

POLAND

Law and Practice

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Softysiński Kawecki & Szlęzak (SK&S) is one of Poland's leading full-service law firms. With more than 180 attorneys, the firm provides the highest standard of legal services in all areas of business activity, and is well reputed for the quality of its work and for its innovative approach to complex legal problems. The labour law team offers employers legal assistance in the broadest sense of HR and compliance matters. The team strives not only to provide clients

with the right answers, but also to ask the right questions, aiming to ensure that the proposed solutions cover all relevant issues, and working with other teams to take tax, corporate and competition regulations into account. SK&S supports the creation of good and safe organisations through well-tailored policies and training of managers and employees in preventing bullying and discrimination, and ensuring diversity and equality in the workplace.

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SOŁTYSIŃSKI
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1. Policy

1.1 Immigration Policy

The Polish system of legalising residence and employment is quite transparent and does not leave much room for arbitrary decisions by the authorities. The legalisation processes run quite smoothly, although due to the recent increase in the number of applications for residence permits, the waiting time for decisions has become longer. This is due to the large number of persons involved and the limited capacity of the offices involved. In cases of the visa process, the main problem at present is making an appointment at a Polish consulate abroad, which is the first step in the process of applying for a Polish visa.

Citizens of certain countries may enter Poland on the basis of visa-free regime for a period of 90 days within a 180-day period. In addition, Poland has concluded a number of bilateral agreements that provide for facilitations for citizens of particular countries in terms of easier border crossing (eg, Americans, Koreans, Israelis, Japanese). Citizens of Ukraine are in a special situation: regulations legalising the stay and work of Ukrainians in Poland, which were introduced after the outbreak of the war, are still in force and are regularly extended for further periods. The stay of Ukrainian citizens who came to Poland in connection with the outbreak of war is legal, and the employment of such persons requires only a notification to the office.

1.2 Upcoming Policy Changes

Currently, the Polish government works on the implementation to the Polish legal system of the provisions of Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and

repealing Council Directive 2009/50/EC. The amendments assume a change in the form of applications for residence permits for foreigners and the facilitation of the procedure for obtaining an EU Blue Card.

According to the planned changes, the submission of applications for residence permits will take place electronically rather than in person. It will still be necessary for the foreigner to visit the office in person in order to provide fingerprints and present the original documents attached to the electronic application.

In addition, there will be a new definition of 'higher professional qualifications' to the one that includes both skills acquired through higher education and those acquired through work experience.

EU Blue Card holders will be able to work in another member state for 90 days within a 180-day period without an additional permit. After a period of one year of residence on the basis of a Blue Card, a foreigner will be able to move to another member state under preferential conditions in order to work. In addition to other facilitations, EU Blue Card holders are to be able to carry out economic activities on the same terms as Polish citizens.

More broadly, in 2024 the Polish government plans to prepare and present the assumptions of the migration strategy for 2025-2030. According to the government's plans, a draft of comprehensive amendments to the laws regulating immigration, including a draft of a new law on foreigners, can be expected in 2025. The direction of the changes has not yet been defined - it will result from the new strategy.

2. Visa Options

2.1 Sponsor-Based Employment Visas

In Poland, a visa is a document legalising entry and stay in Poland, while the work permit is a separate document required for legally working in Poland. Visas or other residence titles are obtained by the foreigners themselves. The work permits are sponsor-based and the foreigner needs an employer in order to obtain a work permit (if the foreigner is not released from the obligation to have a work permit due to their individual situation; eg, EU citizen, student or graduate of full-time studies of Polish University).

There are six options for sponsor-based employment in Poland: work permit Types A, B, C, D, E and a work permit for seasonal work. The application for these work permits is submitted by the employer. The employee needs to secure the residence title (visa, residence permit, etc) under a separate procedure.

Work permit Type A is a standard work permit obtained for foreigners to work in Poland for an employer conducting activity in Poland.

Work permit Type B is a work permit obtained for a foreigner appointed to the management board of a company, or who conducts the affairs of a limited partnership or limited joint-stock partnership as a general partner, or in connection with the granting of a general power of attorney for a period exceeding a total of six months in any consecutive 12-month period.

Work permit Type C is issued if a foreigner performs work for a foreign employer and is posted in the territory of Poland for a period exceeding 30 days in a calendar year to a branch or plant of a foreign entity or an affiliated entity within the meaning of tax regulations.

Work permit Type D is required if a foreigner performs work for a foreign employer who does not have a branch, plant or other form of organised activity in Poland and is posted in the territory of Poland to perform a service of a temporary and occasional nature (export service).

Work permit Type E is required if a foreigner performs work for a foreign employer and is delegated to Poland for a period exceeding 30 days within the next six months for a purpose other than that indicated in the Type B, C, D permits.

The work permit for seasonal work (Type S) is available for work in selected business sectors; ie, agriculture, forestry, hunting and fishing, or catering and accommodation.

Additionally, the alternative option is a unified permit for work and stay issued within one procedure initiated by a foreigner (employee). Still, the employee needs to have an employer and provide a form completed by the employer.

The facilitated procedure is applied for Ukrainian citizens. The employer is required only to notify the competent authority about entrusting work to the Ukrainian.

2.2 Un-sponsored Work and Investment Visas

The options for un-sponsored work permits are very limited in Poland.

Previously it was possible to apply for a visa under the programme called Poland.Business Harbour - dedicated to engineers and IT specialists from selected countries: Belarus, Ukraine, Moldova, Georgia, Armenia and Azerbaijan. Poland. Business Harbour visa holders were allowed to work in Poland without obtaining a work permit during the validity of the visa. How-

ever, the programme has been suspended, and citizens of the above-mentioned countries must legalise their stay and work under the general rules (depending on the rules for a particular nationality), including obtaining a visa in the standard procedure and holding the appropriate title entitling them to work.

In addition, the foreigners of certain countries may conduct business activity in Poland as a sole entrepreneur if the foreigner obtained a proper residence title. However, additional permits and restrictions may apply to business activity.

2.3 Restrictions on Visitors

In principle, visitors cannot legally work in Poland without work permits. There are no specific provisions of law covering the allowed professional activities, which may be carried out without a work permit. In practice, the activities considered by Polish authorities as allowed (not work performance) cover: meetings, visiting premises, training, planning, negotiations. Every situation should be individually assessed. Further, the work permits are required if assignments exceed 30 days, therefore business activities exceeding 30 calendar days should be conducted under a work permit.

The exemption from a work permit is available for foreigners posted by a foreign employer to Poland, if they retain permanent residence abroad, for a period not exceeding three months in a calendar year, in order:

- to perform assembly, maintenance or repair work of delivered technologically complete devices, structures, machines or other equipment, if the foreign employer is their manufacturer;

- to carry out acceptance of ordered devices, machines, other equipment or parts, made by the Polish entrepreneur;
- to train the employees of the Polish employer (the recipient of the devices, structures, machines); and
- assemble and disassemble exhibition stands, and care for them, if the exhibitor is a foreign employer who delegates them for this purpose.

2.4 Remote Working

Remote work in Poland is understood as being working from a place chosen by an employee and accepted by the employer - outside the employer's premises. The foreigner can work remotely from Poland for a Polish entity or for a foreign entity, if the foreigner holds a right to work and a right to stay in Poland. Further fiscal and social security obligations may apply. There are no specific remote work regulations or exemptions. In addition, Polish regulations do not provide for a separate work permit dedicated to employees working remotely.

3. Visa Requirements

3.1 Prerequisite Language Requirements

Poland does not have any language requirements that must be met in order to obtain a visa, work permit or residence permit.

Confirmation of knowledge of the Polish language is required when a foreigner applies for (i) residence of a long-term EU resident or (ii) Polish citizenship. In these cases, the foreigner must confirm knowledge of the Polish language at at least B1 level.

3.2 Medical Certificates or Vaccinations

Entry and travel restrictions related to COVID-19 were completely lifted in March 2022. As a rule, medical certificates or vaccinations are not required for visa or residence permit application purposes.

However, foreigners applying for visas at Polish consulates are required to have health insurance for EUR30,000 covering the costs of hospitalisation in Poland for at least six months. Possession of health insurance is one of the conditions for obtaining a visa. In case of applying for a temporary residence permit, it is also required to present (i) documents confirming health insurance (certificate from the Social Insurance Institution) or (ii) confirmation of having private health insurance in the territory of Poland.

3.3 Minimum Thresholds: Sponsor-Based Employment Visas

To obtain a visa at the Polish consulate allowing the foreigner to work, the foreigner must justify their purpose of residency in Poland. If a foreigner applies for a work visa, they will need to demonstrate a work permit previously obtained by the employer. There are several types of work permits available (work permit Type A, B, C, D, E or S). Depending on the type of work permit, slightly different conditions for obtaining one must be met.

Work permit Type A:

- the amount of monthly remuneration of the foreigner cannot be lower than the amount of the minimum wage;
- the amount of remuneration, which will be specified in the contract with the foreigner, cannot be lower than the remuneration of employees performing work of a comparable position; and

- before obtaining a work permit, a “labour market test” must be conducted.

Work permit Type B:

- issued for a foreigner performing a function in the management board, acting as a proxy or a general partner of a legal entity registered in the Register of Entrepreneurs or in the company under organisation;
- issued for a foreigner who performs one of the functions indicated above for a period longer than six months in a 12-month period;
- the company must demonstrate that it achieved adequate income in the previous year; and
- the company must demonstrate that it employed at least two employees in the year preceding the application; or
- the company must demonstrate that it will meet the above requirements in the future.

Work permit Type C:

- issued for a foreigner who is posted to Poland;
- a foreigner who is employed by a foreign employer;
- the posting period must be longer than 30 days;
- the foreigner will be posted to a branch or a permanent establishment of the foreign entity; and
- the posting employer is obliged to provide the posted employee with terms and conditions of employment no less favourable than those applicable in Poland, provided by the Labour Code and other regulations.

Work permit Type D:

- issued for a foreigner who is posted to Poland;
- the foreigner who is employed by a foreign employer that has no branch, permanent establishment or other form of organised business activity in Poland;
- the purpose of the posting is temporary and provides only occasional services (export services); and
- the posting employer is obliged to provide the posted employee with terms and conditions of employment no less favourable than those applicable in Poland, provided by the Labour Code and other regulations.

Work permit Type E:

- issued for a foreigner who is posted to Poland;
- the foreigner must be posted to Poland for a period longer than 30 days in a six-month period;
- the purpose for posting is different from those listed for work permit Type C or D; and
- the posting employer is obliged to provide the posted employee with terms and conditions of employment no less favourable than those applicable in Poland, provided by the Labour Code and other regulations.

Work permit Type S:

- issued for seasonal workers;
- the amount of remuneration, which will be specified in the contract with the foreigner, cannot be lower than the remuneration of employees performing work of a comparable position; and
- before obtaining a work permit, a “labour market test” must be conducted.

3.4 Employment-Based Visa Limitations

The visa itself is not limited to a specific employer. However, a work permit is subject to such restrictions and is issued for the purpose of working for a specific employer. With this in mind, if a foreigner already has a visa entitling this person to work in Poland, such a foreigner cannot be hired by a new employer until a new work permit is issued.

Employment of a foreigner without the prior obtaining of a work permit when regulations require it, is treated as illegal employment and may result in a fine of up to PLN30,000 at the authorities’ discretion.

4. Immigration Process

4.1 Visa Processing Times Visa Procedure

The Polish consulate, after the foreigner submits a set of documents at the appointment, has, as a rule, 15 days in which to issue a visa. However, it should be borne in mind that the waiting time for an appointment at the consulate depends on the country in which the foreigner is applying for a visa. As a rule, a visa can be obtained at the Polish consulate in the foreigner’s country of origin, but it should be borne in mind that the waiting time for an appointment can last from a few weeks to several months.

Work Permit

The waiting time for a work permit is on average 2-4 months, depending on the immigration office and the complexity of the case. If the case requires a labour market test prior to obtaining a work permit, it should be noted that the time to conduct the test is about two weeks.

Residence Permit

The standard time for issuing a permit ranges from several months to a year. Processing times vary between different immigration offices. Once a complete application for a residence permit is submitted to the immigration office, the foreigner's stay is considered legal throughout the procedure.

4.2 Travel Restrictions Once Application Filed

In the case of the foreigner being required to have a visa in order to enter Poland, they cannot cross the border before obtaining the document. In addition, if the visit to the consulate is successful, the foreigner leaves his passport at the consulate for the purpose of printing the visa.

In the case of application for a temporary or permanent residence permit, the foreigner's stay is legal in Poland during the entire procedure. The regulations do not provide for restrictions on travel outside Poland during the procedure, although re-entry into Poland requires possession of a valid visa (if the nationality of the foreigner requires a visa to enter Poland).

4.3 Expedited Visa Proceedings

Polish regulations do not provide for any legal fast-track visa processing. In many Polish consulates, appointments are scheduled automatically, depending on the staff occupancy of the consulate at a given time. In this context, it is necessary to find out early enough what the current waiting period is for a visit to a particular consulate in order to have sufficient time to collect the necessary documents (including obtaining a work permit). This will help the visa application submission well in advance so as to allow the foreigner to arrive in Poland on the date planned by the employer.

4.4 Post-visa Requirements

After obtaining a visa and work permit, the foreigner's stay and work are legal as long as the visa and permit are valid. A national Type D visa for work is issued for a maximum period of one year, while a Schengen-Type C visa for work allows residence for a maximum of 90 days within each 180-day period. A work permit is issued for a maximum period of three years. Please note that the absence of a legal basis for residence (such as lack of a visa) makes it illegal for a foreigner to work in Poland, even if the work permit is still valid.

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If a foreigner plans to stay in Poland and work for a period exceeding the validity of the visa, they must take steps to legalise a further stay. The foreigner has two options in this situation:

- Obtain a new visa - this option requires the foreigner to return to their country of origin and obtain a visa at the Polish consulate (it is not possible to obtain a visa at the consulate in Poland).
- Obtain a temporary residence permit - the application is submitted to the immigration office in Poland in the city where the foreigner lives. According to current regulations, a foreigner may submit the application no later

than the last day of legal residence in Poland. However, the waiting time for an appointment to submit an application is approx. 2-4 months. In this context, the foreigner should not wait until the last day. After submitting the application, the foreigner receives a stamp in their passport, and residency in Poland is considered legal throughout the whole procedure.

Employment of a foreigner without legal basis for residence or work in Poland is understood to be illegal employment and may result in a fine of up to PLN30,000 at the authorities' discretion. In addition, such an employer may be prohibited from employing foreigners in the future, and the foreigner may be obliged to return to their country of origin and be banned from entering the Schengen Area for up to three years.

5. Immigration Costs

5.1 Typical Cost of a Sponsored Employment

The total fee for the procedure of legalisation of residence and work in Poland includes fees for a visa, a work permit and a temporary residence permit. The type of documents needed to legalise residence and work depends on the nationality of the foreigner.

The visa, work permit and residence permit costs in Poland are as follows:

- National Visa Type D - the visa fee is currently EUR80. However, there are plans to raise the fee to EUR135 in the near future. This amount is calculated in the local currency of the country in which the foreigner applies for a visa. The fee for reprocessing the application

is also EUR80, also with a planned increase to EUR135.

- Schengen Visa Type C - the visa fee is EUR80. The fee for reprocessing the application is also EUR80.
- If the application is denied, the fee is not refundable. At some consulates, the visa fee can only be paid in cash.
- Work permit fee: the fee for applying for a permit is:
 - (a) PLN100.00 – if the foreigner's work is to last longer than three months; and
 - (b) PLN50.00 – if the foreigner's work is to last no longer than three months.
- The labour market test is free of charge.
- Temporary residence permit fee: the fee is PLN340. In case of application for a temporary residence permit to work in a highly skilled profession, the fee is PLN440.
- Permanent residence permit fee: PLN640.

Please note that the amounts of fees are subject to change, so before applying, please check and confirm the current amount of individual fees.

5.2 Payment of Visa Costs

The regulations do not specify rules as to who should be responsible for covering the costs associated with the foreigner's residence (ie, visa or residence permits). Payment of the visa fees as well as fees related to the foreigner's further residence in Poland (eg, a temporary residence permit) can be paid by the applicant, the employer or a third party.

The fee for the work permit is covered by the employer, as the employer is the party of the procedure. However, there is no prohibition that the payment can be made by a third party. Payment of the fee for work permits by the employee is not a common practice.

6. Enforcement

6.1 Enforcement Action Against Individuals and/or Sponsors

The authorities take enforcement action against both the foreign employee and the employer if the foreigner's residence and/or work is illegal.

Illegal employment of a foreigner is considered to be employment of a foreigner:

- who does not have legal residence in Poland (ie, a visa or a residence permit);
- who is staying in Poland on the basis of a tourist visa;
- who does not possess an appropriate document legalising his/her employment, unless the foreigner is exempt from the obligation to possess a work permit;
- on conditions other than those indicated in the work permit; and
- without concluding an employment contract or a civil law contract.

The following consequences should be considered in the case of illegal work:

According to the applicable law, an employer who entrusts a foreigner with illegal work is subject to a fine. The fine ranges from PLN1,000 to PLN30,000. A foreigner who undertook illegal employment is also subject to a fine. The voivod may also decide to revoke the issued work permit or refuse to issue further permits to the employer concerned. A foreigner who illegally performs work may be obliged to leave Poland and receive a ban on re-entry into the country and other Schengen Area countries for a period from one to three years. The employer will be obliged to cover the costs related to the issuance and enforcement of a decision obliging

the foreigner to leave Poland, if the decision is subject to compulsory enforcement.

In addition, according to the provisions of the Criminal Code, whoever enables or facilitates the illegal stay of foreigners in the territory of Poland for financial or personal gain shall be subject to a penalty of deprivation of liberty of between three months and five years.

6.2 Employer Obligations

There are no obligations on the employer referred to sponsoring an employment-based visa (or residence permit). If the fee for the procedure of legalisation of residence and work in Poland is not paid, this is treated as a formal deficiency, so the issuing authority will call for payment of the fee by a certain date, and if the fee is not paid, the application will be returned.

Visa

In order to obtain an employment-based visa, the foreigner must attach a work permit or a statement on entrusted work (if applicable) to the visa application. Thus, the employer's obligation, whether he sponsors the visa or not, is to obtain a work permit or statement and then send this document to the foreigner.

Residence Permit

In order to obtain an employment-based residence permit, the foreigner must attach to the application for a residence permit Annex No. 1 completed by the employer. The employer's obligation is to complete and sign two copies of this document and give one to the foreigner.

Work Permit

The employer is obliged to obtain a work permit for the foreigner before the foreigner starts performing work if there are no other grounds for the foreigner to perform work.

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The employer is obliged to notify in writing, within seven days, the voivod who issued the work permit, of the following circumstances:

- the foreigner started work of a different type or on a different position than that specified in the work permit;
- a change of the registered office or place of residence, name or legal form of the employer occurred;
- the establishment or its part was taken over by another employer;
- the foreigner did not start performing work within three months from the initial date of validity of the work permit;
- the foreigner stopped performing work for a period exceeding three months;
- the foreigner's employment contract was terminated earlier than three months before the expiry of the validity period of the work permit.

6.3 Right to Work Check Requirements

The right to work check requirement in Poland can be deduced from the provisions regulating penalties for illegal employment of foreigners.

There is no explicitly formulated procedure for checking a foreigner's right to work; however, taking into account the regulations governing the residence and work of foreigners and their right to residence check requirement, the following procedure can be adopted. First of all, the employer should check whether the person to be employed has a valid document entitling him to stay in Poland (in particular a visa or a residence permit) and keep a copy of this document for the entire duration of the foreigner's work. Next, the employer should ascertain whether the foreigner can work in Poland without a work permit. If the foreigner is not in the group of persons

exempted from this obligation, the employer has to obtain a work permit or register a statement on entrusting work to a foreigner (if applicable).

7. Accompanying Family Members/Dependants

7.1 Recognised Family Relationships

There are several possibilities for obtaining a visa for a foreigner who is a family member of another person residing or about to reside in Poland.

The first concerns situations in which a foreigner accompanies a citizen of the European Union, Norway, Iceland, Liechtenstein or Switzerland, and the second is a situation in which the foreigner is to join another foreigner (a citizen of other countries) residing in Poland (on the basis of documents specified in regulations). Regarding the visa for a person accompanying a citizen of the EU or of the aforementioned countries, a family member is considered to be a foreigner who is:

- a spouse of a citizen of the EU or of the aforementioned countries;
- a direct descendant (child) of a citizen of the EU or of the above-mentioned countries or of his/her spouse, who is under 21 years of age or is a dependant of a citizen of the EU or of the above-mentioned countries or of his/her spouse; and
- a direct ascendant (parent) of an EU citizen or of the aforementioned countries or of his/her spouse, being a dependant of an EU citizen or of the aforementioned countries or of his/her spouse.

A foreigner who is a family member of another foreigner may apply for a residence permit for

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the purpose of family reunion and visa in order to implement this type of residence permit. In this situation a member of the family is considered to be a foreigner who is:

- a person bonded to a foreigner by marriage recognised by the law of the Republic of Poland;
- a minor child of a foreigner and a person bonded to that foreigner by marriage recognised by the law of the Republic of Poland, including an adopted child;
- a minor child of a foreigner, including an adopted child, being the foreigner's dependant over whom the foreigner exercises actual parental authority; and
- a minor child of the person referred to in Item 1, including an adopted child, being that person's dependency over whom that person exercises actual parental authority.

7.2 Dependant Visas

A family member who holds a visa to accompany a citizen of EU countries or residence permit for the purpose of family reunion can work in Poland without a work permit.