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Working in Poland -- new employment law for foreigners

KRAKÓW, 2017.

As of June 1, 2017, changes to the employment law in respect, among others, of temporary workers came into force. Companies employing temporary workers in Poland and transferring such workers abroad must prepare for significant cost increases and an increase in bureaucratic restrictions related to regulatory changes. Changes in regulations also apply to companies bringing foreigners to Poland.

There was expanded the catalogue of sanctions, introducing penalties of up to PLN 100,000.00 and increasing the number of cases in respect of obligatory removal of an entrepreneur from the register of employment agencies.



Exceptions from work permit

- ▶ Exceptions from work permit obligation are based on the decision of the Minister of Labour and Social Policy of 2015, which is supposed to clarify the circumstances or conditions which have to be fulfilled in order to hire the foreigners without the necessity of obtaining a special permit.



Exceptions from work permit

- ▶ The decision of the Minister contains an enumeration of situations where the work permit obligation will not be applied. Foreigners who work as **coaches** or who perform **advisory** or **supervisory** functions in cases **connected to EU** or other international aid programs, foreign languages **teachers**, members of the **armed forces** or civil personnel stationed in Poland based on international agreements and **foreign media correspondents** after receiving special accreditation from Polish Secretary of State **do not need** to apply for work permit.



Exceptions from work permit

The same applies to clergymen if their work is connected to religious matters, **foreign students** completing their studies in Poland, especially doing **internships** or other international projects, **members** of cultural or educational **exchanges** or **humanitarian workers**, research institutes' employees and working for European Parliament delegates.



Exceptions from work permit

Foreigners performing, individually or in teams, **artistic services, giving lectures** on educational or artistic matters or sportsmen are permitted to perform work in Poland, but their work is limited to **30 days** in calendar year.

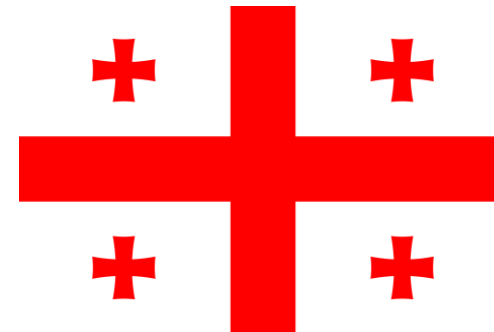


Exceptions from work permit

However, employees from

- ▶ Russia,
- ▶ Ukraine,
- ▶ Moldova,
- ▶ Belarus,
- ▶ Armenia
- ▶ and Georgia

are **excused** from obtaining **work permit** on condition that the employer will notify local job center about working conditions provided to foreign workers, employment contract will take a **written form** and the total employment time will **not exceed six months** in one year.



Seasonal work permit

- ▶ 1) the amount of the remuneration that will be determined in the contract with a foreigner shall not be less than that of a worker at the same or similar position at the same time;
 - ▶ 2) the entity entrusting the performance of work to a foreigner has attached to the application for a seasonal work permit the information of the governor, referred to in the statute.
- ▶ The governor examines the applications for seasonal work permits, taking into account the priority of foreigners who have worked for the entity on the basis of a seasonal work permit at least once in the five years prior to the application, if they work under a contract of employment.

Seasonal work permit

- ▶ The seasonal work permit is issued for a limited period which may not exceed **9 months** in a calendar year.
- ▶ Member States must also determine the maximum period for which seasonal workers may be authorized (between five and nine months). In order to make the system more flexible for seasonal workers, this period was set to nine months, counted as a period of 9 consecutive months of seasonal work.
- ▶ In the case of a foreigner who has entered the territory of the Republic of Poland on the basis of a visa issued for **seasonal work or visa-free travel** in connection with an application for a seasonal work permit entered in the register of applications, the period is counted from the **date** of the foreigner's **first entry** into the territory of the **Schengen States** during the calendar year.

Seasonal work permit

- ▶ The period of seasonal work will therefore be extended and the adoption of the calendar year as a settlement period will help to avoid the problem signalled in the notification procedure, particularly in respect of agriculture, in the case of a different starting point of seasonal work in the subsequent years. However, the period will be calculated from the date of the first entry of a foreigner into the territory of a Schengen state.
- ▶ At the same time, in order to efficiently verify the date of crossing the border, the public employment services **will obtain**, through teleinformatic systems, **access to the data** collected by the **Border Guard** concerning the registered border crossings by foreigners. As a rule, office workers will only **use** this data **incidentally** - especially if the stamp confirming the fact of crossing the border in the foreigners's travel document is illegible.



Short-term work

- ▶ Due to the scope of the directive and the impact it has on the regulation of the procedure of the foreigner's work under the so-called clarification, it is also necessary to amend the regulations on short-term work of foreigners (up to 6 months in the period of 12 months) in respect of work not covered by seasonal work.
- ▶ Declarations of entrusting the work to a foreigner to be entered in the register of declarations will concern only such works for which the seasonal work permit is not required.

Foreigners' work register

- ▶ In order to effectively carry out tasks related to the issuance of work permits and the registration of declarations, there will be created a register of foreigners' work, which will contain information on standard work permits, **seasonal** work permits, **declarations** made in order to enter into the register and for the purpose of informing the governor about the **lack of ability to meet staffing needs** in the local labour market.



The declaration of entrusting work to the foreigner shall include:

- name or first name and surname,
- permanent address or registered office address,
- telephone number and fax number,
- Tax Number and Statistical Number - in the case of a business entity or Polish Identification Number - in the case of an individual,
- a statement about the rules governing the assignment of employment to foreigners;
- the number of the entry into the register of employment agencies - in the case of an entity entrusting work to a foreigner that runs an employment agency providing temporary employment services,
- the symbol of Polish Business Classification and a description of the activity connected with the foreigner's work,
- name (s) and surname of the foreigner
- gender of the foreigner
- date of birth of the foreigner
- citizenship of the foreigner
- the name, series, number, date of issuance and expiry date of the travel document of the foreigner
- the visa number or residence card number and the period of validity of this document if the foreigner stays in the territory of the Republic of Poland
- the information on the legal basis of the foreigner's stay in the territory of the Republic of Poland and the expected manner of using the declaration entered in the register of declarations;

Temporary residence permit to perform work within an intra-corporate transfer:

- ▶ Temporary residence permits for the purpose of performing work within an intra-corporate transfer shall be granted when the purpose of the stay of the foreigner on the territory of the Republic of Poland is to perform work in a host unit established in the territory of the Republic of Poland, as a manager, specialist or intern within the intra-corporate transfer and if **the following conditions are met:**



Temporary residence permit to perform work within an intra-corporate transfer:

A foreigner:

- ▶ has adequate professional qualifications, experience and knowledge of the subject-matter of the activity of the host entity,
- ▶ meets the qualification requirements and other conditions in the case of the intention to entrust him with performing work in a regulated profession,
- ▶ immediately prior to the date of an intra-corporate transfer, he was continuously employed in the same enterprise or in the same enterprise group for a period of at least: - 12 months - for senior management staff and specialists, - 6 months - for interns.

Temporary residence permit to perform work within an intra-corporate transfer:

A foreigner:

- ▶ has health insurance,
- ▶ is guaranteed a place of residence on the territory of the Republic of Poland,
- ▶ at the end of the intra-corporate transfer period, will be able to transfer back to the parent employer or another enterprise belonging to the same group of companies established outside the European Union;

The contract concluded in writing specifies:

- ▶ the period of the intra-corporate transfer and the headquarters of the host entity,
- ▶ the position of manager, specialist or intern in the host entity,
- ▶ remuneration and other working conditions in the host entity.

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- ▶ Legal assistance in setting up and operating business by foreign investors in Polish Special Economic Zones;
- ▶ Legal support in obtaining tax exemption in Polish Special Economic Zones;
- ▶ Negotiating the conditions of investing in the Special Economic Zones with the administrators of SEZ;
- ▶ Legal assistance in purchasing and leasing real property in Polish Special Economic Zones.

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Representing international Clients before tax and administrative authorities in Poland:

- ▶ Legal assistance in obtaining relevant licences and permits, administrative decisions and certificates to conduct business in Poland;
- ▶ Representing international Clients in the Office of Competition and Consumer Protection;
- ▶ Representing foreign employers before employment law authorities and before administrative authorities in Poland (including Polish governors);
- ▶ Representing foreign companies before the Inspector General for Personal Data Protection.

Legal advice on cross border contracts:

- ▶ Legal support in negotiating investment contracts with Polish business partners;
- ▶ Drafting, reviewing and negotiating international contracts with Polish entrepreneurs;
- ▶ Securing contractual interests in such transactions as sales, distribution or licensing to Poland;
- ▶ Securing payment in Poland;
- ▶ Conducting local and cross border negotiations with the Clients' business partners in the Polish market;
- ▶ Advising on contractual penalties;
- ▶ Advising on security interests, mortgage, promissory notes, liens and registered pledges in Poland.



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