



Warsaw, 17<sup>th</sup> November 2017

## **Main changes in form of legalization of work of non-EU citizens in Poland after 1<sup>st</sup> January 2018**

***New Act dated from 20<sup>th</sup> July 2017 change the Act on the promotion of employment and institutions of the labour market and other related acts.***

On 1<sup>st</sup> August 2017, the President of the Republic of Poland signed the act dated 20<sup>th</sup> July 2017 implementing amendments to the regulations on employment of non-EU citizens under the provisions of Directive 2014/36/EU of the European Parliament and of the Council of 26<sup>th</sup> February 2014 on the conditions of entry and residence of third country nationals who are supposed to be employed as a seasonal worker.

### **What does the new act introduce?**

#### **New type of work permit – seasonal work permit**

As of 1<sup>st</sup> January 2018 the changes to existing work permit regulations will apply.

Changed regulation introduces a new type of the work permit, covering seasonal works to be performed by non-EU employees – **seasonal work permit**.

The Directive points out three areas, where the works may have the seasonal character – agriculture, horticulture and tourism.

The seasonal work permit will be issued by the head of the county, competent as per employer's main seat or place of residence of entity entrusted the work to a non-EU citizen for the period of up to nine months in a calendar year.

Seasonal work permit can be granted if:

1. the amount of remuneration specified in the contract is not less than that of employees performing the same type of work in the same time or in a comparable position;
2. the employer provides with the application for a seasonal work permit confirmation issued by the head of the county about the lack of ability to meet the employment needs of the employer based on the register of unemployed jobseekers or the negative result of recruitment process organized for the employer.

In the application for seasonal work permit, the employer shall specify the terms of employment. Upon receiving an approval, the determined conditions will be binding – the employer will be obliged to sign a contract with a non-EU citizen for at least the same conditions (it will be possible to sign a contract for better conditions than those determined in seasonal work permit).

Seasonal work permit will be granted for definite period, but not longer than for nine months in a calendar year.

The period will be calculated as from the first entrance date to a territory of the Schengen zone. For the purpose of verification the dates of crossing the borders, the public employment services will obtain access to the data collected by the Border Police concerning the registered border crossings via the information systems.

Prolongation of seasonal work permit can be granted for the period which will not exceed nine months in a calendar year in total and is calculated as from the first day of arrival to the territory of the Schengen zone.

#### [Authority responsible for issuing seasonal work permit and application fee](#)

The employer shall submit an application for seasonal work permit to the Local Labour Office (the PUP i.e. Powiatowy Urząd Pracy). The PUP will have 7 days for issuing the decision in cases not demanding additional explanations. In a need of additional explanations and more complicated cases, the term for issuing the decision can be prolonged up to 30 days.

For issuing seasonal work permit the employer shall pay application fee in the amount not exceeding 10% of minimum salary for work for each foreign national. The fee for one application is supposed to amount to 170 PLN.

#### [Visa for a foreigner](#)

Registered applications for seasonal work permits will allow to a third country national to apply for Polish visa.

Introduced changes foresee to start seasonal work performance upon granting visa (Schengen Visa – for stays not exceeding 90 days or national visa for stays exceeding 90 days) along with granted new type of seasonal work permit.

In order to obtain visa, non-EU national will be obliged to submit the document confirming place of accommodation in Poland (lease agreement or special agreement with employer e.t.c.).

### Short-term work – new form of registering the Declarations of intent to entrust the work for a period up to 6 months

The possibility of registration the Declarations of intent to entrust the work for a period of up to 6 months within consecutive 12 months will be maintained. The procedure keeps to be conducted by the local labour offices (The PUP).

The citizens of the same six countries will be allowed to apply for short-term work: **Ukraine, Armenia, Belarus, Georgia, Moldova and Russia.**

Registration of the declaration will be possible for the citizens of the aforementioned 6 countries and will cover works other than seasonal works.

The regulation impose additional obligation on the employers to notify the competent authorities about taking up or not taking up an employment by foreign national who applied for it.

The employer whose declaration has been entered in the register of declarations shall notify in writing the competent county labour office of:

- 1) taking up the work by the non-EU citizen at the latest on the day of commencement of work;
- 2) not taking up the work by the non-EU citizen in 7 days as from the start date of employment specified in the declaration of intent to entrust the work.

The registration procedure is chargeable and will cost not more than 10% of the minimum wage for each foreigner. The expected amount will be 30 PLN per one declaration.

### The reasons for refusing to issue a permit for seasonal work and entering a declaration on entrusting the work to non-EU citizen to the record of declarations

The law introduces new grounds for:

1. refusal to issue a work permit,
2. repeal the work permit already issued,
3. refusing to register a declaration of intention to entrust the work,

if the circumstances indicate that the application for work permit or declaration to entrust the work has been submitted without connection to:

1. actual intention of entrusting the work,
2. declaration was registered for the purpose other than real intention to perform work for the given employer,
3. the employer has failed to fulfill obligations which relate to conducting its activity or entrustment of work to other persons.

### Introduction of limits on issuing the work permits, including seasonal work permits and registered declarations

The Act provides the possibility of introducing the limits on issuing the work permits, seasonal work

permits and registered declarations based on labour market needs, security of the state and public order and the principle of complementarity of employment of non-EU citizens vs Polish citizens.

### Obligation to maintain records of matters in teleinformation systems

The Act introduces the regulations related to the principles of running in the teleinformatic system the records of cases concerning the registration of work permits and seasonal work permits issued and registered declarations of intention to entrust the work to a foreigner.

The period of storage the data in the central register is 10 years.

### Entry into force of the Act

The Act comes into force on 1<sup>st</sup> January 2018, with the exception of Art. 12 concerning the declarations of intention to entrust the work to a foreigner which would be performed after 31<sup>st</sup> December 2018 and which comes into force 14 days after the date of publication, as well as the provisions concerning the transfer of information by the authorities of the National Tax Administration to the Governors and the County Heads about the employers entrusting work to the non-EU citizens by using means of teleinformatic systems maintained by the minister responsible for labour, which enter into force on 1<sup>st</sup> July 2018.