



#GMI LEGAL UPDATE

GETTING WORK PERMIT FOR POSTING A FOREIGN NATIONAL TO POLAND WILL SOON GET MUCH HARDER

With the new law on employment of foreigners recently adopted by the Polish Parliament, significant changes will soon come into force regarding in particular the posting of employees to Poland. The changes may enter into force as early as April 2025.

As a result, many business models currently in use which rely on temporary posting of workers to Poland may become much more difficult to implement, and obtaining work permits necessary for their implementation will require overcoming completely new obstacles.

It is now critical to prepare for the following upcoming changes:

► **New restrictions on intra-corporate posting of employees between sister companies**

After the new regulations enter into force, due to modified definitions of certain key terms used in the regulations, it will no longer be legally possible to obtain a work permit for an employee posted in an intra-corporate transfer from a home entity outside of Poland to a Polish affiliated host entity if the two entities are linked only by a common owner - i.e. if they are sister companies. After the changes, it will technically only be possible to issue the permit if one of the entities directly or indirectly owns shares in the other entity (i.e. one is directly or indirectly a parent entity to the other) or if both entities have common management board members. This is a very far-reaching restriction, but it is not clear whether it is intentional or an unintended side effect of changes in the terminology of the new legal act. Nevertheless, it may directly translate into a change in the approach of the work permit offices, which will be bound by the literal wording of the regulations and not their intention.

If you are envisaging an intra-corporate posting of an employee from a non-Polish home entity to an affiliated Polish host entity in the near future, then it is worth taking a look at the structure of corporate connections between the two entities. If these connections do not meet the requirements provided for in future regulations - i.e. the foreign home entity and the Polish host entity are only "sister companies" with a common owner, but neither of them directly or indirectly holds shares in the other entity and do not have common management board members, then it is important to prepare arguments to persuade the work permit office that the permit should be issued. If the work permit office takes a strict approach, it may be necessary to introduce appropriate modifications to the corporate structure - e.g. appointing new management board members in the sending or receiving entity.

► **New restrictions on posting employees to Poland to perform a service under a contract concluded with a Polish client by another entity from the home entity's capital group**

After the new regulations enter into force, it will not be legally possible to obtain a work permit for an employee posted to Poland to provide a service to a Polish client unless the contract for the provision of service is signed directly by the home entity employing the employee. If the provision of service to a Polish client is going to be performed solely on the basis of a service agreement concluded with the Polish client by another entity from the home entity's capital group, then issuance of the work permit will not be legally possible.

In practice, this may render unfeasible a business model in which a contract for the delivery of a specific project for a Polish client is concluded by one legal entity from the capital group (e.g. the headquarters or a Polish branch office), whereas other entities from the capital group post their respective workers to Poland to participate in the implementation of the project.



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If you are planning to post foreign employees to Poland in the near future to work on a project for a Polish client, and the contract for the delivery of the project is concluded with the Polish client by an entity from the capital group other than the home entity employing the posted worker, then it is recommended to carefully review the contractual documentation (if any) setting forth the terms of participation of the employing home entity in the project. Obtaining a work permit will require convincing the office that the documentation submitted meets the requirements of the new act - hence, it is worth preparing in advance for any doubts and reservations from the authorities.

► **Formal prohibition of posting by an entity which does not conduct actual business in the country of registration**

After the new regulations enter into force, it will technically not be legally possible to obtain a work permit for the purpose of posting an employee to Poland if the home entity employing the employee is not running its own actual business activity (other than pure management or administrative tasks) in the country of registration. A home entity which does not meet this requirement will be considered as a "letterbox company" which cannot legally obtain a work permit.

In practice, the above restriction may technically render unfeasible a business model in which a capital group dedicates one of its entities in the given country (e.g. in USA) to act as the employing home entity for employees posted abroad, so that employees normally employed by other group entities in this country are transferred to the dedicated entity shortly before the posting and then posted from this entity. If such a dedicated entity, apart from acting as the dedicated employer for the employees posted abroad, does not conduct actual business activity in the country of registration, then in the light of the new regulations it should be considered as a "letterbox company" unable to legally obtain a Polish work permit.

The new regulations do not specify how the conduct of actual business activity by an entity employing an employee will be verified by the office - this may require submission of additional documents or explanations. It is worth preparing for this type of additional difficulties in advance.

► **Formal prohibition of posting of employees newly employed by the posting entity**

After the new regulations enter into force, a work permit for the purpose of posting an employee to Poland will be legally possible to obtain only if, on the day of submitting the work permit application for the permit, the employee is already working abroad for the foreign entity indicated in the application.

In practice, this may make it technically legally impossible to obtain a work permit for a worker yet to be employed for the very purpose of being posted to Poland (so that the first day of their employment coincides with the start of the assignment in Poland).

Also, this may create a further legal obstacle to the business model in which a capital group dedicates one of its entities in the given country (e.g. in USA) to act as the employing home entity for employees posted abroad, so that employees normally employed by other group entities in this country are transferred to the dedicated entity shortly before the posting and then posted from this entity. In such a model, if the employee is transferred to a dedicated entity short before the start of assignment, then on the day of submitting the work permit application (i.e. in practice several months before the start of delegation), the employee will not meet the requirement of working abroad for the employing home entity indicated in the application.

Also, regarding this restriction, the new regulations do not specify how it will be verified by the office. Nonetheless, if you are planning to post an employee to Poland who is not yet employed by the entity that will act as the home employing entity during the period of the posting, then it is worth considering to have the employee start work for the designated home entity sooner, so that on the day of submitting the work permit application, the employee already meets the requirement of performing work abroad for the foreign entity indicated in the application.



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► New requirements regarding supporting documents required with an application for work permit for an employee posted to Poland

The new regulations will require submitting additional supporting documents together with the work permit application for a posted employee, confirming that the employer is going to comply with the requirements of Polish law during the posting period.

The newly required documents will have to demonstrate that:

- the performance of work by the foreigner will be in accordance with the minimum requirements of Polish labour law applicable to posted workers;
- the amount of remuneration of the posted foreigner will meet the minimum remuneration threshold required for posted employees;
- the foreign entity has indicated an authorized contact person residing in Poland and possessing the required documents.

Collecting the documentation fulfilling the new requirements will require careful preparation - in particular, it will be necessary to properly formulate the assignment letter setting forth the terms of the posting of the posted employee. It is worth reviewing the standard sets of supporting documents submitted with work permit applications for posted workers so as to adapt them to the upcoming new requirements.

Please note that all restrictions and requirements discussed above will apply to work permit applications submitted after the new regulations enter into force. Applications submitted before the new regulations enter into force will be subject to the existing rules.

Therefore, if in a given case the actions necessary to adapt to the new regulations would be impossible or very difficult to complete, then another option worth considering is to expedite the submission of the work permit application so that it is submitted before the new regulations enter into force.

Our Team will be happy to help you prepare for the upcoming changes. Please contact our Partners:



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Webinar: Getting work permit for posting a foreign national to Poland will soon get much harder – new rules after upcoming change of law

We also encourage you to participate in the webinar, where Tomasz Rogala, and Maciej Zabawa will discuss the issue of posting workers to Poland after the entry into force of the new regulations. Event in English. Participation is free.

Date: **14 March 2025, 11:00-11:45 a.m. CET**, online. **Register here.**