutions of 20 April, 2004 (unified text in Journal of Law of 2017, item 1065 as amended);
- Regulation of the Minister of Family, Labor and Social Policies of 7 December, 2017 concerning the issuance of work permits to foreigners as well as entry of representation regarding entrusting the performance of work to a foreigner into register of representations (Journal of Law of 2017, item 2345)
- The Regulation of the Minister of Labor and Social Policies of 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 Labor and Social Policies of 21 April, 2015 concerning cases in which entrusting the performance of work to foreigners in Poland is possible without the need to obtain a work permit (Journal of Law of 2015 item 588);
- Regulation of the Minister of Family, Labor and Social Policies of 8 December, 2017 concerning countries in respect to whose citizens certain provisions regarding seasonal work permits and provisions regarding representations on entrusting the performance of work by foreigners apply (Journal of Law of 2015, item 2349);
- Law 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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