

## Work, economic activity and legalization of stay in Poland

The new Act on Foreigners introduced significant changes in the conditions of legalization of stay of foreigners who work or carry on economic activity in Poland. The biggest change is the introduction of a single residence permit and work permit. In this matter, the foreigner files an application to the Office of the Voivodeship, competent for his/her place of residence.

**Temporary residence permit and work permit** is issued when:

- the foreigner has health insurance within the meaning of the provisions on universal health insurance or a confirmation of coverage by the insurer for medical expenses in the territory of Poland
- the foreigner has a stable and regular income source, sufficient to cover the cost of maintenance of the applicant and his/her dependants,
- the foreigner has a guaranteed place of stay,
- the salary offered to the foreigner is not lower than the proposed rates for work of a similar nature or the salary on a comparable position proposed to the Polish workers in the industry.
- the powiat labour office has not been able to find a candidate from among job seekers.

The amount of the foreigner's monthly income must be higher than the minimum income provided for by the Act on Social Assistance (for all the dependants of the foreigner).

As a general rule, the condition of the issuance of a work permit is that an employer intending to employ a foreigner should obtain a document from the staroste indicating the lack of appropriate candidates from among the unemployed and persons seeking employment (after doing the so-called "labour market test") and should offer the foreigner a salary which is not lower than the salary of Polish employees.

The labour market test is not required in case of foreigners who do not need a work permit in Poland, as well as those engaged in professions that do not require such tests, in accordance with the Act on Employment Promotion and Labour Market Institutions.

In the case of certain professions, a foreigner must in addition present evidence that he/she will be able to take up the job (in "closed" professions - more than 300 jobs in Poland, including medical profession, professions related to law, architecture, but also in other sectors, such as personal security).

An application for work permits and temporary residence permit may not be filed when the foreigner:

- has any type of protection in Poland: refugee status, subsidiary or temporary protection, a tolerated residence permit or a residence permit on humanitarian grounds or political asylum;
- his/her application for refugee or asylum status is being examined;
- has permanent residence or long-term EU resident status;
- resides in Poland on the basis of a Schengen visa issued for humanitarian reasons or due to the interest of the State;
- has been arrested or is in a detention centre;
- may voluntarily leave the country within the period of voluntary return, specified in the decision on return;
- is required to leave the territory of Poland following the refusal of renewal of a Schengen visa, a temporary or permanent residence permit (or the withdrawal of such a permit), refusal of international protection or withdrawal of a permit for humanitarian reasons;

- is a worker appointed to work in Poland by foreign employers;
- entered the Polish territory in the context of the facilitation of visa issuance for foreigners travelling for commercial or investment purposes;
- conducts business activities in Poland.

### ***Refusal of permits***

No permit shall be issued if:

- the foreigner does not meet the requirements for a type of permit,
- foreigner's details are in the list of foreigners who are undesirable in Poland or in the SIS for the purposes of refusing entry,
- this is due to considerations related to defence or security of the State or protection of public order;
- the foreigner has made a false statement or has provided false documents,
- the foreigner has tax arrears in Poland,
- the foreigner has not repaid the costs associated with the obligation to return,
- he/she must undergo compulsory treatment, because of the Polish rules on infectious diseases, but he refuses treatment,
- he/she filed an application during his/her illegal stay in Poland or they stay illegally in Poland.
- in the past the employer or foreigner were punished for offences relating to illegal employment.

The permit issued to a foreigner for residence and work concerns a single employer and type of work described in the permit. The permit concerns work at a specific position, with a defined pay and a specified number of hours.

The foreigner will be required to:

- request, without delay, the Office of the Voivodeship to amend the permit in the case of new working conditions (with the exception of changes of name, address or legal form of the employer or a pay rise). Non-compliance with this obligation may result in the revocation of the permit.
- notify the Voivodeship Office about loss of employment within 15 days of the date of this event.
- submit to the Office an application on replacing their residence permit if the card data have changed (such as the address).

### ***EU blue card***

(Temporary residence permit for work in highly skilled professions)

It is a permit for skilled workers who have a highly qualified job in Poland. In order to have it granted, it is necessary, among other things, to have a contract of employment for a period of at least 1 year, high enough incomes, and the qualifications required. The permit may be granted for the maximum period of 3 years. It is granted for a period of about three months more than the period of employment, but not more than 3 years.

This permit is issued to start working for a particular employer under certain conditions. A change in working conditions within two years from the date of permit requires notification of the Office that issued it. The notification must take place within 15 days. The change of employer requires the foreigner to seek a new permit. Non-compliance with these obligations may result in a withdrawal of the permit.

To apply for an EU blue card, a foreigner presents:

- a contract of employment for a period of at least 1 year (contracts of mandate [umowa zlecenie] or service contracts [umowa o dzieło] are also acceptable),
- qualifications and the necessary documents to do the work, in the case of regulated professions (“closed”)
- evidence of higher education
- health insurance within the meaning of the provisions on universal health insurance or a confirmation of coverage by the insurer for medical expenses in the territory of Poland.
- a work permit or a permit to carry on economic activity when it is required.

The salary amount shall be at least at 150% of the average wage in Poland.

The employer must also carry out a labour market test.

The provisions allow a foreigner to be temporarily unemployed twice at the time of the permit. Jobless spells cannot exceed three months.

### ***Residence permit to a worker appointed to work in Poland by foreign employers***

A worker appointed to work in Poland by foreign employers should seek a special permit. A foreigner can get this permit when he/she has a work permit, or had the right to work in Poland without permission, or when the nature of the work does not require a permit.

To obtain this permit, a stable and regular income source is required that allows a foreigner to cover the cost of living in Poland and that of his/her dependants in the amount higher than the minimum income provided for by the Act on Social Assistance. He/she is also required to have health insurance within the meaning of the provisions on universal health insurance or a confirmation of coverage by the insurer for medical expenses in the territory of Poland. The alien must also prove that he/she has a place of residence in Poland.

### ***Temporary residence permit for the purpose of economic activity***

Starting a business in Poland does not give an automatic right to reside in Poland - but it can be a reason for the request. To submit the request, the following is necessary:

- health insurance within the meaning of the provisions on universal health insurance or a confirmation of coverage by the insurer for medical expenses in the territory of Poland.
- a stable and regular income source that allows the applicant to provide for himself and members of their family,
- a permission for activities where it is required,
- a place of residence in Poland.

The company covered by the application must also meet certain conditions:

- activities must bring an income of at least twelve times the amount of the average monthly wage in the voivodeship where the registered office is located, or
- the company must employ at least two employees full-time for a minimum of one year before filing the application. The workers must be Polish or foreigners, who are entitled to work without authorisation in Poland, or
- the company demonstrates that it has the financial resources required to meet these requirements in the future or that it takes measures in this direction, especially if its activities are beneficial to the Polish economy by contributing to an increase in investment, transfer of technologies, introduction of beneficial innovations and job creation.

The provisions relating to legalization of stay of foreigners with regard to their presence on the Polish labour market can be found in Section V of the Act:

Chapter 2 - Residence and work permits

Chapter 3 - EU blue card

Chapter 4 - Residence permit for delegated workers

Chapter 5 - Legalization of stay in the context of economic activity.