

Dear Readers,

Here we are with the first issue of our quarterly *HR Perspectives Global Mobility & Immigration* this year.

The new year started with a slew of immigration news. We discuss the most important ones, including:

- 1) the latest changes in the regulations concerning the legalisation of employment and stay of non-nationals;
- 2) the "Mobility Package";
- 3) the European Parliament proposals to open up the EU labour market to non-EU citizens;
- 4) obligations for foreign employers who second workers to Poland when the 18-month secondment is over
- 5) further extension of the "Poland. Business Harbour" programme; and
- 6) the National Labour Inspectorate (PIP) inspection plans for this year, including issues related to the employment of non-nationals and the secondment of workers.

To stay on top of the relevant immigration news, subscribe to our newsletter and follow PCS on social media.

Enjoy your reading and do not hesitate to contact us if you have any questions.

Karolina Schiffter, advocate, partner
karolina.schiffter@pcslegal.pl

Kinga Polewka-Włoch, attorney at law, associate
kinga.polewka@pcslegal.pl

Changes in immigration legislation from 29 January 2022

Author:

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

The measures to simplify the process of employing non-nationals that we have mentioned in the previous issue of our newsletter will finally become a reality. The project has gone through the entire legislative process and the changes became effective on 29 January 2022. We summarize the most important information below.

Statements on entrusting work valid for 2 years

At present, an employer can employ a non-national based on a statement on entrusting work to a non-national only for 6 months. Extending the statement validity period to 24 months means that employers will no longer have to apply for work permits to ensure the legality of employment for their non-national employees.

The duty to notify the employment office by a written statement about the commencement of work or delay in starting work in Poland by a non-national remains in place. However, the deadline for notifying the office about the work start was extended to 7 days. Previously, it had to be notified on the day of work start.

No new documents are required for a job title change

In certain cases, non-nationals holding a temporary residence and work permit (the "single permit"), or work permits will not need to file new documents if their job title changes.

It will be possible to change the job title for holders of both types of permits on the condition that the scope of their duties does not change. Another permitted change is the increase in working time, provided that their pay is increased proportionally as well. Therefore, new documents will not be required, for example, when transferring a non-national from a half-time to a full-time job or for certain kinds of promotions, such as from a specialist to a senior specialist.

Single permits - easier to obtain and modify

The planned amendments to the procedure for obtaining temporary residence and work permits aim to simplify it by, for example, removing the obligation to confirm the place of residence in Poland. Currently, if a non-national's lease contract expires when a residence permit case is pending, additional documents need to be submitted to the employment office.

Furthermore, it will also be possible to change a temporary residence and work permit in the case of a planned change of employer. Currently, making amendments to a single permit is only possible if the job title change occurs with the existing employer.

Facilitation measures for strategic entities

There are also plans for giving priority in obtaining single permits and work permits to non-nationals employed "in entities of particular strategic importance for the Polish economy". The entities that may benefit from the facilitation measures will be listed in a separate regulation. At the moment of publishing the newsletter, the list is still not known, as there is no draft regulation yet.

The final outcomes of the attempts made to speed up procedures for these entities will depend mainly on adequate staffing levels and infrastructure at the relevant offices.

Other changes

The new legislation brings also a number of other minor changes, including:

- 1) introducing a special procedure for processing single permit applications submitted before 1 January 2021. The procedure will be simplified but a non-national will have to provide the office with the required information about the work performed in Poland or else they could lose the permit.
- 2) regulating deadlines for processing cases
- 3) simplifying the application procedure for the Pole's Card (Karta Polaka) and document replacement
- 4) changing the method of determining the pay threshold for non-nationals applying for the EU Blue Card. In practice, this may limit the availability of the Blue Card for non-nationals receiving relatively low pay, who have been working in Poland for several years.

Mobility package - how to deal with the next stage of revolution in the employment of international drivers?

Mobility package - how to deal with the next stage of revolution in the employment of international drivers?

Authors:

Marcin Sanetra, attorney at law, senior associate marcin.sanetra@pcslegal.pl

Kamil Nazimek, paralegal, kamil.nazimek@pcslegal.pl

The "Mobility package" is an attempt to unify the regulations governing the work of international transport drivers at EU level. Polish haulers see it as a threat to their business as it means they have to bear the cost of making sure that drivers' working conditions comply with the domestic law of the country in which the transport is organized. The EU requirements may result in a 40% increase in operating costs.

Until now, Polish drivers going into other EU states were treated as being on business trips. This meant receiving a per diem and a fixed-amount for the journey. From 2 February 2022, the rules for secondment or posting should be applied to international drivers providing transport services in other Member States.

At the time of publication of the newsletter, the bill transposing the directive containing the “Mobility Package” into the Polish legislation is waiting for a vote in the Sejm over the amendments proposed by the Senate. It is estimated that it will become effective as soon as in the first quarter of the year. Under the new regulations, all drivers, with a few exceptions, will have to be paid at least the minimum wage applicable in the country where they provide transport services.

Moreover, all pay components defined as mandatory by the Member State’s legislation will have to be included. Any reimbursements of the expenses incurred by the driver, including per diems, will not be counted towards the minimum wage calculated in compliance with the regulations of a particular EU Member State.

Our Global Mobility team and our associated Littler law firms will be happy to support you in developing optimal driver employment models.

Stricter minimum terms and conditions of employment for employees posted to other EU countries from February 2022

Author:

Tomasz Rogala, attorney at law, partner, tomasz.rogala@pcslegal.pl

At the end of January 2022, 18 months have passed from 30 July 2020, by which date EU countries were to implement EU Directive 2018/957 modifying the rules for posting workers between EU countries.

It means that employers who have been posting employees to other EU countries since at least July 2020, may be faced with the necessity to provide more favorable terms and conditions of employment to these employees from the beginning of February 2022.

This is because, under the modified EU rules, 18 months is the maximum period for posting an employee to another EU country under the previous, less stringent rules, namely without applying all statutory terms and conditions of employment required by the laws of that country. After the maximum period of posting under the less stringent rules has been exceeded, an employee posted to an EU country must be provided with the same statutory employment terms and conditions under the host country's legislation as a worker employed locally by an employer operating in that country. The employer posting the employee is responsible for ensuring compliance with the local employment laws.

The maximum period of posting under the less stringent rules is 18 months, provided that an employer has submitted to the host country's national authorities a motivated notification about the posting extension required by the regulations of that country. Otherwise, it is only 12 months. Notably, all consecutive posting periods of employees posted to do the same work in the same place will count towards the maximum period of posting under the less stringent rules.

PIP will thoroughly check the employment of non-nationals

Author:

Kinga Polewka-Włoch, attorney at law, associate kinga.polewka@pcslegal.pl

At the end of December 2021, The President of the National Labour Inspectorate (PIP) announced a 2022-2024 action program. One of the priorities this year is to check the legality of employment and other gainful activities of non-nationals. PIP plans to focus not only on verifying the legality of stay and employment of non-nationals but also on the conditions in which they perform work, including whether their basic employee rights are respected and occupational health and safety rules are complied with at their workplace.

The inspections are to target, among others, non-nationals coming from Asian countries (e.g. India, Philippines, Bangladesh, Nepal, Vietnam) and identified as new countries of origin (e.g. Latin American countries). They inspections should be expected mostly by employers operating in sectors:

- 1) in which illegal employment has been prevalent in recent years (e.g. construction or transport);
- 2) at the highest risk of irregularities (e.g. industrial processing, hospitality, catering);
- 3) based on seasonal work (e.g. agriculture, horticulture, tourism);

as well as employment agencies, which, according to the program, are generally a fixed point on PIP's agenda.

The inspectors also plan to take a closer look at the posting of workers. The inspections will focus mainly on the assessment of the posting process correctness and the detection of the "false posting" cases.

To prepare for the planned inspections, it is worth carrying out an immigration audit in the company, especially if it has never been done before. It will allow verifying the correctness of the existing practices in employing non-nationals/posting workers and adjusting them to the applicable legal requirements where necessary.

EU labour markets to open up soon?

Author:

Oskar Kwiatkowski, trainee attorney at law, associate oskar.kwiatkowski@pcslegal.pl

At the end of November 2021, the European Parliament adopted an own-initiative report concerning the European Commission's proposal on legal labour migration.

The postulated changes include:

- 1) creating an EU talent pool to match non-EU applicants with prospective EU-based employers (based on the existing EURES portal)
- 2) setting up an admission scheme for low- and medium-skilled third-country workers, as well as a uniform framework for recognition of their skills and qualifications;
- 3) making legal migration into the EU by entrepreneurs easier by introducing an EU-wide admission scheme for entry and residence for people wanting to establish businesses;
- 4) facilitating the mobility of artists and cultural professionals (proposal for a 5-year multiple entry visa, allowing visits of up to 90 days per year);
- 5) facilitating intra-EU mobility of long-term residents from outside the EU;
- 6) reducing the number of years required to acquire an EU long-term residence permit from five to three.
- 7) revising the rules on seasonal workers - allowing them to be unemployed for up to three months to look for a new job, without having their existing permit revoked;
- 8) cutting the excessive red tape.

We will, of course, monitor this and keep you up to date with the most important news.

Program Business Harbour program extended again

Authors:

Kinga Polewka-Włoch, attorney at law, associate kinga.polewka@pcslegal.pl

Paulina Kubica, immigration consultant paulina.kubica@pcslegal.pl

A comprehensive package launched in September 2020 to help IT professionals, start-ups, as well as small, medium and large companies relocate seamlessly into Poland, has been expanded to include yet another country. In addition to the citizens of Belarus, Ukraine, Moldova, Georgia, Armenia and Russia, the citizens of Azerbaijan are covered by the program since 12 January 2022.

Furthermore, the existing rules for Belarusians apply only until 31 January 2022 and change as of 1 February 2022. It will no longer be possible to apply based only on a plan for seeking work in the Polish IT sector. However, it will still be possible for Belarussians (as for citizens of other countries) to make use of the special path provided for a company participating in Poland. Business Harbour program.