

Seasonal work permits

Data publikacji: 29.09.2019 Data modyfikacji: 29.09.2019 Departament Rynku Pracy MRPiPS

Starting from 1 January 2018, the amended Act on Employment Promotion and Labour Market Institutions introduced new solutions enabling to employ foreigners in Poland to do seasonal work, i.e. a seasonal work permit.

Seasonal work is the one done for no more than 9 months during a calendar year in the following industries: agriculture, horticulture, tourist industry, within the activities considered seasonal, as stipulated in the **implementing regulation (Journal of Laws.18.1749)** of the Minister of Family, Labour and Social Policy on the business activity subclasses based on Polska Klasyfikacja Działalności (PKD) where the seasonal work permits are issued to a foreigner.

Procedure

A seasonal work permit (i.e. an S-type permit) **for a foreigner is issued based on the application of the entity entrusting work** to a foreigner. The decision is issued by a competent starost based on the employer's seat or place of abode.

- **The employer applies for a seasonal work permit to a Poviats Labour Office** competent for their seat or place of abode (the seat refers to a legal person, e.g. a company, and the place of abode to a natural person);
- In the application, the employer stipulates e.g. the offered minimum remuneration of the foreigner, working time or number of working hours a week or month, type of an agreement being grounds for work performance and the permit validity term. Submitting the application, the employer **shall attach also a proof of paying PLN 30**;
- If the S-type permit refers to a national of any state other than Armenia, Belarus, Moldova, Russia or Ukraine, to the application it is necessary to attach the information on the outcome of **the so-called labour market test**, being information of the starost competent for the foreigner's workplace on the inability to satisfy personnel needs of the employer based on the register of the unemployed and jobseekers or on a negative result of recruitment organised for the employer. If the specific nature of work done by the foreigner does not enable to indicate their main workplace, the said information should be provided by a starost competent for the seat or place of abode of the entity entrusting work to the foreigner;
- Seasonal work permits are issued if **the remuneration value stipulated in the agreement with the foreigner is not lower than the remuneration of employees doing comparable work or working on a comparable position in the same number of hours**;
- **A seasonal work permit is issued for a specific foreigner.** The said permit indicates the entity entrusting work to a foreigner, minimum remuneration of the foreigner, working time or number of working hours a week or month, type of an agreement being grounds for work performance and the permit validity term. If the permit refers to the work of a foreigner as a temporary worker, the work permit names also the user employer.
- In the seasonal work permit validity term it is possible to do **every seasonal work, not only the one indicated in the permit** for a given employer.

Various procedures depending on whether the foreigner is in Poland or is going to come to do seasonal work

The procedure differs depending on **whether a foreigner has already stayed in Poland and held a residence title enabling them to work in Poland** (e.g. stays in a non-visa traffic, but came for some other purpose than seasonal work or holds a visa, except for visas issued for: tourist purposes (01), benefitting

from temporary protection (20) or due to humanitarian reasons (21)), **or whether they will apply for the permit to visit Poland** based on a visa to do seasonal work or in a non-visa traffic in connection with seasonal work.

"National path"

- **When the foreigner is in Poland:** the starost verifies the application and issues or refuses a permit. The decision is issued within 7 business days. When any explanatory procedure is required, the decision is issued within 30 days.

"Foreign path"

- **If a foreigner is going to apply for a permit to visit Poland for seasonal work, the starost verifies the application and enters it in the register of seasonal work applications or refuses to issue a seasonal work permit.** The application is entered into the register within 7 business days after a complete application is submitted unless there is an explanatory procedure when it takes 30 days. Entering the application in the register, the starost issues a certificate of entering the application in the register of seasonal work permits to the entity entrusting work to a foreigner.
- The entity entrusting work provides **the certificate of entering the seasonal work permit application** into the register of seasonal work applications. The said certificate is grounds for obtaining a seasonal work visa or, if the foreigner comes in a non-visa traffic, it is used as a confirmation of the purpose of their visit to Poland.
- Following the foreigner's arrival, the employer notifies the competent Labour Office thereof, presenting a copy of the required pages from the foreigner's passport, and provides the foreigner's address in Poland. After the said obligation is fulfilled, the starost issues a **seasonal work permit**, if no grounds for refusal emerged since the certificate of entry was issued. Please remember **the entry in the register of seasonal work permit applications is valid for only 120 days — if the starost does not receive a confirmation in that period the foreigner is going to start work later, they will discontinue the procedure connected with issuing the seasonal work permit.**
- A foreigner can work when waiting for a seasonal work permit, i.e. after the entity has notified the office of the foreigner's visit. However, the work must be done based on the terms and conditions stipulated in the certificate of entry in the register, issued by the office before. If a worker started to work on a day which is free for the office, the worker's work is considered legal if it is done based on the conditions stipulated in the certificate of entering the seasonal work permit application in the register of seasonal work applications and the employer submits relevant documents to the competent starost **on the first day of the office work.**

When does a starost refuse to issue a seasonal work permit to a foreigner?

- The starost **refuses to issue an S-type permit** if the entity entrusting work failed to meet the procedural requirements concerning the work permit issuance or 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 **refuse to issue a permit** also if, according to the circumstances, the obtained permit can be used inconsistent with its purpose or is obtained for appearances' sake. This refers to situations when the entity entrusting work fails to fulfill their obligations connected with running their business activity or entrusting work, including but not limited to e.g. when it does not have funds to cover their liabilities resulting from entrusting work, does not run any business activity being grounds for entrusting work, is in arrears with paying contributions, e.g. a social insurance one, or delays tax payments.
- If the **decision is negative**, the entity can **appeal to the second instance body**, i.e. a minister competent for labour affairs.

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

- 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 permit. In the agreement, the entity is obliged to include the terms and conditions stipulated in the permit;
- 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 throughout the whole term of work).

Seasonal work permit extension

- This refers solely to foreigners who visit Poland for seasonal work, i.e. the ones for whom the entry in the register of applications for a seasonal work permit was obtained (a "seasonal" visa, non-visa traffic with the application entered in the register);
- It is issued to continue work for the same entity or to start work for another entity;
- It is issued for a period which, together with the period of the foreigner's stay in connection with seasonal work, calculated from the first day of entry in Schengen area in a given calendar year, is not longer than 9 months in a calendar year;
- The foreigner **can work when waiting for the extension of the seasonal work permit for the same employer throughout the whole waiting period**, but for a **new employer for up to 30 days**;
- If the competence of a starost is changed because of the change of the seat or place of abode of the entity entrusting work to a foreigner, the competence of the starost for the procedure of the seasonal work permit extension is determined as at the day when the application for issuing the permit extension is submitted.

Seasonal work permit validity term

- A seasonal work permit is issued for **no more than 9 months in a calendar year**.
- In the case of a foreigner who came to Poland based on a visa issued for seasonal work or within a non-visa traffic in connection with the application for a seasonal work permit entered in the register of seasonal work applications, the said period is calculated started from **the first day of the foreigner's arrival in Schengen Area**;
- For foreigners who came **for any purpose other than seasonal work**, the permit can be issued for the term of their legal stay **not longer than 9 months**. **The said period is calculated together with the periods named in the seasonal work permits issued previously for that foreigner.**

Easier procedure for the nationals of Armenia, Belarus, Moldova, Russia and Ukraine (six states using the declaration system):

- **exemption from the so-called labour market test** — submitting an application for a seasonal work permit for nationals of the said states, the entity need not present the information of the starost on the inability to satisfy the personnel needs of the employer based on the register of the unemployed and jobseekers or on a negative result of recruitment organised for the employer.
- **the so-called multi-season application** — when requested by the entity entrusting seasonal work to a foreigner, the starost can enter the application for a seasonal work permit in the register for periods not exceeding 9 months in a calendar year (for no more than 3 consecutive calendar years), provided the said employer entrusted work to a foreigner based on a seasonal work permit at least once during 5 years preceding the application submission day;
- **it is also possible to entrust work other than seasonal for up to 30 days during the validity term of the seasonal work permit held (except for temporary workers), without the need to apply for a separate work permit.** To benefit from that possibility, the entity entrusting work is obliged to pay at least remuneration on the existing level to the foreigner.

Working when waiting for the seasonal work permit

- A foreigner using the so-called "foreign path" can work also in the period of waiting for the seasonal work permit, if the employer notified the office of the foreigner's arrival and the work is done based on the terms and conditions stipulated in the certificate of entry in the register issued by the Office before.
- The foreigner who came to do seasonal work can work when waiting for the extension of the seasonal work permit (for the same employer throughout the whole waiting period, but for a new employer for up to 30 days).

Circumstances when a new permit 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.

If the entity is a temporary work agency, it is obliged to notify the competent labour office of the said changes within 7 days after they occur. The failure to fulfill the said obligation is subject to a fine.

Documents for the procedure of issuing seasonal work permits:

1. Application for a seasonal work permit for a foreigner in Poland
2. Application of an entity being a temporary work agency for issuing a seasonal work permit for a foreigner in Poland as a temporary worker
3. Certificate of entering the application in the register of seasonal work applications
4. Statement of the entity entrusting work to a foreigner that the foreigner arrived to do seasonal work
5. S-type seasonal work permit for a foreigner as a temporary worker in Poland
6. S-type seasonal work permit for a foreigner in Poland
7. Application of an entity being a temporary work agency for issuing a seasonal work permit extension for a foreigner in Poland as a temporary worker
8. Application for a seasonal work permit extension for a foreigner in Poland
9. S-type seasonal work permit extension for a foreigner as a temporary worker in Poland
10. S-type seasonal work permit extension for a foreigner in Poland
11. Statement of the entity entrusting work to a foreigner concerning the circumstances mentioned in Article 88j section 1 items 3–7 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, i.e. a criminal record statement made under penal liability
12. Starost's information on the ability to satisfy personnel needs of the entity entrusting work to a foreigner, covering Polish nationals and foreigners, stipulated in Article 87 section 1 item 1–11 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, registered as the unemployed and jobseekers — this does not refer to the nationals of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine