

**Dear Readers,**

Here we are with our last issue of this year's quarterly *HR Perspectives* Global Mobility & Immigration newsletter.

In this issue, we discuss the upcoming **changes in immigration regulations**. Notably, there are some changes planned that will make it easier for foreigners to change their employers. In turn, EU authorities are finalising work on amendments to the EU Blue Card directive. We have also some updates on the "**Poland. Business Harbour**" programme, which was extended to other countries shortly after the publication of the previous newsletter.

We also take another look at **remote working from abroad**. This time from the personal data protection angle. Potential breaches in this area may bring serious consequences to employers.

A novelty that also appeared shortly after our previous newsletter is that the option to write reminders in cases concerning the issuance of work permits and the registration of declarations on entrusting work was cancelled. Reminders were supposed to speed up case processing but it turned out that they did not serve employers well.

Finally, we also discuss recent changes to registering process for EU citizens and obtaining residence cards for their family members. This procedure has changed considerably.

**Enjoy your reading!**

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## Non-nationals with temporary residence and work permits will change employers more easily - upcoming changes in immigration law

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Employers often employ non-nationals who already have a temporary residence and work permit in Poland (the "single permit") issued for employment in another company. At present, changing employers requires obtaining a new permit. Such employees must go through the same legalization procedures as the persons who have just arrived in Poland under the visa-free movement.

This is going to change at the beginning of 2022. The law has already passed legislation process in Polish parliament and is awaiting signature by the President of Poland.

Changing employers more easily is the most-awaited change by non-nationals and employers. The application to change an already held permit is, in principle, simpler and requires fewer documents than submitting a new, full residence application. However, it will also be subject to a fee.

The act adopted by the Sejm also introduces some more far-reaching amendments to immigration regulations, such as extending the validity period of declarations on entrusting employment and making it easier for non-nationals employed "at entities of particular strategic importance for the Polish economy" to obtain work permits. As soon as the final version of the new regulations is made public, we will issue a special edition of our newsletter to discuss these changes.

## Changes in residence registration for EU citizens and obtaining residence cards for their family members

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On 2 August 2021, the provisions of the amended Act on the entry into, stay in and exit from the Republic of Poland of the European Union citizens and their families entered into force. The most significant changes include:

- (1) new type of cards issued to family members of EU citizens and a modified form of certificates for EU citizens – now they are also issued as a plastic card containing a photograph, basic data and a signature of a non-national;
- (2) revised application forms of residence registration for EU citizens and issuance of residence cards for their family members;

- (3) certificates of residence registration for non-EU citizens are issued for an indefinite period – to date they expired 10 years after the issue date;
- (4) applications for a certificate of residence registration for an EU citizen must include four photographs (unless the Provincial Governor Office decides otherwise) and a specimen signature;
- (5) documents issued to non-EU family members of the European Union citizens. A temporary card for an EU citizen family member has been renamed a "residence card" (pl. "karta pobytowa") and the document confirming the right of permanent residence for a non-EU family member of an EU citizen has been renamed a "permanent residence card" (pl. "karta stałego pobytu");
- (6) The certificate of an EU citizen registration or the residence card may not include the registered address if a non-national has not registered at this address for more than 2 months.
- (7) If the address or other data indicated on the document change, a new card should be applied for within 14 days after the change. Failure to replace the card for the reason of data change is subject to a fine between PLN 20 and 5000.
- (8) a new obligation to notify a Provincial Governor (Wojewoda) about the loss of or damage to registration documents within 3 days. Failure to inform a Provincial Governor about such an event will result in a fine between PLN 20 to 5000;
- (9) from 2 August 2021 it is necessary to submit fingerprints to applications for residence cards and permanent residence cards. Family members of EU citizens were previously exempted from this obligation. However, the EU citizens' minor family members who are not EU citizens and are under 6 on the date of application are still exempted. The fingerprints are taken twice - when submitting the application and when collecting the document.

Applications submitted before the amendment entered into force should be adjusted to comply with the new regulations. Some Provincial Governor's offices have already issued written requests for completing the documentation and for submitting new application forms.

Others, such as Mazovian Governor's Office in Warsaw, informed the applicants of the need to update their applications by phone, so the practices of particular offices are not uniform.

Certificates of residence registration, documents confirming the right of permanent residence, temporary cards of EU citizen family members and documents confirming the right of permanent residence of EU citizen family members issued before 2 August 2021 remain valid for the period for which they were issued, however, no longer than up to 3 August 2026. Applications for document replacement should be submitted to the Provincial Governor's Office according to the place of residence.

Therefore, from 2 August 2021 to 3 August 2026 the EU citizens who have a certificate of residence registration issued according to the previous model will be able to apply for a new type of residence registration certificate introduced by the amended regulations.

## From July 2021, the "Poland. Business Harbour" programme opened for employees from Ukraine and other countries

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As previously announced, in mid-July 2021, the government extended the 'Poland. Business Harbour' programme to include more countries. Now, apart from Belarussians, also citizens of Armenia, Georgia, Moldova, Russia and Ukraine can benefit from the programme.

Residents of the 5 new countries can apply for a Polish visa under the programme if they work in the IT industry and are invited by a Polish company registered as a participant in the programme. Their family members can also apply for visas. During their validity period, such visas enable them to perform any work in Poland for any entity and to establish a business in Poland.

The citizens of the new countries covered by the programme have already had easier access to the Polish labour market. It was possible to employ them based on the statement on entrusting work to a non-national, which is a special permit issued faster and easier than a regular work permit. The statement on entrusting work remains an available option for employing foreigners from the above-mentioned countries and, in some cases, may be more advantageous for employers. Therefore, before choosing the way of employing a non-national, the advantages and disadvantages of all options should be carefully considered. From the perspective of non-nationals, in most cases, it will be more beneficial to take up employment in Poland under the "Poland. Business Harbour" programme than based on the statement on entrusting work.

## Reminders in work permit cases cancelled

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From 13 July 2021, there is no possibility to send reminders in cases concerning the issuance of permanent and seasonal work permits and entry of a declaration on entrusting work to a non-national into the register of declarations.

Thus, entrepreneurs no longer can submit a reminder when the office fails to process the case within the prescribed deadline (one month for a work permit) or where the decision-making process takes longer than necessary.

If the office is late in issuing a permanent or seasonal work permit or entering a declaration on entrusting work to a non-national into the register of declarations, entrepreneurs will have

the right to lodge a complaint against the office's inaction or protraction of proceedings to the Provincial Administrative Court.

The change in question does not apply to the 'single permits', so if these cases are not processed within the deadline, foreigners can submit a reminder and, only after that, a complaint to the Provincial Administrative Court.

### Protection of personal data when working remotely from abroad

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In the aftermath of the pandemic, remote working from abroad is on the rise. It may either be work from the place of origin or temporary work from a more 'holiday' destination, which has already been given a name: workation. Apart from the typical issues related to labour law, taxes, social security, etc., workation calls for particular attention in the area of personal data protection.

The standard data protection rules for office-based employees may not be well-adjusted to the conditions of remote working, especially from abroad. In order to protect data, it is necessary to introduce appropriate rules and adequate training for employees. Particularly important is the security of the infrastructure used by an employee when working remotely. For example, it often happens that employees connect to public WIFI networks while working abroad. This should be strictly forbidden, since such networks do not guarantee security. By the same token, the security level of hotel networks does not guarantee that data on devices will not be illegally intercepted by unauthorised persons. Cyber threats are rife and a lot depends on the level of remote employees' awareness.

Another issue is international data transfers. As long as work is carried out from one of the EEA member states (EU countries plus Norway, Iceland and Liechtenstein) or a third country which ensures an adequate level of data protection based on the EU's adequacy decision (Andorra, Argentina, Canada, the Faroe Islands, Guernsey, Israel, the Isle of Man, Japan, Jersey, New Zealand, the United Kingdom and Uruguay), such transfer is generally considered permissible. For all other countries, one of the conditions for allowing such data transfer must be applied. The most practical solution in such a situation is to conclude standard contractual clauses specifying the rights and obligations of the parties and security measures that must be adopted for data transfer. It should be remembered that such clauses need to be approved by the decision of the European Commission which determines their template.

This way, the rules for processing personal data also have an impact on remote working from abroad. This is important because failure to comply with these rules constitutes a breach

for which the employer, as a data controller, is directly responsible. It may result in bringing an action against the employer, who may be liable to a fine. It is, therefore, advisable to consider these issues before allowing remote working from abroad and, if necessary, adjust the data protection rules to avoid any negative consequences.

## Reduced requirements for the Blue Card

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The EU Blue Card is based on similar rules throughout the EU. However, these rules will soon change significantly to increase the appeal and popularity of the Blue Card.

The primary motivation for introducing the Blue Card was to attract highly qualified third-country specialists, mainly those working in the new technologies sector, to the EU. This type of permit is currently available to non-nationals who intend to stay in the EU to carry out work requiring high qualifications, with a salary amounting to at least 150% of the average salary.

In practice, this type of residence permit is still too rarely used and does not live up to expectations, mostly because of stringent requirements that are imposed on Blue Card applicants. Notably, work on making the Blue Card more widespread and easier to obtain has been underway for as long as since 2014. This work is now being finalised - the European Parliament voted through the changes to the procedure on 15 September this year. The final act on the matter in question was signed on 20 October and subsequently published in the EU Official Journal on 28 October 2021. The directive must now be transposed by the member states into their national law system by 18 November 2023. Thus, there is still some time to wait before the new provisions will finally enter into force.

Under the new rules, applicants will be required to have an employment contract or a binding job offer for at least six months. It is a significant reduction compared to the existing requirements, under which the minimum contract period is at least 12 months. Moreover, the minimum salary threshold will also be lowered: from 150% to 100% of the average gross annual salary in the Member State where the employment is to take place. Furthermore, future Blue Card holders will also be able to move from the member state who issued their permit to another member state more quickly. Now it is possible after two years following the employment start, but it will be shortened to one year. It is also expected that the new amended conditions for granting the Blue Card will simplify the family reunification procedure.



## PRESS

### **Offices will have easier time dealing with residence permits**

Foreigners and employers are waiting for speeding up the process of issuing residence permits. The new project offers a chance for this. Planned introduction of electronic information exchange will speed up the circulation of information in administration. – Karolina Schiffter and Marcin Snarski comment for Rzeczpospolita. More: [here](#).

### **Sole appointment of a foreigner to the management board, does not allow him to work in Poland**

According to Polish law a foreigner holding a position on the management board of a legal person and residing on the territory of Poland for at least 6 months in the next 12 months needs a work permit (work permit type B). – Karolina Schiffter and Agnieszka Król comment for Dziennik Gazeta Prawna. More: [here](#).



## ALERTS

### **#alert: New testing requirements on entry to Poland from outside UE applicable from 15 December**

From 15 December until 31 January 2022 travellers entering Poland from outside UE will be subject to 14 days of quarantine unless they present confirmation of negative result of a COVID test in Polish or English. Read more: [here](#).