

## Dear Readers,

We are happy to present the summer issue of our quarterly *HR Perspectives Global Mobility & Immigration*.

Apart from good weather, the summer brings some important regulatory changes concerning the employment of non-nationals, including:

- confirming financial means by non-national students applying for a residence permit in Poland,
- obtaining a PESEL number without registering a permanent address, and
- regulating procedures for US citizens' family members coming to Poland.

We will look at these changes more closely below. Moreover, the government is working on amendments to the Act on foreigners and also facilitation measures for Belarusians under the "Poland. Business Harbour" programme, which we also discuss in our newsletter.

Finally, we additionally focus on the secondment of workers to Poland. Our main objective is to underline the importance of complying with the applicable rules for seconding employees and the consequences for non-compliance.

**Enjoy your reading!**

**Karolina Schiffter**



## Non-compliant secondment to Poland can be costly

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**Author:**

**Bartosz Tomanek**, advocate, senior associate, bartosz.tomanek@pcslegal.pl

International companies often post employees to their Polish subsidiaries. While in Poland, the secondee remains employed by their original employer but carries out projects and works directly or indirectly for the Polish company.

One of the essential conditions for correct employee secondment under labour law is that the seconded employee remains in an employment relationship with the original employer, not only formally, based on an employment contract, but also in reality.

It sometimes happens that this rule is not strictly adhered to and the actual authority over the seconded employee is transferred to the host company in Poland. The Polish manager often supervises and manages the seconded employee, deciding on the time, place and way of working in Poland.

What is more, the local manager sometimes even decides about a pay raise for the seconded employee.

It carries a risk that an employment relationship has actually been established between the Polish entity and the seconded employee, which can have a negative impact on the Polish company but may also affect the seconded employee. It can include the following:

- authorities may determine that the seconded employee is employed by a Polish company, and therefore is entitled to the same salary and benefits as local employees (including, e.g., years of service awards);
- authorities may determine that the existing documents legalizing the stay and/or work of the seconded employee are incorrect and need to be changed because they were obtained by a foreign company instead of the Polish one;
- it may be necessary to cover the seconded employee with Polish social insurance and make obligatory contributions to the Social Insurance Institution (EU secondees are, as a rule, exempt from this obligation); and
- in some cases, it may be necessary to pay income tax for such an employee in Poland.

Polish companies receiving seconded workers should therefore pay close attention to how the work of secondees is actually organised and should not assume authority over them.

## Student's financial resources still important for a residency permit

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**Author:**

**Marcin Snarski**, associate, marcin.snarski@pcslegal.pl

Although students from abroad are not uncommon at Polish universities, they need to meet complex requirements when applying for a residency permit in Poland. For example, since April 2019, very detailed requirements concerning utility charges that a student must be able to pay while staying in Poland have been introduced.

This issue is important also for employers who hire students. Insufficient evidence of students' ability to cover the costs of studying and living in Poland is, from our observations, one of the most common reasons for a negative decision concerning student residency permits. This is not surprising, given that the means of support that students must declare can be as high as over 30 thousand zlotys.

On 7 May this year, changes were introduced in the area of proving means of support, which should make the situation of non-national students a little easier. The changes, although seemingly minor, are significant in practice – even the details we discuss below could play a part in residency application rejection.

Firstly, it is now possible to prove means of support not only by providing the account balance certificate of the student but also of the person who supports the student (usually a parent). Previously, parents often had to transfer large sums of money to the student's account for the sole purpose of demonstrating it at the immigration office. Moreover, the bank or credit union (pl. SKOK) issuing the certificate does not have to be registered in Poland. At present, certificates from institutions registered in other EU and EFTA countries or Switzerland are also accepted.

However, it is still not possible to use a bank certificate from the country of origin, if it does not belong to the above-mentioned group.

The second change concerns the option to present a certificate of earnings also from the person who supports the student, even if those earnings are not generated in Poland or the EU. Up to now, it has not been possible to declare the current earnings of the parents.

## Easier legalisation of residency for entrepreneurs and other changes

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**Author:**

**Kinga Polewka**, attorney at law, associate, [kinga.polewka@pcslegal.pl](mailto:kinga.polewka@pcslegal.pl)

Work on two draft amendments to the Act on foreigners is in progress. The most important changes, in our opinion, are presented below. When this newsletter is being released, the draft is under review.

1. The draft offers facilitation measures for self-employed non-nationals in Poland. Currently, they have to fulfil several requirements, for example, they must generate a sufficiently high income and can employ workers under specific conditions set out in the applicable law. These requirements are to be waived for those who participate in support programmes for non-nationals taking up and pursuing self-employment in Poland. At the moment, this applies only to participants of the "Poland. Business Harbour" programme but under the discussed draft a list of such programmes is to be drawn up.
2. The Polish Border Guard Commander-in-Chief is to take over a significant part of the Head of the Office for Foreigners' competencies. The Commander is to handle the matters in which the Head of the Office for Foreigners acts as a higher-level authority. The competencies of the Commander will also be extended to include issuing decisions on the expulsion of EU citizens or their family members from Poland and overturning such decisions, as well as organising voluntary returns of non-nationals to their home countries.
3. Moreover, the Border Guard are to be given direct access to the Social Security Institution's (pl. ZUS) ICT system. Currently, the Border Guard have access only to data submitted to the National Labour Inspectorate. Providing the Border Guard with access to the ZUS system should result in expediting immigration proceedings because if needed, the Border Guard will no longer have to request information from ZUS but will obtain it directly from the system.
4. The draft also provides for watering-down of certain provisions concerning the illegal crossing of an internal Schengen border and illegal stay. The former will no longer require obliging a non-national to return (as it is now) if justified by a particularly important interest of the non-national. As for the latter, the draft stipulates it will be possible to withdraw, in justified cases, from imposing on the foreigner a re-entry ban to Poland and the Schengen area, which is now obligatory.
5. At the same time, the fee for issuing a decision on lifting the re-entry ban to Poland is to be significantly increased - from 10 zlotys to as much as 350 zlotys. Moreover,

the time limit for appealing in cases of non-nationals who were obliged to return will be shortened. As it turns out, not all of the intended changes under the draft will be beneficial to foreigners.

It is assumed that the discussed amendments would enter into force immediately after the summer holidays, namely on 1 September 2021.

### **Further facilitation measures for employing IT specialists from Eastern Europe**

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**Author:**

**Tomasz Rogala**, attorney in law, senior associate, [tomasz.rogala@pcslegal.pl](mailto:tomasz.rogala@pcslegal.pl)

A boom in hiring Belarusian IT specialists is in full swing. Since the introduction of the "Poland. Business Harbour" programme in August 2020, hiring such specialists is much easier than ever before. The waiting time between the decision to recruit a Belarusian for an IT position and the actual start of work can be reduced to as short as 2 weeks.

The new solutions mean that employers who want to employ Belarusian IT specialists do not have to go through the tedious process of obtaining a work permit or registering a declaration of entrusting work. Before employing a candidate, they only need to make sure that the specialist has an appropriate visa issued by the Polish consulate under the "Poland. Business Harbour" programme. Obtaining such a visa is simple and fast (from a week to several weeks).

At the moment, further regulatory changes are underway. They will benefit companies that would like to work with IT specialists from Belarus on a B2B basis. Although Belarusians arriving in Poland under the "Poland. Business Harbour" visas can set up a business here, it is difficult for them to obtain a residency permit and extend their stay after the expiry of the one-year visa. When the amended legislation becomes effective, extending the stay of a Belarusian participating in the "Poland. Business Harbour" programme will no longer be subject to the existing restrictions. In particular, Belarusians applying for a residency permit to continue business activity will not have to prove that in the previous year they achieved a certain income threshold or employed at least two people.

### **Changes to entry rules for US citizens arriving in Poland**

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**Author:**

**Paulina Kubica**, immigration consultant, [paulina.kubica@pcslegal.pl](mailto:paulina.kubica@pcslegal.pl)

Poland's entry rules during the pandemic are changing by the minute. The last significant change became effective on Saturday, 19 June 2021. Following that day, US citizens can enter Poland directly from their home country, regardless of the purpose of entry. The condition is to arrive in Poland by plane.

Thus, the list of countries whose citizens can fly directly to Poland has expanded to include US citizens. Until now, it included citizens of Japan, Canada, New Zealand, Thailand, the Republic of Korea, Tunisia, Australia and Israel, as well as anyone who has the right to reside in any of these countries.

In practice, this means that from now on Americans travelling to Poland for work or study, can be joined by their family members without any problem, provided that they are also US citizens or have the right to reside in the US (e.g. "Green Card"). Previously, when such persons wanted to travel to Poland, they had to obtain entry permission from the Border Guard.

However, this rule does not apply if they arrive in Poland by other means of transport than the plane, for example, by land from outside the EU.

### PESEL for non-registered foreigners

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**Author:**

**Maciej Sielicki**, associate, [maciej.sielicki@pcslegal.pl](mailto:maciej.sielicki@pcslegal.pl)

Before 1 June, PESEL was assigned to non-nationals only in circumstances prescribed by law, such as a foreigner's birth in Poland and permanent address registration, or for other matters where a non-national is required by law to have a PESEL number.

In practice, before 1 June 2021, obtaining a PESEL number by non-nationals who were not able to fulfil their address registration duty because, for example, their visa or residence card expired while the temporary residence permit proceedings were pending, was very difficult. The authorities have often questioned the legal grounds stated in the application and refused to assign a PESEL number. For example, the requirement to have a PESEL number to fill in a credit application did not meet the statutory condition of indicating the legal basis.

Under the latest amendment, a PESEL number has become the tax identification number for non-nationals. It means that they can now easily apply for a PESEL number.



## PRESS

### The Blue Card grants privileges, but after two years questions are multiplying

Firstly, it is uncertain how this time should be calculated. Secondly, it is hard to know whether the change of employer or new terms of employment require changes to the document.

And most importantly, could omissions in these areas result in the Blue Card withdrawal? – Tomasz Rogala and Ewa Wysocka comment for *Dziennik Gazeta Prawna*. Morej: [here](#)

### Different approaches to non-national's permanent address

Some offices follow the letter of the law and expressly request non-nationals to fill in their permanent address in their residence card, while others are more lenient with this requirement, knowing that the law and real life do not always go hand in hand. - Karolina Schiffter, advocate, and Katarzyna Wójcik comment for *Dziennik Gazeta Prawna*. More: [here](#).



## ALERTS

### #alert: Quarantine for travellers extended until the end of summer holidays

Obligatory quarantine upon arrival in Poland has been extended to 31 August. The quarantine is still 10 days and applies equally to people coming to Poland from outside the EU and the Schengen area. Read more: [here](#).

### #alert: Planned immigration law changes to come

Karolina Schiffter on the major upcoming changes in immigration law. Read more: [here](#).

### #alert: Elimination of reminders in work permit cases

There are plans to eliminate reminders in the cases of work permits for non-nationals and registration of declarations on entrusting work to non-nationals. Employers applying for work permits will have limited options to fight delays in their application processing. Read more: [here](#).



## BOOKS



### Publication: Employment of non-nationals

We invite you to read our latest publication: Employment of non-nationals published together with *Dziennik Gazeta Prawna*.

The publication discusses such issues as:

- employment formalities;
- non-nationals entitled to work without a work permit;
- declaration on entrusting work;

- seasonal work permit;
- uniform temporary residence and work permit;
- special arrangements due to COVID-19;
- rules for the United Kingdom citizens.

Authors: Karolina Schiffter, advocate; Tomasz Rogala and Kinga Polewka, attorneys at law; Marcin Snarski and Maciej Sielicki. More: [here](#).