
Recruiting Ukrainians to Work During Covid-19 Pandemic

Submitted 21/08/22, 1st revision 19/09/22, 2nd revision 30/09/22, accepted 30/10/22

Piotr Pagórski¹, Żaneta Szewc²

Abstract:

Purpose: This paper is, on one hand, a presentation connected with recruiting foreigners to work in our country, and on the other hand, an attempt to reflect on the possibilities of improving this process including mainly reducing bureaucracy. The authors of this article presented some observations resulting from the diagnosis of the discussed process, with particular emphasis on employees from Ukraine. These phenomenon has become particularly relevant in the era of military operations in this country. The purpose of this article is recognition and assessment of processes used to recruit and adapt foreign workers within legal and organizational considerations.

Design/Methodology/Approach: Creative analysis of literature and acts of law regulating the issue of hiring foreigners in Poland.

Findings: The research results were presented in a form of legal and organizational advice for entrepreneurs.

Practical implications: The research results will help entrepreneurs to hire foreigners in a way that is compliant with current law.

Originality/ value: The research was conducted on the basis of the newest acts of law related to hiring foreigners.

Keywords: COVID-19, pandemics, hiring foreigners, anti-crisis shield, recruitment.

JEL codes: J20, J40.

Paper type: A research study.

¹Senior Lecturer, Department of Management, Faculty of Social Sciences, Calisia University – Kalisz, Poland, p.pagorski@akademikaliska.edu.pl;

²Grad student of post-graduate studies, Faculty of Social Sciences, Calisia University – Kalisz, Poland.

1. Introduction

The phenomenon of lack of people eager to work is observable on Polish labor market. Even Covid-19 pandemics did not change it. The most vacancies are connected with works requiring the lowest qualifications. There is also a new trend now – Ukrainians are hired for medium – level works. The highest number of Ukrainians is hired in a production sector.

Currently they also find work in places where higher qualifications are necessary. The times when an Ukrainian could find work only by simple field works or at the construction site are gone. There are vacancies on Polish labor market, for example among well qualified IT specialists. Ukrainians are more frequently hired as such specialists. Unfortunately, formal issues connected with firing a foreigner still constitute a big problem.

Foreigner's short stay in Poland due to short expiry date of visa or other document certifying legality of residence in Poland, is still a significant burden for entrepreneurs, since they are forced to train new workers all the time because current workers have to leave the Country. Special legal solutions for foreigners were proposed by the act of law of 31 March 2020 in Official Journal, item 568 - the act on so called anti-crisis shield assuming, among others, special solutions for foreigners in Poland due to corona virus pandemics.

2. Workers Recruitment Process – Practical Aspects

Workers recruitment is the beginning of a long process of acquiring a candidate to work and starts together with a correctly constructed job advertisement. Such job advertisement is often a decisive element among thousands of other offers. Job advertisement including elementary components can be perceived as a form of initial interview, first verification for both potential worker, as well as for future employer. Answering some simple, however, very important questions is the key to prepare a well construed information. These questions are as follows:

- What are the skills, potential worker has to and should have?
- What are the features he does not have to present, and which are especially significant?
- Are foreign language skills requires in this workplace?
- How long work experience should the worker have?
- Is work simple or so complicated that it requires to have experience? etc.

If the employer approaches the job advertisement in a reliable and real way, omitting information, requirements and expectations which are really not important at a certain workplace, it is very likely that people for whom the advertisement is tailored will respond to it. Such job advertisement should be directed to at least three

information channels, to websites with job advertisements, to social media and to a facilitator.

3. Foreigners in Poland – Work and Integration with Society

Foreigners are an integral part of Polish labor market. People for low-paid jobs which do not require qualifications, as well as highly qualified specialists are especially desired. Hiring foreigners is not only treated as factor influencing competitiveness, but often the only possibility to save particular sector of economy, for example agriculture or construction.

Foreign workers do not exclude local workers for the labor market. They rather fill in shortcuts of workers. However, employers who want to maintain continuity of production, realization of purchase orders and signed contracts, encounter factors which obstruct the possibility of hiring foreigners.

Extended time of procedures create situations which raise concerns and influences negatively the situation of both employer and foreigner. An employer applying for registration of declaration of employment should be sure that this declaration will be entered into register within seven days if all requirements are met appropriately. Unjustified lack of such entry means that the foreigner cannot be employed even if he stays in Poland on legal basis. It means the necessity to take some steps connected with employment by the employer (the issue of paying remuneration, questions related with cooperation continuation), which is important with regard to his responsibility, image and realized purchase orders.

Entrepreneurs often shoulder the burden of ensuring foreigners decent conditions of living while waiting for the document. Similar practices take place in case of uniform residence and work permit. Extending periods of time related with waiting for a stamp in foreigner's travel document confirming filing a petition for such permit, on the other hand, make it harder to start legal work and causes a lot of problems.

This can lead to a situation when a foreigner has the right to start work legally, however, there is no legal basis for residence continuation. Putting a stamp in a travel document does not entitle to travel to other Schengen countries at the same time. A foreigner can go to his country of birth, however, he needs a visa to come back to Poland if he comes from a country which is a subject to a visa requirement. It influences the assessment of our country attractiveness especially in case of high qualified foreigners holding a high position (Konfederacja Leviatan, 2018).

Complicated formal and legal procedures are the main reason significantly blocking the increase of hiring foreigners in Poland. Due to such state of matters Poland is perceived as unattractive because of bureaucracy which is problematic for a foreigner who wants to start work in the possibly fastest time.

Identification of problems met by economic migrants in the process of integration is a vast phenomenon. The following aspects should be taken into account: access to health care system, relations with offices and participation in social and cultural life. On 13th December 2011, European Parliament adopted a directive concerning one petition procedure for one permission for third countries citizens allowing them to reside and work on a territory of EU member country.

The directive also referred to common collection of laws for third countries employees legally residing in a EU member country. Preamble of the directive, point 2 stipulates that (Mikulska and Pater, 2011) 'European Union should ensure just treatment of third countries citizens legally residing on the territory of EU member country and that more vigorous integration policy should be directed at awarding them rights and responsibilities comparable with rights and responsibilities of European Union citizens' (Dyrektywa PE 211/98).

At this point, it should be advisable to answer the question concerning these conditions in Poland. Can foreigners coming to Poland count on identical treatment as Polish citizens? Foreigners, unqualified workers without command of Polish language are the most problematic group of District Employment Agencies. Thus, access to Polish language courses on at least intermediate level should be free. A lot of migrants have job positions incomparable to their qualifications (their qualifications are much higher).

Therefore, procedures of recognizing qualifications achieved outside European Union should be simplified. Informing potential employers about rules connected with legal employment of foreigners is also crucial at this point. Diagnosis show that immigrants are often exposed to labor law and social insurance violation by employers. They are also fraud victims: remuneration not-payment, social insurance not-payment (even though they are ensured the contributions are paid), slave labor relationship, especially in not registered work performed at home, such as cleaning and taking care of somebody (Urząd Miejski and Gdańsku, 2016).

4. Ways of Legalizing Foreigners' Work in Poland

Taking into consideration the simplest and the fastest way of employing foreigners coming from such countries as Armenia, Belarus, Georgia, Russia or Ukraine, the employer can make an entry into a declaration of employment register. In such a situation a petition should be filed in a Labor Agency competent for the place of registered office or permanent residence of an entity entrusting a foreigner the performance of work.

The employer or his authorized representative should file complete documentation right at the stage of filing a petition, since lack of complete formal documentation causes that the application is not being considered.

The employer or his representative should additionally have the following documents prepared while he is filing the application: a copy of all filled passport pages of a foreigner for whom the declaration is to be issued and a certification of covering stamp duty. Additionally, at the stage of submitting application, the office verifies if the employer is not in the arrears with social insurance contributions.

The application has to be authorized with a qualified electronic signature or with ePUAP Trusted Profile (Labor and Social Policy, 2017). District Employment Agency will enter a declaration into the register of declarations if the following conditions are fulfilled:

- A foreigner is a citizen of a country specified in the resolution on declarations or on professions;
- A foreigner is to work in Poland for a period not longer than 6 months during the next 12 months, no matter how many entrepreneurs employ the foreigner on the basis of declaration of employment.

The entry of a declaration to the register or refusal of an entry has to take place in the course of 7 days from the moment the declaration had been submitted. A District Employment Agency worker can prolong this period to 30 days if explanatory proceedings are necessary. The procedure legalizing employment on the basis of a declaration is very simple. The employer submits a declaration about hiring a foreigner and competent District Employment Agency enters it to the register. After the declaration being submitted and statutory time expiration, the document is entered into the register and foreigner can start work on legal basis.

Refusal of an entry is an administrative decision made by a competent starost in accordance with provisions of Code of Administrative Procedure – however there is a possibility to appeal against the decision. The decision concerning refusal of an entry is made by a starost, not a director of a District Employment Agency. Therefore, authority competent in this matter is starost, who performs his operations through District Employment Agency – this is his decision one should appeal against.

After receiving declaration entry to the register, the employer has to inform District Employment Agency that a foreigner had started work. It should be done on the day of commencement of work at the latest. If a foreigner does not begin work, such information should also go to District Employment Agency. In such case, the employer has 7 days from the date of work commencement written in the declaration.

If the employer does not comply with this requirement, District Employment Agency will assume that a foreigner performed work from the day specified in the declaration (Promotion of employment and labor market institution, 2018). However, this is not the end of informational commitments of the employer. He can

also inform District Employment Agency that a foreigner is no longer employed, however it is not compulsory.

The most popular works undertaken by foreigners, such as seasonal job and work on the basis of declaration allow for short-term work. Employment permit is a document entitling a foreigner to commence legal work in Poland for a longer time, provided that he has a visa or temporary residence permit allowing to work in Poland.

Employment permit is issued by a voivode competent for the place of residence or employer's registered office. The employer is the person who applies for an employment permit for a foreigner. Regulations indicate 6 types of employment permits for foreigners on the territory of the Republic of Poland (type A, type B, type C, type D, type E and type S), which are issued by a voivode:

Type A:

Type A employment permit is in force for the period of time to 3 years. This period can, however, be shortened, according to criteria specified in local regulations, i.e. voivodeship criteria issued by voivode.

Type B:

Applies to a foreigner performing work connected with performing management functions for a legal person entered in the commercial register. Type B employment permit is issued for a standard period of 3 time (up to 4 years), however members of companies' management can apply for a permit valid up to 5 years.

Type C:

Applies to a foreigner performing work for a foreign employer, delegated to Poland to a department or a foreign entity's facility. It can also be an entity connected with such foreign employer. This type of employment permit is valid for a period longer than 30 days in a calendar year.

Type D:

Applies to a foreigner performing work for a foreign employer delegated to Poland to realize a temporary and occasional service (export service), who does not possess a department, facility or other form of organized activity on the territory of Polish Republic. In case of export services, the applier has to submit specific information concerning a contract.

Type E:

Applies to a foreigner performing work for a foreign employer, delegated to the territory of Polish Republic for the period of time longer than 3 months; in the course of subsequent 6 months for a different aim than the one indicated in Type B, C and D permits.

Type S:

Seasonal work permit. Seasonal work is work performed: in the period of time not longer than 9 months in a calendar year within actions considered to be seasonal. These are chosen types of activities within agricultural crops, animal production, as well as accommodation and catering services.

Single permit for residence and work is a subsequent form for foreigners who want to start or continue work in Poland. It also applies to foreigners who intend to commence or continue work based on performing functions in management board of a joint-stock company or in LLC, which stocks and shares are not possessed by this foreigner and the entity he is or will be in charge of fulfills appropriate requirements.

Temporary residence permit is granted for a period of time necessary to perform the aim of residence in Poland, exceeding 3 months, up to 3 years, with the possibility to apply for subsequent permits.

Foreigner's stay in Poland is considered legal from the moment decision concerning temporary residence permit becomes final.

A foreigner who is granted temporary residence permit, receives a residency card. This document is issued ex officio by a voivode who granted such permit for a foreigner.

4.1 Solutions Concerning Foreigners' Work in the Time of COVID-19 Pandemic

Times of Covid-19 pandemic caused that many offices had to change their mode of operation and start working online. Such situation was very difficult for petitioners to find information or to obtain certain decisions. Entrepreneurs, who tried to function more or less similar to the times before the pandemics was declared, were confronted with many obstacles connected with sustaining continuity of production which was very much related with employing foreigners.

Due to this fact, in late May, an amendment of the act of law COVID-19, so called 3.0 Shield of specific solutions connected with fighting and counteracting COVID-19 and other infectious diseases and related crisis situations entered into force. This law gave new solutions to, among others, entrepreneurs affected with negative effects of corona virus epidemics. This amendment implemented the possibility of changing conditions of performed work.

Temporary residence permits are granted by state administration authorities (voivodes, Head of the Office for Foreigners as a higher level authority) for specified period of time, not longer than 3 years (article 98, paragraph 2 of Act on Foreigners). Foreigner, who is granted such permit, receives a residence card ex officio, which expiry date is identical as the expiry date of granted permit (article

243, paragraph 1, point 1 of the Act on Foreigners). The special law currently stipulates that, if the last day temporary residence permit's validity coincides with epidemics threat or the state of epidemics, the period of residence is prolonged by virtue of law to 30th day after the day of cancelling this state which was the latest.

The result of such state of matters is automatically prolonged expiry day of temporary residence permit. There is no administrative decision needed in this case. A foreigner also does not have to apply for official confirmation of this fact. Prolonging the temporary residence permit's validity by the virtue of law will not be accompanied with issuing a new residence card or exchange of the current one.

The special Act of Law expressly excludes legal basis entitling voivodes to perform such actions in these situations. Prolonging the validity of temporary residence permit will result in the possibility of further realization of residence aim and taking advantage of privileges arising from possessing this permit, for example for performing work under the conditions specified in the temporary residence permit and work (article 118, paragraph 1 of the Act on Foreigners) or commencing and performing business activity on the same basis as Polish citizens in case of temporary residence permit to join family.

Provisions of 2nd March 2020 on special solutions connected with fighting and counteracting COVID-19 and other infectious diseases and related crisis situations also implemented solutions aiming at ordering problems connected with legality of foreigners' residence on the territory of the Polish Republic within Schengen visa and visa-free travel, regarding foreigners residence on the territory of Polish Republic legal by the virtue of law, in cases when on the day when the state of epidemic emergency connected with Covid-19 infections was declared, they stayed in Poland on the basis of short-term residence titles such as:

- a) Within visa-free travel;
- b) On the basis of Schengen visas issued by Polish authorities;
- c) On the basis of Schengen visas or long-term visas issued by other countries from Schengen territory;
- d) Residence documents issued by other countries from Schengen territory.

From the day following the last day of the legal stay resulting from these titles, till the end of the 30th day after the day the state of epidemic emergency or the state of epidemic had been cancelled, depending on which was in force as the latter (article 15z1, paragraph 1 of the special act of law). This provision has legal effect only in case of the above mentioned documents, owner of which stayed in Poland on the day when the state of epidemic threat connected with SARS-CoV-2 was declared.

This provision is not equivalent with prolonging any of above mentioned visas or documents, or prolonging permissible stay within visa-free travel (<https://www.strazgraniczna.pl/pl/cudzoziemcy/covid-epidemia->

[koronawi/8572,Epidemia-koronawirusa-zasady-wjazdu-i-pobytu-na-terytorium-RP-oraz-specjalne-roz.html](https://www.koronawi/8572,Epidemia-koronawirusa-zasady-wjazdu-i-pobytu-na-terytorium-RP-oraz-specjalne-roz.html)[access: 04.06.2021 r.).

Hereinabove described solutions allow for changing assigned work duties and change in working hours without the necessity of obtaining a new declaration or work permit, which significantly allows entrepreneurs to assure the production continuity with current staff. It has been very helpful in the time of pandemics, when a lot of business owners were anyway faced with problems connected with functioning.

If the date of filing the application concerning the above mentioned residence titles coincides with the state of epidemic emergency or the state of epidemics declared in reference to SARS-CoV-2 infections, it is prolonged till the 30th day after the day the latter state had been (article 15z of the special act of law). Foreigners' stay in Poland during the above mentioned, prolonged period of time is considered legal according to article 108, paragraph 1 point 2 of the Act on Foreigners, if a foreigner files the application in this period. It means that foreigner's residence already in the period preceding submitting the application will be considered legal, no matter how the proceedings finish.

Prolonging, by the virtue of law, the validity of below mentioned documents residence cards granted to foreigners possessing temporary / permanent residence permit, as well as long-term EU resident, residence permit due to humanitarian grounds, refugee status, subsidiary protection, temporary certifications confirming foreigner's identity, residence cards of family member of EU citizen, documents confirming permanent residence permit and permanent residence cards of EU citizen's family member, Polish identity documents of a foreigner, documents 'permit for tolerated residence' – till the 30th day following the cancellation of the state which was in force later.

5. Conclusions

A lot of Poles are concerned that foreigners take our places of work. However, it occurs that Ukrainians do not take our places of employment. They fill in the gaps in works where Polish entrepreneurs cannot find an employee. Currently, Polish companies do not look for Ukrainians just because it is cheaper to maintain them, but simply because they are in Poland. Besides, a Ukrainian worker has never been really cheap. Of course only legal employment is being discussed in this research paper.

The employer had to provide the Ukrainian with at least minimal remuneration existing in Poland, all services. He was also responsible for arranging all formalities connected with legal stay of a foreign employee. We should not feel angry that there are more and more Ukrainians in Poland. On the contrary, we ought to be glad that they want to come to our country, since they fill in staff shortcuts in many Polish

companies, which corresponds with these companies better functioning. So called covid act of law gave entrepreneurs temporary solutions facilitating legal hiring and residence for a foreigner.

However, what will the future bring when the state of epidemics finishes and Polish entrepreneur stays without workers, who have to leave our country in the period of 30 days from the moment the state of epidemic finishes. Situation preceding pandemics had shown that an entrepreneur had to wait from 1 month in case of a declaration, 6 months in case of work permit and even 2 years in case of residence card, to legalize work for a foreigner. Let's hope that there will be new solutions significantly facilitating hiring a foreigner in our country.

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