Work on a basis o employer’s declarations

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Entrusting work to a foreigner based on the *declaration of entrusting work* is a simplified procedure, referred to also as a "declaration procedure". Thanks to it, a national of one of the following 6 states, i. e. **the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation and Ukraine,** can work in Poland for 6 months during 12 consecutive months without the need to obtain a work permit in the scope where the seasonal work permit is not issued, meaning other than the one indicated in the **Regulation. A prerequisite for using the simplified procedure is obtaining an entry in the register of declarations in the Poviat Labour Office by the employer** and holding a document confirming their residence title in Poland, authorising them to work in Poland, by the foreigner.

Registration procedure

- The employer submits the declaration to the Poviat Labour Office competent for the seat of a legal person or place of permanent abode of an individual. Filling the declaration, it is necessary to enter e.g. the details of the employer and of the foreigner they intend to employ, commencement date and the term of work, type of the agreement being grounds for work, gross remuneration value, a subclass of Polska Klasyfikacja Działalności Gospodarczej (PKD, Polish Classification of Activity), a job and work location. Remember the declarations can be registered solely for PKD subclasses **not mentioned** in the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 *on the business activity subclasses based on Polska Klasyfikacja Działalności (PKD) where the seasonal work permits are issued to a foreigner.* This means the employer must run a business activity of a given type (i.e. non-seasonal one) and the foreigner's work must be closely connected with it.
- The employer can also submit the declaration via a **website**

PLEASE NOTE: the declaration form is stipulated in the **Regulation** and is slightly different than the one used in previous years. A separate form is prepared for the foreigner doing work as a temporary worker.

- Submitting the declaration for registration, the employer presents a proof of paying **PLN 30, a clean criminal record declarations,** a valid identity document, a copy of all filled-in pages of the valid travel document of the foreigner or a copy of another valid identity document of the foreigner, and if the foreigner is not staying in Poland, a copy of the travel document pages containing the foreigner's personal data,
- The employee of the Poviat Labour Office enters the declaration in the register or refuses to enter it in an administrative decision. The application is entered within 7 business days after the declaration is submitted unless there is an explanatory procedure when it takes up to 30 days.
- The starost always issues a negative decision when the entity entrusting work was penalised in connection with entrusting work to foreigners, i.e. committed crimes or serious violations of regulations related to employing foreigners or certain provisions of the Criminal Code;
- The starost can also refuse to enter the document in the register of declarations if the circumstances indicate the declaration is submitted for the appearances' sake, it will be used by the foreigner for any purpose other than the work stipulated in the declaration or the entity entrusting work does not meet their obligations connected with running their business activity or entrusting work, including but not limited to they do not have funds to cover their liabilities resulting from entrusting work, do not run any business activity being grounds for entrusting work, are in arrears with paying contributions, e.g. a social insurance one, or delay tax payments.
- If the decision is negative, the entity can appeal to the second instance body, i.e. a minister competent for labour affairs, being the Minister of Family, Labour and Social Policy,
- Just like before, the declaration is not sufficient to ensure legal work in Poland. The foreigner must hold a **residence title enabling them to work** as well (e.g. a relevant visa or a temporary work permit, staying within a non-visa traffic for up to 90 days during 180 consecutive days).

Employer's obligations in connection with entrusting work based on the decision

- The employer whose declaration of entrusting work to a foreigner was entered in the register of declarations is obliged to notify the Poviat Labour Office **in writing** of work commencement (no later than on the day of starting work) or the failure to commence work (within 7 days after the work commencement date named in the declarations) by the foreigner.
- The employer is obliged to **execute a written agreement with the foreigner**, having presented **its translation into a language understandable for the foreigner** before in line with the terms and conditions stipulated in the declaration. In the agreement, the entity is obliged to include the terms and conditions stipulated in the declaration;
- The employer is obliged to comply with all the obligations resulting from entrusting work, identical as for Polish employees (e.g. registering for social insurance within 7 days, if a given agreement is subject to insurance, e.g. a contract of employment, of mandate or agency agreement), and also obligations connected with employing a foreigner under other regulations (e.g. keeping a copy of the foreigner's residence document).

The failure to fulfill the said obligations is subject to penalties.

Continued work of a foreigner who worked based on a declaration

If the entity wants to cooperate with the foreigner further based on the **contract of employment** following **3 months** of the foreigner's work based on the declaration, with the terms and conditions not inferior to the ones stipulated in the declaration, they can apply to the voivode for the work permit (or the foreigner can apply for the residence and work permit). Such a permit will be issued in a simplified procedure, i.e. the one excluding the so-called labour market test. In such a case the foreigner will be able to work legally for the said employer when waiting for the decision concerning their permit. The said solution can be used only when the foreigner's work for the said entity based on the declaration (registered by the said entity) before the permit application is submitted was carried out based on a **contract of employment.**

Counting the periods of working based on the declaration
The total period of the foreigner's work cannot exceed 6 months during consecutive 12 months regardless of the number of employers employing them based on the declaration. To count the periods of work based on a declaration, the periods which the declaration was registered for are considered.
Thanks to the central register system, the declarations registered in other offices in Poland are visible.
If the employer fails to fulfill their obligation to notify of the work commencement or a failure to commence work by a foreigner, the presumed work commencement date is used (i.e. the work was performed starting from the date named when entering the declaration into the register), unless the circumstances prove it was different, e.g. the foreigner arrived in Poland on a later data and this is corroborated by a stamp in their passport.
If the foreigner finishes work earlier, it is worth notifying the Labour Office as, if you do not, the work period will correspond to the entire period of the declaration validity. The Office can be notified both by the employer and by the foreigner.

Circumstances when a new declaration is not required

- changed seat or place of permanent abode, name or legal form of the entity entrusting work to a foreigner;
- acquisition of an employment establishment or a part thereof by another employer;
- transfer of an employment establishment or a part thereof to another employer;
- execution of a contract of employment and not a civil law agreement by the entity entrusting work and the foreigner;
- the foreigner is a temporary worker of a temporary labour agency and is delegated to work in a different place (for a different user employer), if the remaining working conditions did not change.

Document forms (in Polish)

1. Declaration of entrusting work to a foreigner
2. Declaration of the entity acting as a temporary work agency of entrusting work to a foreigner as a temporary worker
3. Declaration of the entity entrusting work to a foreigner concerning the circumstances mentioned in Article 88z section 5 items 1-6 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions