



Jarosław Cichoń
Do you work in Poland?
Do it legally!



Leaflet for workers

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Autor tekstu
JAROSŁAW CICHON

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DOROTA ZAJĄC

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IZABELLA DOBRZAŃSKA

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TERESA JASTRZĘBSKA, ROBERT JAWORSKI

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BARBARA CHAREWICZ

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Before coming to Poland

You can take up work in Poland legally if:

- you have a work permit,
- your stay in the territory of Poland is lawful,
- the basis of your stay in Poland entitles you to perform work, because it is something different than e.g. a tourist visa or another document which excludes taking up work.

A **work permit** is obtained at the voivodeship office by your prospective employer, who has to pay the related fee. After completion of the procedure, the employer has to give you one copy of the work permit.

Instead of the work permit – employer’s declaration

If you are a citizen of Ukraine, Belarus, Russia, Moldova, Georgia or Armenia, you can work without a work permit for a period **no longer than 6 months during 12 subsequent months**, provided that:

- the employer issues a written declaration of the intention to entrust you with work,
- the employer registers that declaration in the county labour office.

Obtain a visa!

Once you have a valid work permit or a declaration, you have to apply to the Polish consulate competent for the country of your permanent residence and ask for a **visa in order to perform work**. The visa will enable you to come to Poland, stay and work here legally.

You cannot work legally, if you stay in Poland on the basis of:

- a visa issued to a person in order to: come as a tourist (symbol “01”), take advantage of temporary protection (“20”), come

for humanitarian reasons, considering the state's interest or international obligations ("21");

- permit for a temporary stay granted on the basis of art. 181 par. 1 of the Act of 12 December 2013 on foreigners.

If you want to change your employer

A work permit is granted for work for one specific employer, in a specific position and during a period specified in the permit. If for some reasons you wish to change the employer, you have to obtain a new permit for work with a new employer. When you work on the basis of your employer's declaration, and wish to work in another company, you should also have a declaration of your new employer, registered by him in a county labour office. On the other hand, a change of the employer does not oblige you to obtain a new visa or a permit for temporary stay, if the documents held by you are still valid.

IMPORTANT!

The employer can entrust you with work in a different position than specified in the work permit, but only for the period of 30 days in total during one calendar year and on condition that within 7 days the employer sends written information about the change to the voivode who issued your permit.

Illegal work can be punished with a fine and expulsion from Poland

If you work in Poland:

- but you do not have a valid visa or another document which gives you the right to stay in the territory of Poland (e.g. a residence card),

- but the basis for your residence excludes the performance of work (see above),
- but you do not have an obligatory work permit,
- but in a position or on terms different than those specified in the permit (excluding the period of 30 days in a calendar year), **then your work is illegal.**

You shall be subject to a fine from 1 000 to 5 000 PLN, be compelled to leave for home (leave the Polish territory), and forbidden to re-enter Poland or the territory of other countries of the Schengen zone (for the period from 1 to 3 years).

The employer engaging foreigners illegally shall also be subject to a fine. Additionally, he has to pay the costs related to the expulsion and enforcement of the decision obliging the foreigner to leave Poland. Fines for the employer are much higher when by deceiving or taking avail of professional subordination, the employer persuaded the foreigner to perform work illegally.

Before you start working

The employer is obliged to conclude a **written contract** with you and give you one copy of it. Before signing the contract, you should have a chance to read its **translation into the language you know well** (this refers to foreigners who are obliged to have a work permit).

The employment contract has to be concluded in writing – at the latest on the day when you start your work. Failure to comply with that duty is punishable with a fine of up to 30 000 PLN.

Remember! **The name of the contract is not decisive when it comes to its type!** Depending on the contents of the work permit and the terms of performing work, you can be engaged based on an employment contract or a civil-law contract (contract of mandate, task

contract, agency contract, etc.). **Civil-law contracts do not guarantee you the right to enjoy the protection and privileges resulting from the Labour Code!** If you work under the employer's management, in the place and at the time specified by the employer, he/she should conclude **an employment contract with you, not a civil law contract. Such a situation occurs especially when:**

- you come to work every weekday (or on specified days, if you work part-time),
- your hours of work are set by the employer (e.g. in a work schedule or timetable),
- you are obliged to perform the work personally (you cannot send somebody to stand in for you),
- the employer or supervisor gives you orders and supervises your work.

In such a situation, it is irrelevant how your contract was titled, because what really matters is the way your work is arranged.

NOTE!

In the concluded contract, the employer has to include the amount of salary specified in your work permit and pay you the salary in, at least, such amount. In the case your salary is lower, the employer is obliged to compensate for the difference, and pay the related social security contributions and income tax advance.

Registration with the insurance system is the employer's duty

The employer is obliged to register you with the social and health insurance system within 7 days and to pay respective contributions for your insurance. This applies to you regardless of the basis of your employment, be it a contract of employment or a civil law contract, i.e.

a contract of mandate, or an agency contract. The duty does not apply to task contracts only. Being insured gives you the right to:

- **use public health care services free of charge,**
- **receive benefits related to sickness, maternity, and a workplace accident (e.g. sickness benefit and maternity benefit).**

The employer calculates and deducts from your wages contributions for social and health insurance as well as advances for the income tax. The employer must pay contributions and advances for the income tax from the whole of your pay which you actually receive. It is inadmissible to pay wages in part or in full without deductions for the income tax and insurance contributions.

A single permit (for residence and work)

If you plan to reside and work in Poland for over 3 months, then you can apply for a single permit for temporary stay and work which is issued by the voivode. The issuing of such permit is realized within one administrative procedure and – based on one document only – it gives a foreigner the right to both reside and work in Poland. In this case you do not need to apply for a separate residence permit (a visa), while your employer does not have to apply for a work permit.

The initiative is yours!

It is the foreigner's task to apply for a single permit for residence and work and not the employer's (like in the case of ordinary work permits). The application should be enclosed with an opinion of a staroste concerning personnel supply possibilities in the local labour market, which your employer must obtain first.

Foreigner's duties in case of change of your work permit terms

In case your employment conditions are different from the ones specified in the temporary residence and work permit, i.e. in case:

- you lose a job with one of the employers listed in the permit (a single permit for temporary residence and work can mention a number of employers),
- you change your work post, or
- your wages are lowered,

you are obliged – **within 15 working days** – to notify the voivode of this fact and your permit will be amended accordingly. If you fail to notify the voivode – your temporary residence and work permit will be revoked.

30 days to find a new job

If you have lost a job with the employer (employers) listed in the temporary residence and work permit, but you have complied with the duty to notify the voivode about this fact in writing and the period of unemployment has not exceeded 30 days and happened only once during the period of the permit's validity, the permit will not be revoked. As mentioned above, you can find yourself a new job within 30 days.

Your work is legal while you wait for your permit to be extended

The application for your permit to be extended should be submitted at the provincial office by your employer at least 30 days prior to the date of the permit's expiry. In case of a single residence and work permit

the application is submitted by the foreigner himself no later than on the last day of his legal stay in the territory of Poland. If the deadline for submission of the application to extend the work permit or temporary residence and work permit **with the same employer and at same post** has been met, the foreigner's work in the territory of Poland remains legal – from the date of submission of the application till the day on which the decision on extending the permit becomes final.

Powers of inspection authorities

Inspections of legality of foreigners' employment are conducted by inspectors of the National Labour Inspectorate and officers of the Border Guard. They are authorized to:

- establish the identity of persons performing work who are staying on premises of a workplace and to question them,
- demand that the employer provide them with any documents related to employment of foreigners, e.g. work permits, concluded contracts and proofs of registration with the social insurance system.

Where to look for help?

The National Labour Inspectorate

You can get free legal advice on labour law and legality of employment in each of the 16 district labour inspectorates (in province capital cities) and 42 field offices of the National Labour Inspectorate (in other larger cities). The advice can be obtained personally or over the phone (or in writing – by forwarding a letter of enquiry to the office). Information on office days for provision of legal advice as well as our lawyers' telephone numbers can be obtained on the web page at www.pip.gov.pl.

You can also file a complaint with the National Labour Inspectorate **about non-compliance with labour law provisions and occupational safety and health.**

Labour court

If an employment contract is the basis of your work, then you can exercise your rights at a labour court in case of a conflict with the employer. Legal proceedings in such courts are more employee friendly (less formalized) than in civil courts which deal with conflict situations related to civil law contracts (contracts of mandate, task contracts, etc.).

Non-governmental organizations

Certain non-governmental organizations can also provide you with legal advice on performance of work in Poland. They advise foreigners on the existing legal provisions in Poland and may deal with individual cases, they can also help foreigners get started in Poland. Some of them can help deal with administrative matters, like writing letters and applications, and can also represent foreigners in offices and courts of law. Representatives of such organizations can accompany foreigners as interpreters.

Useful information

Info line for migrants: +22 490 20 44 (Mon. – Fri. from 9.00 to 17.00)

At this number migrants can obtain information concerning among others, conditions for residence and work in Poland. Information is provided in the following languages: English, Arabic, French, Polish, Russian, Ukrainian, Vietnamese.

Info site for migrants: www.migrant.info.pl

National Consulting and Intervention Centre for the Victims of Trafficking

If:

- you have been cheated by intermediaries who have trafficked you into Poland or you are indebted to them,
- your identity documents (like a passport) have been taken away from you,
- you are forced to work in deplorable conditions, or your remuneration is collected by someone else,
- you are watched (e.g. by armed guards) during work,
- you cannot move about freely after work, or you have been prohibited from contacting your family in your home country,
- you are blackmailed or beaten,

it is highly probable that you have fallen victim of trafficking in human beings.

In this case you can apply for help to the National Consulting and Intervention Centre for the Victims of Trafficking, which is managed by the **La Strada Foundation**, www.strada.org.pl, www.kcik.pl, tel.: +48 22 628 99 99, +48 22 628 01 20.

If you get qualified for the Programme of support and protection for the victims/witnesses of trafficking in human beings, you will receive (free of charge): accommodation in a safe location, food and clothing, medical help, legal assistance. You can also count on legalization of residence if your stay in Poland is illegal.

Relevant public institutions:

- Ministry of Labour and Social Policy, www.mpips.gov.pl
- Ministry of Internal Affairs, www.msw.gov.pl
- Border Guard, www.strazgraniczna.pl
- Office for Foreigners, www.udsc.gov.pl
- Ministry of Foreign Affairs, www.msz.gov.pl

Non-governmental organizations providing legal assistance to foreigners:

Office of the International Organization for Migration (IOM) in Warsaw; source of information for foreigners – webpage:
www.migrant.info.pl

Association for Legal Intervention,

www.interwencjaprawna.pl, tel.:+48 22 629 56 91, +48 22 621 51 65

Helsinki Committee for Human Rights,

www.hfhr.org.pl, tel.: +48 22 556 44 66

Foundation for Development “Beyond Borders” (FROG),

www.frog.org.pl, tel.: +48 22 403 78 72, info@frog.org.pl

Foundation „Ocalenie”,

www.ocalenie.org.pl, tel.: +48 22 828 04 50

Centre for Legal Assistance named after Halina Nieć,

www.pomoc.prawna.org, tel.: +48 12 633 72 23,

e-mail: porady@pomocprawna.org

Embassy of the United Kingdom of Great Britain in the Republic of Poland

ul. Kawalerii 12, 00-468 Warszawa

tel.:+ 48 22 311 00 00