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Changes in the mobility of foreigners from outside the EU

From February 12 this year the amended Act on foreigners is applicable, which implements into the Polish legal order provisions of the European Parliament and the Council Directive 2014/66/EU on the conditions of entry and residence of third-country nationals as part of an intra-corporate transfer (hereinafter referred to as "ICT directive").

The amendment introduced important changes in the movement of foreigners from outside the European Union, who are increasingly willing to come to work in Poland.

Mobility of foreigners from outside the European Union

The amended Act included a definition of mobility, which should be understood as the entitlement of a foreigner to enter and stay on the territory of EU Member States in order to work in a host entity established in a given country as a management employee, specialist or an intern.

A new type of a residence permit

A temporary residence permit for a foreigner has been attached to the current catalogue of permits for residence in the Act on foreigners, in order to perform work as part of an intra-corporate transfer (that is a temporary secondment).

The permit will be issued by the voivode after examining whether the foreigner arriving as part of secondment meets the statutory conditions, which are, among others:

- possession of adequate professional qualifications and experience necessary in the unit to which he/she is to be transferred (in the case of managers and specialists) or a diploma of completion of higher education (in the case of interns),
- uninterrupted employment immediately before intra-corporate transfer within the same enterprise or group of enterprises for a period of at least:
 - 12 months - in the case of work as a management employee or a specialist,
 - 6 months - in the case of working as an intern.
- possession of health insurance,
- guaranteed residence in the territory of Poland,
- possibility of returning to the home employer after the secondment or transfer to another enterprise within a group of companies established outside the EU.

Maximum period of secondment

The amendment to the Act introduces a maximum period of secondment to Poland – for interns it will be 1 year, and for managers and specialists – 3 years.

After this period, the seconded person will have to leave the territory of the EU Member States, unless he/she applies for a new permit earlier – based on a different basis of residence.

Contract requirements

The contract on the basis of which the foreigner is to work, which is the basis for a temporary secondment, should specify the period of transfer of the foreigner within the enterprise, the seat of the receiving unit, the foreigner's job post in the receiving unit and the remuneration and other working conditions of the foreigner in the receiving unit.

In addition to the implementation of the provisions of the ICT Directive, a number of significant changes have been introduced to the Act on foreigners. Below are those of greatest significance.

Employment agreement and information from a starost – also during the procedure

So far, the information from the starost on the inability to satisfy the employer's employment needs based on local registers of the unemployed and jobseekers was already required at the stage of submitting the application in the voivodship office. Now, the information from the starost and the signed employment agreement can be provided already during the proceedings.

Occupations desirable for the economy and employment limits

According to the new regulation, the Minister of the Interior in consultation with the ministers competent for labour and economy will be able to determine by a regulation:

- a list of professions desired for the Polish economy,
- the limit of new type permits granted, taking into account the needs of the labour market, as well as issues of state security and public order.

Knowledge of the Polish language

Under the current legal status, foreigners do not need to know Polish in order to apply for permanent residence in Poland. The new regulation introduces the knowledge of Polish language at the minimum B1 (intermediate) level as an obligatory condition for foreigners applying for permanent residence in Poland. This obligation does not apply to children of foreigners under 16 years of age and those already born in Poland.

New form templates

Finally, the key thing when completing documents – new templates for applications for temporary residence permits have been introduced. It is worth making sure that the data is entered into the current form.

If you are interested in the details of this Act, please contact us.

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