

APRIL 2022

# LEGAL ALERT

## EMPLOYMENT LAW



**BKB**

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## APPLICATION FOR FAMILY WELFARE BENEFIT FOR A CHILD WHO IS A CITIZEN OF UKRAINE



- This benefit is for a child between the ages of 12 and 35 months who is a citizen of Ukraine and entered Poland from Ukraine in connection with hostilities after February 23, 2022 - regardless of family income. This benefit is available in a total amount of PLN 12,000 for the second and subsequent child in the family. A parent can choose whether to receive PLN 500 per month for 24 months or PLN 1,000 per month for 12 months.
- The application can only be submitted on the ZUS Electronic Services Platform, using the relevant form.

More on this topic can be found here:

<https://www.zus.pl/baza-wiedzy/biezace-wyjasnienia-komerek-merytorycznych/swiadczenia/-/publisher/details/1/rodzinny-kapital-opiekunczy-na-dziecko-ktore-jest-obywatelem-ukrainy/3241947>

## AMENDMENTS TO THE SPECIAL ACT TO HELP CITIZENS OF UKRAINE

On April 14, 2022, the President of Poland signed an amendment to the Special Act on granting Support to Citizens of Ukraine in connection with the Armed Conflict in that Country. The changes include:

- new provisions under which notification of employment of a citizen of Ukraine (article 22 of the Special Act) is not required when the Ukrainian citizen works in Poland legally under article 87 of the Act on Employment Promotion and Labor Market Institutions. A Ukrainian citizen will not be fined under article 120(2) of the Act on Employment Promotion and Labor Market Institutions if an entity that employs a foreigner fails to comply with the obligation to submit notification of employment of a citizen of Ukraine.
- Ukrainian citizens legally residing in Poland may be employed: (i) in auxiliary and service positions in local government units, (ii) in a position where the work performed does not involve direct or indirect participation in the exercise of public authority and functions aimed at protecting the general interests of the state in offices employing Civil Corps officials, (iii) in a position where the work performed does not involve direct or indirect participation in the exercise of public authority and functions aimed at protecting the general interests of the state in state offices that do not employ Civil Corps officials.

In addition, on the basis of the Act amending the Special Act, Ukrainian citizens legally residing in Poland in connection with the ongoing war may:

- be directed to participate in activities conducted by a community integration center;
- attend a community integration club.

Most of the amendments to the Special Act came into effect on February 24, 2022.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2022/pozycja/830>

## NEW RULES FOR DETERMINING PLACE OF RESIDENCE FOR THIRD- COUNTRY CITIZENS

Information has been posted on the website of the Polish Social Insurance Institution (ZUS) on determining the place of residence of third-country citizens (e.g. from Ukraine or Belarus). Determining the place of residence is important for obtaining the A1 certificate from the Social Insurance Institution (ZUS) confirming social security coverage in Poland.



- Currently, ZUS does not require a tax residency certificate to be attached to an A1 application for third-country citizens.
- Citizens of Ukraine who entered Poland after February 24, 2022, may receive A1 for the maximum period of their legal stay in Poland, which is until August 24, 2023, under the Special Act.
- Under the Special Act, Ukrainian citizens who entered Poland before February 24, 2022, can have their legal stay and validity of residence documents extended. In such a situation, the A1 certificate may be obtained for the maximum period of that extended stay.
- ZUS has pointed out that Ukrainian citizens, like citizens of other third countries, still need to be covered by insurance or reside in Poland for at least one month before they can benefit under rules on posting of workers. This requirement must be fulfilled regardless of the date of arrival of a Ukrainian citizen in Poland - it applies equally, whether the arrival date was before or after February 24, 2022.

More on this topic can be found here:

[https://www.zus.pl/baza-wiedzy/biezace-wyjasnienia-komorki-merytorycznych/pracujacy/-/publisher/details/1/ustalanie-miejsca-zamieszkania-w-przypadku-obywateli-panstw-trzecich-nowe-zasady-od-29\\_03\\_2022-r\\_/1570369](https://www.zus.pl/baza-wiedzy/biezace-wyjasnienia-komorki-merytorycznych/pracujacy/-/publisher/details/1/ustalanie-miejsca-zamieszkania-w-przypadku-obywateli-panstw-trzecich-nowe-zasady-od-29_03_2022-r_/1570369)

## LEGISLATIVE PROPOSAL ON THE POSTING OF DRIVERS IN THE ROAD TRANSPORT SECTOR

A proposal has been posted on the Government Legislation Centre website for a bill on the Posting of Drivers in the Road Transport Sector of April 12, 2022.

The issues covered by the proposal include:



- an obligation for road transport operators to submit notification of a posting to Poland, stating the expected start and end date of the posting, and other information,
- the obligation for road transport operators to provide drivers with appropriate work conditions, including remuneration for work,

- inspection powers of the National Labor Inspectorate and the Road Transport Inspectorate with respect to drivers in the road transport sector posted to Poland.

Work on the bill is however at an initial stage, and the solutions eventually adopted may be different to those in the present proposal.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/docs//2/12358852/12872308/12872309/dokument551459.pdf>

## NEW GOVERNMENT DRAFT LAW ON THE PROTECTION OF WHISTLEBLOWERS

The key changes concerning employers include modifying the scope of persons included in the minimum updating obligation to implement the system of internal notifications. Pursuant to the draft law published on April 12, 2022, the catalogue of reporting persons has been expanded to include, among others, interns.

The refusal to establish an employment relationship remains a retaliatory measure.

The new draft stipulates that not only can retaliatory actions not be taken against the reporting person, but also the attempt to take such actions or threatening to take them is prohibited. The catalogue of retaliatory actions has been expanded to include the following activities:

- coercion, intimidation or exclusion;
- mobbing;
- discrimination;
- unfavourable or inequitable treatment;
- causing financial loss, including economic loss or loss of income
- causing other non-material damage, including damage to reputation, especially in social media.

The scope of possible whistleblowing has been extended to include infringement of the interests of the Polish State Treasury.

The new draft law provides that a person who has suffered damage due to a whistleblower knowingly reporting or disclosing untrue information to the public is entitled to compensation equivalent, at least, to the average salary in the enterprise sector in force on the date of the report or public disclosure.

In terms of the internal reporting system, the organisationally independent entity authorised to take follow-up action has been replaced by an impartial internal organisational unit or a person within the organisational structure of the legal entity authorised to take follow-up action. With the consent of the reporter, an oral report via a recorded telephone line may be documented in the form of a recording or transcript of the conversation. The amendments also provide for the possibility to implement a system of incentives for using whistleblowing solutions introduced by the employer.

The way of consulting the draft procedure of reporting violations of law with trade unions or representatives of persons performing work has been made more precise.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12352401/katalog/12822857#12822857>

## RECOMMENDATIONS FOR BKB IN LEGAL RANKINGS

Recently, our firm has been recommended in two law firm rankings.

- Our Law Firm received a recommendation in the “Employment” category of the Legal 500 EMEA 2022. Daniel Książek, PhD hab., also received an individual award in the same category, for the second year in a row.
- Also our Law Firm has been named in the Forbes ranking of Best Law Firms 2022 for its employment law practice.

More on this topic can be found here:

<https://ksiazeklegal.pl/the-legal-500-emea-2022/>

[https://www.forbes.pl/prawo-i-podatki/najlepsze-kancelarie-w-polsce-2022-polands-best-law-firms-2022-lista-magazynu-forbes/qpw9nm4?utm\\_source=fb\\_forbes&utm\\_medium=social&utm\\_campaign=fb\\_redakcja](https://www.forbes.pl/prawo-i-podatki/najlepsze-kancelarie-w-polsce-2022-polands-best-law-firms-2022-lista-magazynu-forbes/qpw9nm4?utm_source=fb_forbes&utm_medium=social&utm_campaign=fb_redakcja)

## ANOTHER WIN FOR BKB IN THE SUPREME COURT!

On 12 April 2022, the Supreme Court ruled in favor of our client - a multinational corporation - in a case concerning issues including the rules for eligibility for disability severance pay.

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**This legal alert does not constitute any form of legal advice.**

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