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LEGAL ALERT

EMPLOYMENT LAW



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Suspension of deadlines for handling cases related to legalization of stay of foreigners

Due to the war in Ukraine and the mass migration of Ukrainian citizens to Poland, voivodship offices currently have a heavy workload and often have problems with the timely handling of cases. Therefore, the Special Act of April 8, 2022, has been amended to suspend, from April 15 to December 31, 2022, **the deadlines for handling certain cases concerning legalization of stay of foreigners in proceedings conducted by voivodes, including granting a temporary residence permit (Article 100c of the Special Act)**. This provision excludes rules on inactivity of an authority. For example, a voivode is not fined for failing to issue a decision within the time limit specified by law. A voivode is also not obliged to notify a party or a participant of the proceedings that a case has not been resolved within the time limit specified by law (Article 36 of the Administrative Procedure Code).

In a communication of April 25, 2022, the Polish Office for Foreigners clarified that the provision described above does not stop proceedings. Cases will continue to be processed and new applications will be accepted. The Office for Foreigners also emphasizes that the introduced solution concerns all foreigners, regardless of their citizenship.

More on this topic can be found here:

<https://www.gov.pl/web/udsc/zawieszenie-biegu-terminow-zalatwiania-spraw-przez-wojewodow-nie-oznacza-wstrzymania-prowadzenia-postepowan>

Amendments to the Special Act to help citizens of Ukraine

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, which entered into force on April 30, 2022. The main changes are as follows:

- **The period for which persons providing accommodation and meals to Ukrainian citizens can claim pecuniary benefits has been extended from 60 to 120 days**, even when applied for before the amendments came into the force.
- Under the Special Act, a database will be created in which municipalities can access the applications for these pecuniary benefits to ensure that no other application has been submitted for the person concerned stating a different place of accommodation, compare details given on an application with the information in the PESEL register, or check the date on which the Ukrainian citizen entered Poland.



More on this topic can be found here:

<https://dziennikustaw.gov.pl/D2022000093001.pdf>

Draft of the regulation on work permits and declarations of commissioning of work

A draft was published on the website of the Government Legislation Centre of April 27, 2022, of the Regulation of the Minister of Family and Social Policy on work permits and declarations on commissioning work to a foreigner. It is intended to replace the current Regulation of the Minister of Family, Labor and Social Policy of December 7, 2017 on the issuance of a work permit for a foreigner and the entry of a statement on commissioning work to a foreigner in the register of statements.

The main points of the draft.



- Introduction of new forms of statements and applications submitted to legalize work of foreigners in Poland.
- Only the entity commissioning the work will be able to sign the declaration of no criminal record (which will be an attachment, among others, to the application for a work permit). The explanatory memorandum to the draft emphasizes that this statement cannot be signed by a proxy of the entity commissioning work (although it can sign the application for a work permit itself). The statement of no criminal record will have to be consistent with the facts on the date of application and be signed not earlier than thirty days before that date (the current regulation does not provide for such a requirement).
- The requirement for the authority to verify the identity of the entity commissioning the work, applying for a work permit or seasonal work, and applying for entry of the statement of commissioning of work in the register of statements. At the same time, the regulation does not indicate how this will be done "technically" (the explanatory memorandum to the draft only mentions that the way the authority will be able to do this in practice will depend on whether the entity commissioning the work is a natural or legal person and the form in which the application was submitted). The legislator has abolished the requirement, present in the current regulation, to attach to the application for a work permit, seasonal work or entry statement on the commissioning of work, a copy of the identity card or other document confirming the identity of the employer.
- Clarification that the confirmation of payment of the fee should identify the foreigner indicated in the application (the draft does not determine how the foreigner is to be identified in the description of the confirmation of payment).
- Documents drawn up in a foreign language, with the exception of travel documents used as evidence in the proceedings covered by this regulation, should be submitted together with a translation into Polish - specifying that the translation must be produced by a certified translator registered with the Minister of Justice.

Proceedings relating to work permits and declarations initiated before the entry into force of the new regulation will be carried out pursuant to the existing provisions. We will keep you informed of further work on the draft.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12359350/katalog/12876202#12876202>

Remote work and sobriety checks for employees - a draft amendment to the Labor Code

A draft amendment to the Labor Code regulating the issues of working remotely and employee sobriety checks has been published on the website of the Government Legislation Centre.

The main points of the draft with respect to working remotely are as follows:



- remote work is defined as work that can be performed wholly or partially in a place specified by the employee and agreed with the employer on each occasion, including at the employee's home address, in particular using means of direct remote communication,
- remote work may be performed occasionally at the request of the employee, up to a maximum of 24 days per calendar year,
- the employer's obligations include providing the employee with work materials and tools, including technical equipment, necessary to work remotely,
- the obligation to cover the costs or pay the equivalent may be replaced by the obligation to pay a lump sum, the amount of which is to correspond to the expected costs incurred by the employee due to working remotely,

The main provisions of the draft with regard to sobriety checks are as follows:

- if it is necessary to ensure the protection of life and health of employees or other persons or the protection of property, the employer will be able to introduce sobriety checks for employees,
- sobriety checks include testing by methods not requiring a laboratory test by means of a device with a valid calibration certificate,
- the introduction of sobriety tests, the group or groups of employees subject to sobriety tests, and the procedure for carrying out sobriety tests, including the type of equipment used for the tests and the time and frequency of the tests, shall be laid down in a collective bargaining agreement or work regulations, or in a notice, if there is no collective bargaining agreement in place at the employer or the employer is not required to adopt work regulations,

- the employer shall inform the employees about the introduction of sobriety tests according to the procedure adopted by the employer no later than two weeks before the start of the testing,
- the employer may not allow an employee to work if the sobriety test reveals the presence of alcohol in the employee's organism, indicating that they have used alcohol or are in a state of intoxication, or there is a justified suspicion that the employee came to work after using alcohol or in a state of intoxication, or consumed alcohol while at work.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12354104/katalog/12835646#12835646>

Concluding contracts via an ICT system

A proposal has been posted on the Government Legislation Centre website for a bill on the Act on Certain Contracts Concluding Electronically and amending the Act on Social Service, of April 20, 2022. **The main purpose of the proposal is to help small business entities (micro-entrepreneurs, farmers, individuals) in activities related to the conclusion of employment contracts, contracts of mandate (*umowa zlecenia*), as well as service contracts (*umowa o świadczenie usług*) and some other types of contracts. The proposal also provides for measures to help with social security issues (for instance registering an employee with ZUS, calculating the amount of contributions) and taxes. Such activities will be available via an ICT system, with the consent of both parties to the contract.**

Selected proposals:



- the minister competent for labor law matters will launch an ICT system enabling employers to conclude contracts with provided templates; access to the ICT system will be provided after logging in with a trusted profile (*profil zaufany*), on an individual account on the praca.gov.pl website.
- Templates of contracts will be available in the ICT system, which will ensure their efficient distribution and facilitate the whole process for all those wishing to conclude them (micro-entrepreneurs, farmers, as well as natural persons).
- Extension of the use of the trusted electronic signature (*podpis zaufany*) from official matters to include concluding contracts of employment and contracts of mandate between an employer and an employee on the praca.gov.pl website; contracts through the system can be signed with a qualified electronic signature (*kwalifikowany podpis elektroniczny*), a personal signature (*podpis osobisty*) or a trusted signature (*podpis zaufany*).
- The ICT system will make notifications to ZUS (competent body for social security) and KAS (competent body for taxes), and it will also be possible to calculate and pay contributions and tax advances and the amount of remuneration due to an employee.

- Via the ICT system it will also be possible for instance to issue leave applications, to calculate and account for leave, to issue a work certificate, and to perform activities related to amendment and termination of a contract.
- Performing activities related to maintaining and storing employee records in the system.

We will keep you informed of further developments.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12354302/katalog/12837316#12837316>

Planned increase in allowance for a domestic business trip

According to a draft of the Regulation of Minister of Family and Social Policy amending the regulation on entitlements to be paid to an employee working in a state or local government unit for a business trip of May 6, 2022 and published on May 11, 2022 on the website of the Government Legislation Center, **the daily allowance for a domestic business trip is to be increased to PLN 38**. Currently, the allowance payable to an employee for a domestic business trip is PLN 30 and has not been increased since 2013.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12359601/katalog/12878122#12878122>

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