

Dear Readers,

We are very excited to share with you the first edition of *HR Perspectives Global Mobility & Immigration* for this year.

The turn of the year has been an exceptionally busy time in immigration law. Some changes have already been made, while others are on the horizon. We have outlined the most significant changes below.

- 1) The Non-national Employment Act, which is to replace the existing legislation scattered across several other statutes, including the act on the promotion of employment and labour market institutions and the Non-national Act;
- 2) Another amendment to the Ukraine emergency legislation;
- 3) The long-time coming abolition of residence permit extensions introduced during the coronavirus pandemic;
- 4) Ukrainians and Belarusians can now apply for humanitarian visas and it is no longer possible to employ Russian citizens based on a declaration of giving work to non-nationals;
- 5) Changes in the minimum salary thresholds for non-nationals working in Poland;
- 6) New plans of the National Labour Inspectorate (PIP) concerning the employment of non-nationals and employee secondment.

Join us on social media to keep abreast of all the relevant immigration news.

Enjoy your reading and feel free to contact us if you have any questions.

Enjoy reading!

Karolina Schiffter

advocate, partner, head of the Global Mobility & Immigration team
karolina.schiffter@pcslegal.pl

Tomasz Rogala

attorney-at-law, partner, head of the Global Mobility & Immigration team
tomasz.rogala@pcslegal.pl

Kinga Polewka-Włoch

attorney-at-law, senior lawyer,
Global Mobility & Immigration team member
kinga.polewka-wloch@pcslegal.pl



Non-national Employment Act - delayed farewell to paper applications, end to the labour market test and many other changes on the horizon

Author: Marcin Snarski, senior lawyer, marcin.snarski@pcslegal.pl

The bill on employment of non-nationals has been in the pipeline for a long time. According to the current draft, it is planned to come into force as of 1 January 2024. The new law will change the rules for obtaining work permits and declarations of giving work to non-nationals. Visa and residence permit procedures will remain unchanged, as will the special rules for Ukrainians working in Poland.

The most important planned changes are:

- **abolition of the "labour market test"** - the change will speed up those work permits processes that required the test by several weeks;
- **full digitalization of work permit processes.** However, it may take as long as two years. This is the maximum length of the transition period for institutions, such as the Social Insurance Institution or provincial governors to adjust their IT systems to the new regulations. Until the shift to paperless procedures is completed, it will be possible to use both paper and electronic forms;
- it will be possible **to refuse a work permit or a residence permit application of a non-national seeking employment in one of the protected professions.** the list of protected professions will be drawn up by a district executive (Starosta) in the case of, for example, an increase in the local unemployment rate;
- the rules for processing **data concerning non-national employment**, such as the storage period, will be clarified;
- it will be possible to **increase the working time of a non-national worker beyond the limit specified in the permit** but the relevant authority will have to be notified each time;
- **more non-nationals will be allowed to work without a work permit**, for example, EU university graduates;
- there will be further **restrictions on outsourcing non-national workers to other entities by employers** who are not temporary work agencies - an entity using such an outsourced workforce may face a fine of no less than PLN 3,000.

The bill has not yet been submitted to the parliament, and we expect the Ministry of Family and Social Policy to make further changes to the bill. Our team is closely monitoring the progress of the bill.

Ukrainian Emergency Act amended

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

On 24th January 2023, the President of the Republic of Poland signed yet another act amending the Ukrainian Emergency Act, i.e. the act on assistance to Ukrainian citizens in connection with the armed conflict on their territory dated 12th March 2022.

Major changes to a legal stay in Poland after 24th August 2023 were implemented for Ukrainians covered by the Emergency Act.

Firstly, the amendment to the Emergency Act marks 24th August as the end of automatic legal stay for all Ukrainian citizens residing in Poland under the Emergency Act. Secondly, it significantly limits the possibility of extending the right of residence beyond 24th August 2023 for those Ukrainians who arrived in Poland after 23rd February 2022. Before the amendment, they could apply for a special simplified residence permit 9 months after their arrival in Poland. Now, the simplified residence permit will no longer exist, and the right to extend the mobility period beyond 24th August 2023 will only be available to those who declare working or running a business as a reason for their stay. They will be able to apply for residency from 1st April 2023. For the rest of the Ukrainians covered by the Emergency Act who arrived in Poland after 23rd February 2022 (including family members who neither work nor run a business in Poland) this may mean the necessity to leave the country by 24th August 2023 at the latest.

At the same time, the amendment provides a specific “lifeline” for Ukrainians who will be entitled to submit a request for the extension of the mobility period but fail to meet all criteria needed for a residence permit. Their applications will not be rejected and they will be permitted to stay for another year.

All non-nationals applying for residence permits will be affected by the further suspension of maximum time limits for handling cases by the authorities (and thus revoking the non-nationals’ right to file reminders in protracted cases) until 24th August 2023.

For Ukrainians who arrive in Poland after the amendment enters into law, the updated Emergency Act provides a reduced deadline for registration with the municipality to apply for a PESEL number with UKR status – 30 days instead of the previous 90.

Slowly coming back to normal - end to automatic extension of temporary residence permits and national visas

Author: Maciej Zabawa, attorney-at-law, senior lawyer, maciej.zabawa@pcslegal.pl

Along with the amendment to the Ukrainian Emergency Act, the authorities are implementing key changes to the COVID-19 Emergency Act, namely the Act of 2nd March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them.

It covers the enactment of Articles 15z-15z3, 15zd, 15zzza and 15zzzb of the Emergency Act which establish the following particular legal solutions for the time of the COVID-19 pandemic:

- extension of validity of national visas and temporary residence permits (Article 15zd);

- extension of deadlines for submitting applications for legalization of temporary, permanent, and long-term residence, applications for extending the validity of national visas or the residence period under the visa-free travel regime, and recognition of residence in Poland as legal based on submitting such applications before the postponed deadline (Article 15z);
- extension of legal stay after exceeding the temporary residence limit (e.g. based on Schengen visas or under the visa-free travel regime) for non-nationals residing in Poland on such a basis on 14th March 2020 (Article 15z1);
- extension of validity of residence permits (Article 15z2);
- extension of validity of temporary certificates of identity (Article 15z3);
- extension of validity of the EU citizen's family member residence cards, documents confirming the right of permanent residence, the EU citizen's family member permanent residence cards, Polish identity documents of a non-national citizen, and "tolerated stay permit" documents (Article 15z6);
- extension of time limits for leaving the territory of Poland under Article 299(6) of the Non-national Act (Article 15zzza), and
- extension of the deadline for voluntary return specified in the return decision under Article 315 (1) of the Non-national Act (Article 15zzzb).

The aforementioned extensions were to last until the end of the 30th day following the date of cancellation of the state of epidemic or epidemic emergency. It was meant to protect non-nationals from the consequences of involuntary illegal stay in Poland. Such unintentional overstaying might have happened if a non-national was unable to apply for the stay extension because immigration authority offices suspended their service due to the COVID-19 outbreak. Given the stable epidemic situation in the country and the full re-launching of immigration processes, the Government and the Sejm decided to revoke the above-mentioned solutions.

Not all of the special measures for non-nationals due to the COVID-19 pandemic have been revoked, though. Some will remain in force, such as regulations concerning the extension of work permits and declarations of giving work to a non-national. Those regulations are scheduled to be abolished on 24th August 2023 and the special measures will no longer apply after that date (unless the state of epidemic emergency is cancelled more than 30 days earlier, in which case the special solutions will expire 30 days after the cancellation date).

Therefore, it is important to act now and take the necessary steps to extend the legal stay of a non-national residing in Poland, for example, only based on a national visa or a temporary residence permit extended by law under the revoked regulations. We will be happy to support you in such matters and help you with all the formalities.

Visas for Ukrainians and Belarusians, no declarations for Russians

Authors:

Kinga Polewka-Włoch, attorney-at-law, senior lawyer, kinga.polewka-wloch@pcslegal.pl

Roman Sharambei, immigration paralegal

On 27th December 2022, the Ministry of Foreign Affairs' regulation on rules for issuing national visas to non-nationals in Poland was amended. The changes include:

- Belarusians and Ukrainians can apply for a Polish national visa for another three months, i.e. by 31st March 2023;
- Belarusians no longer have to provide evidence of being persecuted to apply for a humanitarian visa;
- Belarusian and Ukrainian citizens staying in Poland based on the Poland Business Harbour (PBH) visa can now apply for a humanitarian visa (including a PBH visa which is also a humanitarian visa).

Before, only Belarusians who stayed in Poland based on a previously issued humanitarian visa or those who lived in Ukraine before the war and came to Poland after the outbreak of the war could apply for a Polish humanitarian visa. Furthermore, they had to prove that they could not return to Belarus for security reasons or fear of repression.

From 28th October 2022, it is not possible to apply for a declaration of giving work to a Russian citizen to be entered into the register of declarations. Russians who have already worked in Poland based on a previously obtained declaration may continue to work until its expiration date. On the other hand, obtaining ordinary work permits or residence and work permits by Russian citizens is not restricted in any way under the new regulations.

Changes in calculating minimum pay for non-nationals employed in and seconded to Poland

Author: Zofia Pawelec, lawyer – account manager, zofia.pawelec@pcslegal.pl

Local employment

The minimum monthly salary in Poland increased on 1st January and now amounts to **PLN 3490 gross per month**, with a minimum hourly rate of **PLN 22.80**. This will be further increased in the middle of the year. From 1st July 2023, the minimum monthly salary will be **PLN 3,600 gross per month**, and the hourly rate - **PLN 23.50**.

The employer's duty to provide a minimum pay to their employees applies, of course, also to the non-national workers. Compliance with the minimum pay requirement is verified at the initial stage of the work permit or temporary residence and work permit processes.

What has not changed is the minimum income criterion applied to a non-national who wants to obtain a temporary residence permit (e.g., as an employee, non-national dependent family member, student, or employee temporarily seconded to Poland), a long-term EU residence permit or a permanent residence permit. The minimum monthly threshold is still set

as **PLN 776 for single households and PLN 600 for each family member**. Income criteria are subject to revision every 3 years. Last time the thresholds were revised in 2021, so the next time will be in 2024.

The minimum gross monthly pay for a non-national seconded to work in Poland was increased. According to the regulations, such pay cannot be lower by more than 30% than **the average monthly pay in a given province according to data provided by the Statistics Poland**. The updated average pay levels were provided by the President of the Statistics Poland on 18th November 2022. The highest average pay was in the **Mazowieckie Province – PLN 6735.13**. For the Dolnośląskie it was PLN 5883.69, for the Małopolskie province - PLN 5672.84, and the Pomorskie province - PLN 5622.34. This means that, for example, the minimum monthly pay of a seconded employee in the Mazowieckie province is PLN 4714.59, and in the Dolnośląskie province - PLN 4118.58. The seconding employer must remember to adjust the pay of an employee seconded to Poland to the new pay thresholds for a given year.

The announcement of the average pay amounts for particular provinces is important also for non-nationals applying for temporary residence permits for business purposes. One of the prerequisites for obtaining such a permit is to demonstrate that the business has earned an income equivalent to at least 12 average gross monthly salaries in the province. Thus, for example, in the Mazowieckie province, the required income in 2023 is PLN 80,821.56, and in the Dolnośląskie province - PLN 70,604.28.

Non-national employment and secondment under scrutiny by labour authority again

Author:

Kinga Polewka-Włoch, attorney-at-law, senior lawyer, kinga.polewka-wloch@pcslegal.pl

It comes as no surprise that employing non-nationals and seconding workers to Poland is the focus of the National Labor Inspectorate's (PIP) attention. Both of these areas were prioritized in the PIP's 2022-2024 agenda.

It was also confirmed in the PIP's action plan for 2023, announced in late December. The inspections will focus on:

- 1) Employment of non-nationals "off-the-books";
- 2) employment of non-nationals which is non-compliant with the conditions set out in the documents legalizing their employment (including longer working hours);
- 3) employment of Ukrainians
- 4) employment and secondment of non-national drivers in international transport.

Furthermore, employment agencies and outsourcing services providers also remain on the PIP's radar.

How to prepare for this type of inspection? The best solution would be to carry out an immigration audit to determine and remedy any potential irregularities before PIP finds them, which could result in severe consequences for both employers and non-nationals.



PRESS

Employment of Ukrainian citizens

More and more Ukrainian citizens are working in the IT sector. When considering their employment, it is worth to keep in mind, that ensuring legal work may involve certain immigration formalities. The current regulations significantly simplify employment of Ukrainians. Some additional obligations still lie with the employer, and their scope depends on whether the Ukrainian citizen has full access to the job market in Poland, and on what basis they stay in Poland. – Karolina Schiffter comments for *IT-Leaders*. Read more: [here](#).

Protected professions. Foreigners will not get a job in every profession

The project or the bill says that it will be possible to limit the employment of foreigners in companies by specifying their maximum percentage, and now the ministry proposes to create lists of professions for which refusal of work permit for a foreigner will be possible. This is a redundant and disadvantageous solution for employers. – Karolina Schiffter comments for *Dziennik Gazeta Prawna*. Read more: [here](#).

Interview: The employment system for Ukrainians has changed completely

How can Ukrainians start working in Poland? Who can obtain a Residence Card? What does the profile of Ukrainian employee look like? – Aleksander Dżuryło answers these and other questions related to employment in Poland in an interview with *Polskie Radio*. Read more: [here](#).

More refugees in Poland could work, but changes are needed

The profile of employee from Ukraine has changed and it is mostly due to who could, can, and want to leave the country. Ukrainian authorities have banned men between 18 and 60 years old from leaving the country so only women with children from bigger cities were able to leave. These partly are women who have not worked before, because they were, for example, taking care for children – therefore they do not have any professional experience. They do have problems with understanding the language, though. The expectations of Polish employers are ill-matched to this profile. – Aleksander Dżuryło comments for *pulshr.pl*. Read more: [here](#).

Is the Polish job market open for the new wave of refugees?

From the legal point of view – I think that the new rules are, by far, more favourable to previous ones. Employers no longer have to obtain declaration on entrusting work or work permit – instead, there is a new notification system. Does it satisfy the employers fully though? – Aleksander Dżuryło comments for *wirtualnemedi.pl*. Read more: [here](#).

What a company needs to remember when a non-national is appointed a member of the board

The legal situation of non-nationals serving as the members of the board of directors is different than that of a foreign citizen who is an “ordinary” employee. However, applicable regulations may overlap if such a member is also the company’s employee. – Kinga Polewka-Włoch and Oskar Kwiatkowski comment for *Dziennik Gazeta Prawna*. Read more: [here](#).

Special procedure was supposed to simplify the legalization of work of refugees from Ukraine. Is it now used by ineligible persons?

The Act of 12 March 2022 on aid to Ukrainian citizens in connection with armed conflict on the territory of Ukraine (Journal of Laws of 2022, item 583, amended) introduced a simplified procedure for legalization of employment of Ukrainians. Citizens of Ukraine are covered by the scope of this law, as well as their spouses, who do not have to be Ukrainian citizens, and immediate family of Ukrainians who hold the Polish Card. These persons may work in Poland on the basis notifications of assignment of work – Karolina Schiffter comments for *Dziennik Gazeta Prawna*. Read more: [here](#).