



**Dać radę
w Polsce**

Informacja i pomoc
prawna dla migrantów

Education and Work for Foreigners in Poland





**Dać radę
w Polsce**

Informacja i pomoc
prawna dla migrantów

Education and Work for Foreigners in Poland

Warszawa 2017

**HR HELSIŃSKA FUNDACJA
PRAW CZŁOWIEKA**

 **UNIA EUROPEJSKA
FUNDUSZ AZYLU,
MIGRACJI I INTEGRACJI**

Save haven

Education and Work for Foreigners in Poland

Valid as of August 2017.

The publication has been brought to you as a part of the “Navigating Poland II” project, co-financed by the National Programme of the Asylum, Migration and Integration Fund and the state budget. The sole responsibility for the opinions expressed herein lies with its authors. The European Commission and the Ministry of the Interior and Administration deny any responsibility for the way the information included herein is presented.

Content: Jacek Białaś, Bogusława Domańska, Marta Górczyńska, Ismena Saadi

Editor: Agnieszka Mikulska-Jolles

Translation: lingua line

Layout, typesetting and page makeup:

Argrafpol Agnieszka Blicharz-Krupińska

www.argrapol.pl

Print:



ISBN: 978-83-62245-68-0

Published by:

Helsinki Foundation for Human Rights

11 Zgoda Street

00-018 Warsaw

Tel.: 0048 22 556 44 40

Faks: 0048 22 556 44 50

e-mail: hfhr@hfhrpol.waw.pl

www.hfhr.pl

CONTENT:

I. EDUCATION FOR FOREIGNERS IN POLAND	6
1. BASIC LEVEL EDUCATION / EDUCATION UNTIL THE AGE OF 18	6
2. POST-SECONDARY EDUCATION / EDUCATION OVER THE AGE OF 18	11
3. UNIVERSITY EDUCATION	12
II. EDUCATION AND WORK	20
1. WORK DURING STUDIES AND AFTER GRADUATING	20
2. VOLUNTARY AND AU PAIR WORK	21
3. RESEARCHERS	22
III. WORK	24
1. PERFORMANCE OF WORK BY FOREIGN CITIZENS IN POLAND – GENERAL TERMS	24
2. WORK PERMIT	26
2.A. WORK PERMIT APPLICATION PROCEDURE	26
2.B. THE EMPLOYER’S OBLIGATIONS UNDER A WORK PERMIT.....	32
3. SEASONAL WORK PERMIT.....	33
3.A. A TEMPORARY RESIDENCE PERMIT GRANTED TO PERFORM SEASONAL WORK....	36
4. TEMPORARY RESIDENCE AND WORK PERMIT	37
4.A. A TEMPORARY RESIDENCE AND WORK PERMIT – THE PROCEEDINGS.....	37
4.B. CHANGE OF THE EMPLOYER AND LOSS OF WORK.....	40
5. TEMPORARY STAY PERMIT IN ORDER TO PERFORM WORK IN A PROFESSION REQUIRING HIGH QUALIFICATIONS	41
5.A. HOW TO APPLY FOR A TEMPORARY STAY PERMIT IN ORDER TO PERFORM WORK IN A PROFESSION REQUIRING HIGH QUALIFICATIONS – THE PROCEEDINGS.....	41
6. WORK UNDER THE EMPLOYER’S DECLARATION	43
6.A. REGISTERING THE EMPLOYER’S DECLARATION OF THE INTENT TO ENTRUST A FOREIGNER WITH WORK – THE PROCEDURE	43
6.B. THE TERMS OF PERFORMING WORK UNDER THE EMPLOYER’S DECLARATION	44
7. ILLEGAL PERFORMANCE OF WORK	46
IV. BASIC EMPLOYEE RIGHTS AND HOW TO ASSERT THEM	48
1. TYPES OF AGREEMENTS UNDER WHICH WORK MAY BE PERFORMED	48
2. PERFORMANCE OF WORK UNDER AN EMPLOYMENT AGREEMENT	52
3. LEAVES	55
4. INFRINGEMENT OF EMPLOYEE RIGHTS.....	57
5. ASSERTION OF EMPLOYEE RIGHTS.....	63
6. HUMAN TRAFFICKING.....	65

I. EDUCATION FOR FOREIGNERS IN POLAND



Are foreigners entitled to education in Poland?

Under the Polish Constitution **every person has the right to education**. Moreover, education until 18 years of age is compulsory for all children living in Poland, regardless of their citizenship or residence title, including persons whose stay in Poland is undocumented.

For adult foreigners, the possibility of receiving education in Poland is frequently associated with the necessity to pay fees (including public, state schools), and obtain a residence permit or a relevant visa. This refers in particular to foreign nationals whose primary purpose of temporary residence in Poland is education, including studies. There are, however, many groups of foreigners who are entitled to education in Poland on the same terms as Polish citizens (for more information, see page 11).

1. BASIC LEVEL EDUCATION / EDUCATION UNTIL THE AGE OF 18

What is education duty/schooling obligation?

Children under 18 years old are covered by the so-called schooling obligation. The schooling obligation means that they are required to start attending primary school in the school year when they turn 7 (for exceptions to this rule, please see: **Are disabled children covered by the education duty**, page 10). The schooling obligation continues until the moment the student graduates from *gimnazjum* (lower secondary school in Poland) or *szkoła podstawowa* (primary school), yet no longer than until the age of 18. The schooling obligation may be met by attending state (public), charter (*szkoła społeczna*), or private schools. If a child does not attend school, so the schooling obligation is not fulfilled, the child's parents or guardians may be penalized, initially by receiving a relevant admonition, and if this proves unsuccessful, by a fine. Children who have graduated from *gimnazjum*/primary school, fulfill their schooling obligation by attending higher-level schools, such as *liceum* (academic higher secondary school), *technikum* (technical higher secondary school), *szkoła zawodowa* (vocational school) and, where relevant, by undertaking apprenticeships or traineeships with employers.



Important: A child whose stay in Poland is undocumented is also covered by the schooling obligation!

Where and when should a child be enrolled in school?

In Poland, schools have their districts. This means that children are assigned to public (state) primary schools according to their place of residence. This is known as a district school (*szkoła rejonowa*). If the parents prefer for their child to attend another school, they are free to

enrol them at a different school, whether state or private. The school of your choice, however, is not obliged to admit the child (some of the schools have entrance exams). If the child is denied admission at the school of your choice, you should enrol the child in their district school. A state school cannot refuse to admit a child who lives in its district (*rejon*).



Important: The information on school districts may be found online, usually on websites of given city/town halls or poviast offices (*urząd powiatu*). You can also enquire at the nearest state school whether your address of residence belongs to their district.

It is also worth knowing that some countries operate their own schools abroad, to carry out their state curriculum (examples in Poland include the French or Canadian schools).

To enroll the child in the first form (grade), you should submit an application with the school principal (*dyrektor szkoły*). The enrolling process usually takes place in March or April (sometimes earlier in private and charter schools) preceding a given school year. Hence, if a child is to begin school education in the first form in September 2017, he/she should be enrolled in April 2017. Once having started a given school, the child continues education in the same school from one year to another without the need for re-enrolling.

To enroll a child older than 7 years, the parents should contact the school principal (*dyrektor*) in person. Foreign students may be assigned to given forms based on the certificate of graduation from the previous form in their country of origin and an interview with the principal, which usually also serves to test the child's knowledge of Polish. If your child does not know any Polish, he/she may be assigned to a lower form than based on their age.

Education reform of 2017

- Primary school (*szkoła podstawowa*) has 8 forms, instead of 6 forms.
- *Gimnazja* (lower secondary schools) will be gradually discontinued until their final termination.
- The number of years of education in higher secondary schools has changed: (*liceum* – 4 years instead of 3 years up until now, *technikum* – 5 years instead of 4, whilst *szkoła zawodowa* i.e. vocational school will now be broken into level 1 lasting 3 years with the possibility to continue education in level 2, thus replacing a uniform 3-year basic vocational school)
- The core curriculum (the subjects and the number of school hours assigned to those subjects, as well as the syllabus for given subjects) has been changed.
- For more detailed information on the current education reform, see: <http://reformaedukacji.men.gov.pl/>

How is education in Polish schools organized?

The school year begins on 1 September every calendar year and runs until June next calendar year (the exact date of the last day of school in a given year is determined by the education authorities yearly). The school year is divided into two semesters (terms, or in Polish: *półrocza* – literally halfyears), divided by a 2-week winter break (*ferie*). The dates for the winter break

change yearly, and they are different in different voivodeships, ranging from the beginning of January to the end of February. There are also other breaks throughout the school year, including Christmas and Easter break.

School classes start in the morning, typically around 8.00 a.m. Schools which have a large number of students operate a shift system, meaning that some classes start at a later time during the day. Schools run the so-called *światlica*, an after-class programme for students who cannot be picked up by their parents or caregivers directly after finishing their classes on a given day. In fact, *światlica* operates also in the morning, before classes (also if the school has a shift system), so that children may be left at school when parents need to go to work earlier than their child's classes start on a given day. At present, most schools also offer a range of additional classes, activities and afternoon clubs (*kółka*) for children, such as sports, arts and many other (e.g. foreign language courses, IT classes, music, etc.). Some of these activities are free, but others are run commercially by external entities on school premises and have fees (there is a monthly or annual participation fee), so it is a good idea to ask if any fees apply while signing your child up.

Are children obliged to attend religious education or ethics classes at school?

No. In Polish schools, religious education and ethics classes are taught (separately), however participation is **voluntary**. This means that every school year, parents should inform the school if they wish their child to attend either of these subjects, both of them or none. It is a common practice for Polish schools to distribute at the beginning of the school year a mini questionnaire form where parents (legal guardians) tick relevant boxes, stating which of the subjects they wish their child to attend. These do not need to be repeated every school year if parents have not changed their decision, but the declarations may be modified for every school year. There are two hours of religious education every week, whereas the number of ethics hours taught on a weekly basis is decided by the principal of a given school (due to organizational issues). The participation is voluntary, but if the child does attend either of the subjects, their final grade is compulsorily included in their end-of-school-year report.



Important: Some schools require parents to sign a special statement if their child is not going to attend religious education classes in a given school year. Such requirement is, however, not legally justified, as under the law only a declaration expressing the wish to attend religious education classes is required.

Is it possible for children from different denominations and faiths to receive their own religious education classes at school?

Yes. The large majority of Poles have a Roman Catholic religious background, hence religious education classes organized at schools are usually classes of Roman Catholic religion. It is, nonetheless, possible to hold religious education classes for other religions, provided that the religion in question is formally registered in Poland (such as Islam, Judaism or other Chris-

tian denominations). The lessons are organized by the local authorities that run a given school, in collaboration with the local authorities of a given religion or denomination. Religious education classes may be organized at school or at a different dedicated location, such as a local Eastern Orthodox or Protestant church. This is a common practice in the case of less popular religions in a given area. If there are fewer than 7 students interested in attending religious education in their religion in a given school, the classes are held either at a dedicated location provided by the church/community in question, or at one school designated for students from several schools.



Important: Religious education classes must be organized for any given religion/denomination (if it is officially registered in Poland), even if there is only one person requesting it.

What does a child who does not attend religious education/ethics classes do during the classes?

Children who do not participate in the classes, typically attend *świątlica* (see above) for the time of the classes and are supervised by *świątlica* teachers. The same applies during the yearly religious retreat days or other religious celebrations during the school year (e.g. a mass held to celebrate the beginning or the end of the school year). Retreat days are Christian religious practices associated with important religious holidays, such as Easter or Christmas. In Polish schools, students attending Roman Catholic religious education classes are exempted from the schooling obligation for 3 days of yearly Lent retreat (Lent is the religious period preceding Easter, and is in Polish referred to as *Wielki Post*). The retreat is held at the local church, some time before Easter, and the exact date is from one year to another determined by the school principal together with the parish organizing the event. In schools that have religious education classes for different denominations, the dates should be shared by all denominations wishing to organize retreat days for their students. For children who do not participate in retreat days or other religious events on school days, the school is obliged to provide adequate care during the events.



Important: No student may be forced to participate in religious events/practices against the wishes of their parents/guardians, or, in the case of older students, their own wishes.

Can foreign students expect additional help at school?

Yes, the Polish education system stipulates special solutions dedicated to aiding the education of foreign children. They include: **additional Polish classes, the support of the so-called intercultural assistant, and special transitional-curriculum groups.**

Foreign students are entitled to **additional Polish classes** in a minimum number of two per week. The classes must be organized by the school. If the school principal has not come forward with the suggestion on their own, make sure to approach them about it. The additional classes will help your child learn Polish quicker, and thus be more active in other subjects, and school in general will become an easier and more enjoyable experience for him/her.

To help a good relationship between the student, his/her parents and school staff, the school principal may employ a so-called intercultural assistant. This should be a person who while sharing background with the student in question, also knows Polish and the Polish education system very well. The assistant may accompany the student in class, and whenever needed explain the taught material in the language that the student is comfortable communicating in. Intercultural assistants are permanently employed in schools attended by groups of children from the same cultural background (e.g. primary schools in Podkowa Leśna and Biała Podlaska). However, some schools employ assistants even if they have just one student needing additional support due to culture-related issues.



REMEMBER! If your child finds it difficult to adjust to the new school environment, make sure to ask the school principal to find an intercultural assistant. If your school is for some reason unable to provide one, you can use the help of intercultural assistants/ integration counsellors provided by non-government organizations offering help for foreigners free of charge.

The Polish law allows **special transitional curriculum groups** in schools where needed. If a school has at least several foreign students who know very little or no Polish, or experience various difficulties adjusting due to cultural differences, the principal may form a special transitional curriculum group for them. They are aimed at easing the children's transition to education in a regular class. Apart from an intensive Polish course, the same curriculum is taught in such groups as in other student groups, adequate to the children's level in a given subject. The class teacher may be assisted by a person who knows the language spoken by the children in the group. A transitional curriculum group should not be larger than 15 students.

Are disabled children covered by the education duty?

Yes. Children affected by physically or mental disability, and children who have special educational needs for other reasons (such as social maladjustment) are covered by the education duty just like all other children. Prior to starting school (or preschool) education, they should be diagnosed at the District Psychological and Pedagogical Centre (*rejonowa poradnia psychologiczno-pedagogiczna*) or another specialist centre designated by the chief education officer in the area (*kurator oświaty*). The institution issues a ruling on the need for special education, specifying what support is needed by the child in question. They may also issue an opinion postponing the schooling obligation for a given child. Children who have been issued relevant rulings on the need for special education may attend either regu-

lar, the so-called integration schools (*szkoła integracyjna*) or schools for children with special needs (*szkoła specjalna*).

2. POST-SECONDARY EDUCATION / EDUCATION OVER THE AGE OF 18

Can foreigners receive post-secondary education in Poland on the same terms as Polish citizens?

No. Only some groups of foreigners are entitled to education in public (state) schools for adults, post-secondary schools, artistic schools, post-secondary schools of social work, as well as continuous education in the form of occupational training courses on the same terms as Polish citizens. They include:

1. citizens of EU, Iceland, Liechtenstein, Norway and Switzerland, and their family members, who have temporary or permanent residence permits in Poland,
2. foreigners of Polish descent,
3. holders of a permanent residence permit,
4. holders of a EU long-term residence permit,
5. holders of the Polish Card,
6. persons who have been granted the refugee status and their family members,
7. persons granted subsidiary protection and their family members,
8. persons covered by temporary protection,
9. holders of a tolerated residence permit
10. holders of a humanitarian protection residence permit and their family members,
11. persons entitled to such education under an international agreement,
12. holders of a temporary residence permit based on a skilled job offer,
13. persons exercising their right to family reunification,
14. holders of a temporary residence permit for victims of human trafficking,
15. holders of a temporary residence permit who are long-term EU residents of another EU member state and their family members,
16. family members of persons seeking international protection,
17. holders of a residence card annotated "access to the labour market", a Schengen visa, or a Polish visa granted to perform work in the territory of Poland.

Other foreign nationals (not listed above) may receive post-secondary education in Poland either if they have a special scholarship granted by a relevant minister or a school principal, or are required to pay tuition fees.

Does education in Poland constitute the grounds for obtaining a visa?

Yes. Several types of visas are directly associated with educational purposes. The law stipulates that a Polish or a Schengen visa may be granted, among others, for the following purposes:

1. education,
2. professional training,

3. education or training of some other type,
4. participation in a cultural or educational exchange programme, humanitarian aid programme or holiday work programme.

Visas are issued by a Polish consul. To obtain a visa, you must meet the general requirements for a Polish or Schengen visa (such as having adequate financial means and health insurance), and document the purpose of your stay in Poland, for instance by providing the confirmation of admission to a university or undertaking academic collaboration with a given academic entity.

Is education in Poland sufficient grounds for legalizing your stay?

Yes. A person studying (regardless of the level of the education) in Poland may apply for a so-called temporary residence permit granted based on other reasons, granted to foreigners intending to undertake or continue **education or professional training** in Poland. The terms under which the permit may be granted include having health insurance, adequate financial means, and accommodation in the territory of Poland.

The application for a temporary residence permit should be submitted **in person with the relevant voivode (województwo)**, that is the voivode for the place of your residence. The application must be submitted **not later than on the last day of your legal stay in Poland**, e.g. the last day of your visa or your right to stay in Poland under visa-free traffic. If you include in your application all the required documents, you will get your **passport stamped** to confirm your right to stay in Poland until your application has been processed. Remember that the language of the administrative proceedings is **Polish**. This means that all documents in a foreign language must first be translated by a sworn translator into Polish before being submitted.



Important: For reasons why you may be refused a temporary residence permit and what to do if the decision you receive is negative, please see the section about university education, on page 17.

3. UNIVERSITY EDUCATION

Can a foreign citizen study at a Polish university?

In principle, yes. Depending on your residence status, however, your entitlements associated with university education vary, and there are different terms concerning university tuition fees. Some foreign nationals may study at Polish universities and participate in academic research under the same terms and conditions as Polish citizens. Education at public (state-run) universities in Poland without the need for paying tuition fees is available to:

1. holders of permanent residence permit,
2. foreigners granted the refugee status,
3. foreigners covered by subsidiary protection,

4. foreigners covered by temporary protection,
5. migrant workers who are citizens of one of the EU member states, Iceland, Norway, Liechtenstein or Switzerland, and their family members, living in the territory of Poland,
6. holders of a EU long-term residence permit
7. holders of a temporary residence permit who are long-term EU residents of another member state, and their family members,
8. holders of a temporary residence permit granted based on a skilled job offer,
9. persons exercising their right to family reunification,
10. citizens of EU member states, Iceland, Norway, Liechtenstein and Switzerland and their family members, who are holders of a permanent residence permit in Poland.

Holders of a residence card annotated “access to the labour market” or a Schengen or Polish visa granted based on the performance of work in the territory of Poland may study at Polish universities (including PhD programmes), pursue other forms of academic education, and participate in academic research only by paying **tuition fees**. They are not entitled to receive any need-based grants, special scholarships for disabled students or financial aid of any other kind.

Can EU citizens study at Polish universities?

Citizens of EU member states, Iceland, Norway, Liechtenstein and Switzerland, and their family members, who have sufficient financial means to cover the costs of living in Poland during their studies may study at Polish universities (including PhD programmes) pursue other forms of university education, and participate in academic research under the same terms and conditions as Polish citizens. They are not, however, entitled to receive any need-based grants, special scholarships for disabled students or financial aid of any other kind.

Can other foreign citizens than listed above study at Polish universities?

Foreign citizens who do not fall into any of the categories listed above may study at Polish universities and participate in academic research under:

1. relevant international agreements,
2. relevant university agreements (e.g. concluded with other universities),
3. a relevant decision by the relevant minister,
4. a relevant decision by the head of the university (*rektor*).

In such cases, foreign citizens may study at Polish universities and participate in academic research either as scholarship students or paying tuition fees.



Important: Even if you do not fall into any of the above categories, you can always apply for admission with the head of the university of your choice (*rektor*). If the decision is positive, however, usually you will be required to pay tuition fees.

I have already studied at a university my country for some time, and now I would like to continue my university education in Poland – is it possible?

In principle, it is possible, whilst the detailed requirements, terms and conditions in each case must be discussed with the authorities of the university where you wish to continue your studies. Foreign university degrees may be recognized in Poland to allow further education under relevant **international agreements** or through the **validation process**.

Poland recognizes foreign university diplomas and degrees awarded in countries with which it has concluded international agreements on the recognition of education. The list of all currently valid international agreements is published by the Ministry of Science and Higher Education, and is available from their website.

If a degree has been awarded by a country that does not have a relevant international agreement with Poland, it has to undergo the validation process (referred to as *nostryfikacja* in Polish), which is a paid procedure. However, it is noteworthy that a foreign citizen applying for admission into a **second-cycle degree programme**, may be exempted by the university from the obligation to undergo the validation procedure.

A foreigner who previously studied at a European university may apply for a transfer to another university based on their ECTS credit (for the explanation of ECTS score please see below). Under the Lisbon Recognition Convention, qualifications obtained abroad, must be, in principle, recognized unless there are serious objections, such as substantial differences in educational outcomes achieved following the graduation of two parallel university programmes in two different countries.

For Erasmus programme participants, the period spent at a foreign university is recognised based on the agreements signed between the participant's university, the receiving university and the student.

What are ECTS credits?

ECTS is the European Credit Transfer System. It is a body of procedures developed by the European Commission and used by European universities, warranting the recognition of subjects studied at other, both domestic and foreign, universities by the student's mother university. In other words, the credits transferred from another university are added up to contribute to the student's degree programme.



If you need more detailed information on international academic exchange programmes and the recognition of education between universities, please contact:
Ministerstwo Nauki i Szkolnictwa Wyższego
Departament Obsługi Programów Międzynarodowych
i Uznawalności Wykształcenia
ul. Wspólna 1/3
00-529 Warszawa

Do I need a visa or residence permit if I come to Poland under the Erasmus student exchange programme?

Yes. Every citizen of a third country staying in Poland needs a residence entitlement, e.g. a visa or a residence card.

Can you obtain a visa based on pursuing studies at a Polish university (a student visa)?

Yes. Several types of visa are directly associated with the intent to enter Poland for educational or academic purposes. Under the relevant regulations, a Polish or a Schengen student visa may be granted, among other reasons, to a person who wishes to attend a first cycle (undergraduate), second cycle (graduate), uniform masters university programme, or third cycle (post-graduate) university programme.

Visas are issued by a Polish consul. To obtain a visa, you must **meet the general visa requirements** for a Polish or a Schengen visa (such as having sufficient funds and health insurance), and document the purpose of your stay in Poland, e.g. by submitting the confirmation of your admission into a university or participating in academic collaboration with a given academic institution.

Is admission into a Polish university sufficient grounds for legalizing my stay in Poland?

Yes, provided that all the requirements stipulated by the law are met. An application for a temporary residence permit should be submitted **in person with the voivode** relevant for the place of your residence. The application must be submitted not later than on the last day of your legal stay in Poland e.g. under your visa or regulations on visa-free traffic. Provided that you attach all the required documents to your application, you will get your passport stamped confirming your right to stay legally in Poland until your application is processed. Remember that the language of administrative proceedings is Polish, hence all enclosed documents must be translated by a sworn translator into Polish.

What requirements do I need to meet to obtain the permit?

A temporary residence permit is granted to a foreign citizen wishing to attend a full-time first cycle (undergraduate), second cycle (graduate) university programme, uniform masters university programme, or third cycle (post-graduate) university programme. This also refers to situations where the university programme in question is a continuation of or supplements previous university education received in the territory of another EU member state, or where the foreigner intends to attend a preparatory course (pre-sessional Polish course) to be able to attend a university programme in Polish.

You must meet the following requirements to obtain the permit:

1. submit an admission statement issued by the university in question,
2. submit proof of tuition fee payment where relevant,
3. take out health insurance,
4. document having sufficient funds to cover the cost of living in Poland while studying, return trip to the country of your origin, and tuition fees where relevant.

For how long is the residence permit issued?

The initial temporary residence permit based on pursuing studies at a Polish university is invariably granted for a maximum period of **15 months**. If the university programme is to be shorter than a year, the permit is granted for the programme's length of time plus additional 3 months. Subsequent temporary residence permits may be granted to cover a period necessary to complete the entire university programme, yet not longer than **3 years**.

For example, if you apply for an initial residence permit based on pursuing studies at a Polish university, and the programme you wish to attend takes 10 months, the voivode will issue the permit for a total period of 13 months.

What are sufficient funds?

Under the regulations currently in force, a foreign national wishing to attend a Polish university programme and applying for a relevant residence permit is required to document having funds in a minimum amount of PLN 635 per every month of stay (or 515 per each person in the family) for a period of 15 months or the entire period of stay if the planned stay is to be shorter than 15 months. The foreigner may also document having the relevant amount in foreign currency, calculated according to the mean currency exchange rate stipulated by the National Bank of Poland on the last working day preceding the submitted application.

This requirement is also met if the person is able to evidence having a minimum **monthly supply of funds** equalling the amount indicated above for the entire period of the planned stay in Poland (e.g. a scholarship, grant, etc.).

Moreover, the foreigner must document having a return ticket to the country of their origin or sufficient funds to cover the cost of return to that country, in an amount stipulated by the law as follows:

1. PLN 200 if the person comes from a neighbouring country,
2. PLN 500 if the person comes from a EU member state,
3. 2500 if the person comes from a country which is not a EU member state or a neighbouring country.

If the foreigner is travelling with family members, he/she must document having sufficient funds to cover the cost of the return trip for all the family members accompanying him/her.

What documents can be used to confirm having sufficient funds?

The regulations stipulate a specific list of documents that may be used to confirm having sufficient funds. These include:

1. travellers cheques,
2. a letter from the bank issuing a credit card confirming the awarded credit card limit
3. a letter from a bank confirming funds,
4. a document confirming a Polish or foreign scholarship or grant,
5. proof of employment and earnings (a letter from the employer).

Can I study in Poland if I am under 18 years old?

Yes, it is possible in principle, however make enquiries about the details and potential limitations in this respect at the university of your choice. Also, remember that a person who is underage is required to provide a formal **permission from their statutory representative** (usually their parents) to enrol at a university. Also, the application for a visa or residence permit in Poland for an underage person must be submitted by his/her parent or legal guardian.

Under what reasons may the voivode refuse a residence permit?

In justified cases, the voivode may refuse to grant the foreigner a residence permit. The law stipulates the following circumstances under which the permit may be refused:

1. No sufficient grounds for the foreigner's stay in Poland longer than 3 months exist (e.g. the it will take shorter than 3 months to complete the education the foreigner wants to pursue in Poland).
2. The applicant's personal data are included in a black list specifying the foreigners whose stay in the territory of Poland is considered undesirable, or in the Schengen Information System (SIS).
3. For reasons of national security and defence or protection of public security and order
4. False personal data or information has been provided by the foreigner applying for the permit, or altered (fraudulent) documents have been submitted.
5. The foreigner has refused mandatory treatment of an infectious disease.
6. The foreigner is staying in Poland illegally while submitting the application.
7. The foreigner has a temporary residence permit granted to commence or continue university education or professional training.
8. The foreigner performs work or runs a business in the territory of the Republic of Poland (unless he/she is applying for a subsequent permit to be granted based on pursuing university education).

I have been refused a residence permit – what can I do?

The voivode's negative decision may be appealed with the **Head of the Office for Foreigners**. The appeal must be submitted within **14 days** from the receipt of the decision, through the authority that issued the negative decision. If you need help with preparing the appeal, you can contact one of the non-government organizations providing free legal aid services for foreigners.



Important: The period of 14 days is calculated in calendar days, not working days. This means that the period runs also on days free from work. Hence, if you receive the negative decision on 12 May 2017, your deadline for submitting the appeal is 26 May 2017, and it will not be possible beyond this date.

How does my student record affect my right to stay in Poland?

The head of the university is obliged to notify the voivode immediately if the foreigner has been expelled from the university, or failed to complete a given year of studies in the designated time.

Hence, if your residence permit has been granted based on pursuing university education in Poland, remember that if you fail to commence or you terminate your studies, relevant information will be passed to the authorities which **may initiate proceedings aimed at revoking your residence permit**.

I have failed some exams/year of studies. Will I lose my residence permit?

A foreigner may be refused a subsequent residence permit based on pursuing university education in Poland if he/she has **not completed a given year of studies in the designated time**. Also, your residence permit **may be revoked** under such circumstances. However, this depends on the voivode's decision, hence you can try to justify why you deserve the permit to be granted despite having failed the year.

Remember that foreign citizens have **the right to change the grounds for their stay** in Poland. Hence, if you have failed a year of studies, you can, prior to your residence permit being revoked, apply for a residence permit based on other reasons, such as employment taken up in Poland.

Your residence status must also be altered if you **change your university programme from a full-time to a part-time programme**.

If I want to change the university or the university course do I need to apply for a fresh residence permit?

If you change your university programme from full-time to part-time, you **should apply for a fresh temporary residence permit**. However, if you have changed your university course within the same university, or you have transferred to another university, you do not need to apply for a fresh permit, but you are required to notify the voivode about the changes.

I have finished my studies, but I would like to stay in Poland. What can I do, and what requirements do I have to meet?

Graduating from university means that a foreigner who wishes to stay in Poland must apply with the voivode for a fresh residence permit granted for other reasons than studying at a Polish university. If the foreign citizen is a graduate of a Polish university and is seeking employment in Poland, they may be granted a 1-year temporary residence permit. To obtain the permit, the foreigner must document having health insurance and a source of stable and regular income sufficient to support him/herself and any dependent family members, as well as a **place to live** in Poland (accommodation).

If the foreigner wishes to continue their stay in Poland for **other reasons**, such as taking up employment, starting their own business, or accompanying a family member who already lives in Poland, they should apply with the voivode for a residence permit based on relevant reasons.



Important: Helpful information for foreign students can be found at <http://www.go-poland.pl/>

II. EDUCATION AND WORK



1. WORK DURING STUDIES AND AFTER GRADUATING

Can I work while I am studying in Poland?

Yes. However, depending on the type of your residence permit and the programme of your studies (full-time or part-time university programme), you may have to apply for a work permit.

Some groups of foreigners are **exempted from the requirement** of having a work permit to be able to work in Poland. This group includes, for instance, foreigners who are holders of a residence permit granted based on pursuing university education in Poland in a full-time first-cycle, second-cycle or third-cycle degree university programme (a residence permit granted under Art. 144 of the Act on Foreigners). Also holders of a temporary residence permit granted based on conducting academic research (a residence permit issued under Art. 151, item 1 or 2 of the Act on Foreigners) are exempted from the requirement of having a work permit.

The foreign citizens indicated above do not need a work permit to take up employment, just like Polish citizens. For more information on performing work in Poland, please see “Work” section of this publication.



Important: It is worth knowing that while the proceedings aimed at obtaining a subsequent residence permit are in progress, a foreigner can legally perform work in Poland if their previous residence permit gave them the right to work in Poland.

Who else is exempted from the requirement of having a work permit?

The Polish law stipulates a number of cases where a foreign citizen can perform work in Poland **without being required to obtain a work permit first**, some of them concerning foreigners staying in Poland for **educational or academic/scientific** purposes. Under the regulations, the following groups of foreigners can perform work without a work permit:

1. full-time students of Polish universities (including PhD programmes),
2. graduates of Polish upper secondary and post-secondary schools (schools of higher level than *gimnazjum*), full-time university programmes, including full-time PhD programmes run by Polish universities, scientific institutes of the Polish Academy of Science or other academic research institutions,
3. academic staff of academic research institutes,
4. foreigners who conduct courses/classes or participate in internship programmes held as part of EU activities,
5. foreign language teachers working at kindergartens, schools, educational facilities, centres, centres for teacher education, colleges and Voluntary Labour Corps,

6. foreigners who for up to 30 days per a calendar year give occasional lectures, speeches or presentations of substantial academic value,
7. university students performing work as part of their internships, referred by member organizations of international student associations,
8. university students performing work under the collaboration between public work services and their foreign partners,
9. university or vocational school students based in EU member states, Iceland, Liechtenstein, Norway and Switzerland, performing work as part of their professional internships necessary to complete a given year of studies/ their study programme under a given university's regulations or curriculum.
10. foreigner participating in cultural or educational exchange programmes, humanitarian or developmental aid or summer work programmes for students, held in consultation with the minister relevant for employment issues.

As can be seen from the list above, foreigners staying in Poland under a visa and studying at Polish universities can, in principle, work in Poland **without a work permit**.

All foreign citizens who do not fall into any of the categories listed above, are required to obtain a work permit first (for more information, please see "Work" section below).

2. VOLUNTARY AND AU PAIR WORK

Can I work as a volunteer if I am a foreigner in Poland?

Voluntary work is understood as performing given services for a non-government organization or public authorities in a voluntary manner and without remuneration (without getting paid). Foreigners who undertake voluntary work do not need a work permit. The organization is required to conclude a so-called **voluntary agreement** with the person in question. If the volunteer's services are to be provided for a period longer than 30 days, the agreement should be set forth **in writing** and signed by both parties.

The organization **is required** to ensure good health and safety practices and to reimburse the costs of any work-related travel and pay travel allowance.

Can I apply for a residence permit in Poland based on performance of voluntary work?

The law does not stipulate voluntary work as a separate premise for applying for a residence permit. Nonetheless, if volunteer work is the actual purpose of your stay in Poland, you can apply with the voivode for a residence permit based on other reasons, not stipulated in the relevant act (art. 187, point 8 of the Act on Foreigners). The final outcome will depend on the voivode's individual decision. To obtain the permit, you will need to document having health insurance, accommodation in Poland and a stable and regular source of income.

Can a foreigner work as an au pair in Poland?

Au pair work means staying with a given family in return for performing certain services for the family, typically childcare. Its purpose is learning the language and culture of a given country. Such work can be, as a principle, performed for a period of 1 year, with the possibility of extending the period to 2 years, by a person aged 17-30 years old.

To work as an au pair, you must meet the **general requirements concerning performance of work in Poland**. You can also apply for a residence permit in Poland based on performing au pair work.



Change of residence status

A foreign citizen who has been granted a temporary residence permit in Poland is required to notify the voivode within 15 days if the reason for which their residence permit was granted has ceased to be valid. This means that if your temporary residence permit was granted to allow you to pursue studies at a Polish university, and after you had been granted the permit, you were expelled from the university, you are obliged to notify of the fact the voivode who granted your permit. Failure to do so may result with the voivode refusing to grant a subsequent permit.

During this time, however, you can change the basis for your residency in Poland, by applying for a **fresh permit based on a different reason** (such as taking up employment or running your own business in Poland, or having a family life in the territory of Poland). Detailed information concerning the submission of a fresh application in relation to performing work can be found in the "Work" section below.



Remember - every time that the purpose of your stay in Poland changes, you are obliged to notify the voivode, and submit a fresh application for a residence permit based on a different reason.

3. RESEARCHERS

Can I legalize my stay in Poland based on conducting academic research?

Yes. A foreigner may be granted a temporary residence permit to do research if the purpose of their stay in Poland is to conduct academic research or development work under a relevant agreement with an academic institution.

To obtain the permit, you should submit an application with the voivode, enclosing the formal agreement with the academic institution based in Poland and a written statement is-

sued by the institution in question undertaking to cover the costs of the person's stay in Poland and, should such necessity arise, the costs of the person's deportation from Poland. Also, the foreigner must have health insurance and sufficient funds to cover the cost of living in Poland and return to the country of their origin (the relevant financial requirements are the same as for university students).

A temporary residence permit granted to do research is also issued to a foreigner who already **has a residency document annotated 'academic'**, issued by another EU member state. In such a case, the agreement on the admission for the purpose of conducting a research project concluded with a relevant academic institution based in the country in question must stipulate conducting scientific research or development work also in the territory of Poland.

What period does the permit cover?

The permit granted to do scientific research covers the entire period of a research project, academic research or development work in the territory of Poland, however **not exceeding the period of 3 years**.

It should be remembered that the academic institution is obliged to notify the voivode of all circumstances or occurrences that may prevent the execution of the concluded agreement. In such circumstances, the voivode may **refuse** to grant the permit to the foreigner in question, or **revoke** an already existing one.



Important: For the possible reasons under which a temporary residence permit may be refused and what to do if the decision is negative see the section devoted to university students, on page 17.

III. WORK



1. PERFORMANCE OF WORK BY FOREIGN CITIZENS IN POLAND – GENERAL TERMS



Important: This chapter provides information based on regulations in force in August 2017, as well as changes due to become effective in January 2018 (seasonal work, amendments in regulations governing work under the employer's declaration). Currently, further changes in the regulations governing the performance of work by foreigners in Poland are in progress, however the final extent of the amendments in question is not yet known.

Performance of work – what does it mean?

Under the Polish law, performance of work by a foreigner means employment (work performed under the employment relationship, service relationship or home-based work agreement) and performance of other types of paid work (e.g. civil law contract such as contract for services or contract for a specific task). Performance of work also includes performance of the function of a member of the board of a legal person entered in the register of entrepreneurs of the National Court Register (e.g. a limited liability company – *spółka z ograniczoną odpowiedzialnością* - or joint stock company – *spółka akcyjna*), or a capital company in the process of formation (*spółka kapitałowa w organizacji*). Additionally, pursuant to the amendments to become effective on 1 January 2018, the definition of the performance of work will also cover conducting the affairs of a limited partnership (*spółka komandytowa*) or a limited joint stock company (*spółka komandytowo-akcyjna*) by a general partner (*komplementariusz*), or acting in the capacity of a proxy (*prokurent*).

What are the main principles governing the performance of work by foreign citizens ?

In general, to work in Poland, the foreign citizen's **stay in Poland must be legal** (i.e. the foreigner must be staying in Poland under the regulations on visa-free traffic, a visa, a temporary residence permit or another type of residence permit), as he/she is required to have a work permit. There is, however, a whole range of categories of foreigners allowed to perform work in Poland without a work permit. Also, citizens of some countries are allowed to perform work in Poland without a permit for a specified period of time, under the employer's declaration of intent to employ a foreigner (commonly referred to in short as 'the employer's declaration' - *oświadczenie*).

An important change in the law that is to come into effect on 1 January 2018 will be the possibility of introducing quota for work permits and declarations. The potential limits will operate in a given voivodeship, industry or profession, or will cover given types of agreements/contracts. This means that only a limited number of permits will be issued in a given year.

Who is eligible for performing work without a work permit?

Some foreign citizens are eligible for performing work without a work permit. This applies to foreign citizens who:

1. are holders of a permanent residence permit,
2. are EU long-term residents,
3. have been granted the refugee status,
4. have been granted subsidiary protection,
5. have applied for international protection (i.e. to be granted the refugee status or subsidiary protection), and have received a relevant formal statement allowing them to perform work in Poland (the statement in question is issued to a foreign citizen upon their request if the relevant administrative proceedings are longer than 6 months),
6. have been granted a humanitarian protection residence permit,
7. have been granted a tolerated residence permit,
8. are holders of a residence permit granted for certain reasons, such as:
 - ✔ being married to a Polish citizen or a foreign citizen granted the refugee status, subsidiary protection, permanent residence permit, EU long-term residence permit, humanitarian protection residence permit, tolerated residence permit (also if the permit was issued under circumstances where the person had been widowed or separated),
 - ✔ family reunification,
 - ✔ pursuance of full time undergraduate, graduate and PhD university programmes at a Polish university,
 - ✔ conducting academic research by a foreign citizen who is an academic,
 - ✔ being a victim of human trafficking,
9. have applied for a temporary residence permit, permanent residence permit or EU long-term residence permit, and prior to submitting the application had stayed in Poland under one of the temporary residence permits listed in point 8,
10. are holders of a valid Polish Card,
11. are full-time students of a Polish university, staying in Poland under a valid visa,
12. run trainings/courses, participate in internship programmes, perform advisory, supervisory or highly-skilled functions in EU programmes or other international aid programmes,
13. work as foreign language teachers employed in kindergartens, schools, educational institutions, centres, teacher education centres or colleges,
14. are graduates of Polish upper secondary and post-secondary schools or full-time university programmes, including full-time PhD programmes,
15. are academic staff of research institutes,
16. work on a regular basis as foreign media correspondents, accredited by the Polish Minister of Foreign Affairs,

17. perform artistic services for up to 30 days per a calendar year,
18. give, for up to 30 days per a calendar year, occasional lectures, speeches or presentations of particular academic or artistic value,
19. participate in cultural or educational exchange programmes, humanitarian aid programmes or summer work programmes for students, organized in consultancy with the Minister of Labour.

2. WORK PERMIT

Who is granted a work permit?

In general, a foreign citizen needs a work permit to perform paid work in Poland (unless he/she is exempted from the requirement of having a work permit).



Important: a work permit is not equivalent with a residence permit!

A foreign citizen who has been granted a work permit is also obliged to have a valid residence entitlement for the entire period of performing work, such as: a valid visa (this may also be a visa issued by another Schengen area member state), temporary residence permit, residence permit issued by another Schengen area member state, or the regulations on visa-free traffic. A foreign citizen covered by the regulations on visa-free traffic, entitled to stay in Poland for 90 days over a period of 180 days, may also apply for a Polish visa (long-term), and stay in Poland under the visa in question.



Important: The right to stay in Poland under the regulations on visa-free traffic is not equivalent with having the right to work without a relevant permit!

If a foreign citizen is staying in Poland under a tourist visa or humanitarian protection visa, or under a special temporary residence permit issued pursuant to circumstances requiring a short-term stay in Poland (e.g. to appear before a Polish court), the person in question may not perform work in Poland, even if they have a work permit.

2.A. WORK PERMIT APPLICATION PROCEDURE

Who and where submits the application for a work permit?

The application must be submitted at the Voivodeship Office relevant for the employer's seat. It is submitted by the employer (not the prospective employee), and it is the employer who is a party to the administrative proceedings. Thus, it is also the employer who signs all

documents and applications/requests in the course of the proceedings, unless they appoint a legal representative.

The prerequisite for the work permit to be granted is that the salary stipulated in the agreement is not lower than the salary of other employees performing similar work or work in a similar position.

What documents should be enclosed with the application?

In general, the application must be enclosed with the so-called **labour market test**, i.e. the information from the local Employment Office confirming that it is impossible to hire another unemployed person or person seeking employment in the position in question, or the negative result of a recruitment process held by the Office. The document should not be older than 180 on the day of the submission of the application, and in cases justified by the staroste (*starosta*) – not older than 90 days. Thus, prior to applying for a work permit, the employer need to obtain the labour market test (more on this below). Remember, however, that in some cases the employer is exempted from the duty to submit the results of the labour market test (for more information, see below).

A number of other documents should be enclosed with the application, including:

1. excerpts from the relevant register (e.g. the National Court Register),
2. the employer's personal identity card or travel document where the employer is a natural person,
3. company deed – where the employer is a limited liability company in the process of formation or a civil law partnership (*spółka cywilna*), or a notarized deed confirming the formation of a company (incorporation) where the employer is a joint stock company in the process of formation,
4. copies of all completed pages from the foreigner's travel document (if the foreigner has no valid travel document and it is not possible to obtain one, copies of pages from another identity document),
5. where the entity entrusting with the performance of work is a temporary employment agency – a document drawn by the user's employer, confirming the agreement concerning the foreigner's referral for employment by the temporary employment agency in question,
6. confirmation of payment for the submission of the application for a work permit (PLN 50 if the employer intends to entrust the foreigner with the performance of work for a period not longer than 3 months, PLN 100 if the employer intends to entrust the foreigner with the performance of work for a period longer than 3 months).

The employer is obliged to enclose the application with one counterpart of each of the documents listed above. If copies of the documents are enclosed, the original documents must be submitted for review.

When is the labour market test not required?

In some cases, the labour market test is not required. This is the case where:

1. the employer is applying for a work permit to be extended for the same foreign citizen in employed in the same position,
2. the foreigner represents a foreign entity in their division or branch office located in the territory of Poland,
3. within a period of 3 years preceding the application, the foreign citizen in question graduated from a university based in Poland or another country from the European Economic Area or Swiss Confederation, or pursues a PhD course at a Polish university,
4. for 3 years preceding the application, the foreigner legally and continuously stayed in the territory of Poland,
5. the foreigner is a citizen of Armenia, Belarus, Georgia, Moldova, Russia or Ukraine performing welfare and nursing or house help services for a natural person in a household,
6. the foreigner is a sports coach or an athlete performing work for a sports club or another entity whose statute activity includes the promotion of physical culture and sports,
7. the foreigner is a physician or a dentist undergoing professional training or pursuing their specialization program,
8. the foreigner is a citizen of the Republic of Armenia, Republic of Belarus, Republic of Georgia, Republic of Moldavia, Russian Federation or Ukraine who directly prior to the application for a period not shorter than 3 months performed work for the same employer and in the same position under the employer's registered declaration of intent to entrust a foreigner with the performance of work, whereby the employer is obliged to submit the registered declaration and relevant agreement, as well as documents confirming the payment of social insurance contributions (where relevant).

Moreover, voivodes may stipulate lists of professions for which the labour market test is not required in a given voivodeship. The current examples in the Mazowieckie Voivodeship (*województwo mazowieckie*) include the driver of a semi-tractor truck and the bus driver.

How can I obtain the labour market test?

To obtain the labour market test, the employer should notify the relevant Employment Office of the presence of the vacancy to be filled by the foreigner in question. The office checks if the vacancy can be filled with another unemployed person or person seeking employment who is a Polish citizen or a foreigner eligible for work in Poland without a work permit, registered in the same office. If no such candidate is found, the office issues relevant information, known as the **result of the labour market test**.

How long does it take to receive the result of the labour market test?

The Employment Office is obliged to issue the result of the labour market test within a stipulated period, calculated from the day the job offer is registered at the office by the employer. The period is:

- ✓ 14 days if according to the register of the unemployed and jobseekers it is not possible to hold a recruitment process for the position to be filled
- ✓ 21 days if a relevant recruitment process is held among the unemployed and jobseekers registered with the office.

Can I work while the work permit proceedings are in progress?

While the work permit proceedings are in progress, the applicant is not allowed to perform work in Poland. However, certain changes in this respect will become effective on 1 January 2018. An employer who employed a foreigner for a period not longer than 3 months under a declaration entered into the declaration register (issued under the new provisions discussed below) may submit an application for a work permit for the foreigner in question to be employed in the same position under an employment agreement. Under such circumstances, the work performed by the foreigner in question on terms not worse than stipulated in the declaration entered into the declaration registry is considered legal starting on the date when the declaration expires until the completion of the work permit proceedings.

What information does a work permit include?

A work permit is issued for a given foreign citizen. It stipulates the detailed conditions under which the foreign citizen is allowed to perform work, and includes the following information:

1. the employer,
2. the position or type of work performed by the foreigner,
3. the lowest salary that the person in question must receive in a given position,
4. work time (as of 1 January 2018, it will also be possible to stipulate the number of hours per week or month),
5. the validity period,
6. the entity where the foreign citizen is delegated to (where relevant),
7. the user's employer (if the permit is issued for a foreign citizen to be hired in the capacity of a temporary worker).

A work permit is issued in 3 copies, 2 of which are received by the employer. One of the copies must be passed on to the foreigner. As of 1 January 2018, an electronic form of the work permit will be possible. In such a case only one copy of the permit will be issued.

For how long is a work permit valid?

In general, a work permit is issued for a specified period of time, no longer than 3 years, and may then be extended. The permit may be granted for a period shorter than requested by the employer. If the foreigner holds a function of a board member of a legal person which on the day of submitting the application has more than 25 employees, the voivode may issue a work permit for a maximum period no longer than 5 years.

Can a work permit be extended?

A work permit may be extended if it applies to the performance of work under the same terms as before. The employer submits an application for an extension of a work permit with the relevant voivode. The application must be submitted 30-90 days prior to the date when the previous permit expires.

The application must include the same documents as the application for a work permit, as well as documents confirming the payment of social insurance contributions where relevant. The labour market test is not required.

The fees are 50% lower than the for work permit application fees: PLN 25 where the employer intends to entrust a foreigner with the performance of work for a period not longer than 3 months, and PLN 50 where the employer intends to entrust the foreigner with the performance of work for a period longer than 3 months.

The foreigner may perform work from the moment the application for an extension of a work permit is duly submitted, i.e. he/she has his/her passport stamped to confirm the submission of the application.



Important: The submission of an application for a work permit after the completion of the period when the foreigner performed work under the employer's declaration is not considered an application for an extension of a work permit. Hence, the foreigner is not allowed to work while the work permit proceedings are in progress.

However, as indicated above, under the amendments in the regulations to come into force on 1 January 2018, if the employer submits an application for a work permit (under an employment agreement) for a given foreigner who has worked for them under a declaration of intent entered into the declaration registry for a period not shorter than 3 months, and the work is to be performed under terms not worse than those stipulated in the said declaration, it will be possible to perform work while the relevant proceedings are in progress.

Is it possible to alter the terms stipulated by a given work permit?

In general, a foreign citizen may perform work solely under the terms stipulated in the work permit. The performance of work under different terms is considered and may entail serious legal consequences.

There are, however, exceptions from this rule.

The foreigner's remuneration (salary/wage) may be raised without the need for changing the work permit or notifying the voivode.

The employer may entrust the foreigner, for a total period not exceeding 30 days per calendar year, with the performance of work of a different type or in a different position than stipulated by the work permit in question, provided that other terms set forth in the work permit are met. The employer is obliged to notify the voivode if such circumstances arise.

If the employer's registered seat, residence address, name or legal form changes, or their employment establishment or its part is taken over by another employer, a fresh work permit is not required, yet the employer must notify the voivode. Additionally, as of 1 January 2018, the replacement of a civil law contract with an employment agreement will not entail the necessity to apply for a fresh work permit.

Under any other circumstances, if the foreigner in question intends to take up employment under different terms, a new work permit is necessary. Until the new work permit has been granted, the foreigner is not allowed to perform work under the new terms.

Can the voivode refuse to grant a work permit?

Yes. In certain circumstances, the voivode issues a decision refusing a work permit. This applies where:

1. the employer submitted an application for a work permit including false personal data or information, gave false testimony, withheld the truth, falsified or altered a document to use as an authentic one, or used an altered document as an authentic one,
2. the result of the labour market test was not enclosed with the application,
3. the employer (as of 1 January 2018 also a person representing them) has an offence record associated with illegal employment of foreigners, infringement of employee rights or human trafficking,
4. the employer (as of 1 January 2018 also a person representing them) has a criminal record associated with falsifying documents,
5. the personal data of the foreigner to be granted the work permit are found in the black list of foreigners whose stay in the territory of Poland is considered undesirable.

Moreover, as of 1 January 2018, the voivode will refuse the work permit also where:

1. the designated limit of work permits, discussed above, has been exhausted,
2. the circumstances indicate that
 - ✓ the application was submitted to deceive the authorities,
 - ✓ the work permit is to be used for purposes other than performance of work for the employer in question,
 - ✓ the employer does not meet their obligations pursuant to conducting a business or entrusting other persons with work (e.g. does not conduct an actual business, has no funds to pay remuneration to the foreigner, fails to pay social insurance contributions or taxes).

Is it possible to appeal a negative decision issued by the voivode?

Yes. The employer may appeal a decision refusing a work permit with the Minister for Family, Employment and Social Policy within the period of 14 days from the receipt of the decision. The appeal must be sent by post or submitted in person through the voivode who issued the decision in question. The Minister's decision may be appealed with the Voivodeship Administrative Court in Warsaw.

Can a work permit be revoked?

Yes. The voivode may revoke a work permit e.g. based on information mandatorily provided by the employer. This may be the case where:

1. the foreigner in question has failed to commence employment within 3 months from the date the work permit was issued, or discontinued work for a period longer than 3 months with no valid reasons,
2. the circumstances or evidence relevant for the decision in question have changed,
3. the reason for which the work permit was granted has ceased to be valid,
4. the foreigner's personal data have been entered into the black list of foreigners whose stay in the territory of Poland is considered undesirable.

Additionally, as of 1 January 2018, the voivode will revoke the work permit if the foreigner's employer terminates or discontinues their business.

2.B. THE EMPLOYER'S OBLIGATIONS UNDER A WORK PERMIT

What obligations does the employer have to the voivode pursuant to a work permit granted to a foreigner?

The employer is obliged to notify the voivode in writing within 7 days if any of the following circumstances have occurred:

1. the registered seat, residence address, name or legal form of the entity entrusting the foreigner with the performance of work has changed, or the employment establishment or its part has been taken over by another employer,
2. the employment establishment or its part has transferred to another employer,
3. the foreigner has failed to commence employment within 3 months from the permit's commencing date,
4. the foreigner has discontinued work for a period longer than 3 months,
5. the foreigner has terminated work earlier than 3 months prior to the work permit's expiration date,
6. the foreigner has commenced employment of another type or in another position than stipulated by the work permit, yet under permissible terms, as discussed above.

What obligations does the employer have to the foreigner pursuant to a work permit granted to the foreigner in question?

The employer is obliged to:

1. meet the terms stipulated in the work permit, and include them in the relevant agreement concluded with the foreigner in question,
2. conclude an agreement in writing with the foreigner in question and, should the person not be able to understand Polish in writing, provide its translation into a language he/she is able to understand prior to signing the agreement,
3. provide the foreigner with their counterpart of the work permit,
4. inform the foreigner of any measures taken in relation to the proceedings aimed at obtaining or extending the work permit and of any decisions issued by the authorities in relation to granting, refusing or revoking the permit in question.

3. SEASONAL WORK PERMIT

As of January 2018, a new form of work, referred to as seasonal work is to be introduced.

Performance of seasonal work will involve the performance of work in a given industry or area of business (e.g. agriculture/farming, hospitality or catering industry) for a maximum period of 9 months in a given calendar year.

This type of work will be available to all foreigners, yet the citizens of Armenia, Belarus, Georgia, Moldavia, Russia and Ukraine will be exempted from the labour market test in this respect.

What is the procedure for entering the application into the application registry and the work permit procedure?

A seasonal work permit is to be issued by the staroste (*starosta*). The application must be submitted by the employer.

The application, apart from information included in an ordinary application for a work permit, must include:

- ✔ the date of the foreigner's entry into the Schengen area and information related to the foreigner's stay in Poland, including the legal basis for the stay,
- ✔ information whether the foreigner in question performed work for the same employer in the period of 5 years preceding the submission of the application under a seasonal work permit,
- ✔ the employer's statement that, according to their best knowledge, the foreigner is providing their own accommodation, or declaration on providing accommodation for the foreigner in question,
- ✔ information concerning paid leave for the foreigner, where relevant.

To submit the application, a one-time fee in an amount not exceeding 10% of the minimal wage must be paid for each foreigner to be entrusted with the performance of work.

The staroste considers the applications for seasonal work permits with priority given to foreigners who at least once over the period of 5 years preceding the application performed work for a given employer under a seasonal work permit, provided the work will be performed under an employment agreement (i.e. not under a civil law contract such as contract for services or contract for a specific task).

Upon the submission of an application, the staroste enters the application into the application register, or refuses to grant the work permit within the period of 7 days. The period may be extended to 30 days if any additional investigation is necessary.

Once the staroste has entered the application into the register, the employer receives a relevant certificate to be handed over to the foreigner in question. Based on this certificate, the foreigner may obtain a visa, unless he/she is eligible for entry into the territory of Poland under the regulations on visa-free traffic.

How long does the entry of the application into the register remain valid?

The entry of the application into the registry remains valid until the relevant work permit is granted. If the employer fails to submit within 120 days a copy of a document entitling the foreigner to stay in Poland, the proceedings aimed at obtaining a work permit are discontinued (unless the circumstances indicate that the permit will be utilized at a later time).

The staroste may enter the application into the register for periods of time not longer than 9 months in a given calendar year, in not more than 3 subsequent calendar years, provided that the foreigner is a citizen of one of the six countries listed above, and the employer:

- ✔ has entrusted the foreigner with the performance of work under a seasonal work permit at least once within the period of 5 years preceding the date of the submission of the application.
- ✔ is not in arrears with tax or social insurance contributions.

What requirements do I need to meet to obtain a seasonal work permit?

The requirements include the following:

- ✔ the amount of the salary set forth by the relevant agreement concluded with the foreigner in question is not lower than the remuneration of employees performing work of a similar type or in a similar position in the same work time,
- ✔ the submission of the results of the labour market test for review (as indicated above, in the case of citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine, the labour market test is not required).

What information does a seasonal work permit include and how long is it valid?

A seasonal work permit is granted to a given citizen of a foreign country and it includes the following information:

- ✓ the employer,
- ✓ the minimum remuneration to be paid to the foreigner,
- ✓ the work time or the number of work hours per week or per a month,
- ✓ the type of agreement under which the foreigner is to perform work,
- ✓ the permit's expiration date.

If the permit is granted to a foreigner to be hired as a temporary worker, it also stipulates the user employer.

The permit is granted for a period not longer than 9 months in a given calendar year.

Can a seasonal work permit be extended?

The permit may be extended if the foreigner is to continue performance of work for the same employer and he/she entered Poland under a seasonal work visa or under the regulations of visa-free traffic in relation to an application for a seasonal work permit entered into the register.

If the application for an extension of a seasonal work permit is submitted by the same employer, the foreigner may continue performing work for this employer while the proceedings aimed at the extension of the permit are in progress.

The permit may also be extended with the purpose of performance of work for another employer. If the application for an extension of a seasonal work permit is submitted by a different employer, the foreign citizen may start work for that employer while the relevant proceedings are in progress, yet for a period not exceeding 30 days calculated from the date the application is submitted.

A seasonal work permit may not be extended if the foreign citizen is staying in Poland under a document other than a visa granted for the purpose of performing seasonal work or under the regulations on visa-free traffic not related to an application entered into the register.

A seasonal work permit is extended for a period which, calculated jointly with the period of the foreigner's stay aimed at performance of seasonal work calculated from the date of the foreigner's entry into the territory of a Schengen member state in a given calendar year can should not exceed 9 months in a calendar year.

Is it possible to perform work under different terms than those stipulated in the seasonal work permit?

The employer may entrust the foreigner performing work under a seasonal work permit with other types of work than seasonal work for periods not longer than a total of 30 days during the permit's validity period where:

1. the foreigner is a citizen of one of the countries whose citizens are not required to provide the results of the labour market test,
2. the foreigner is to receive remuneration not lower than stipulated in the seasonal work permit,
3. the foreigner is not employed as a temporary employee.

A new seasonal work permit is not required where:

1. the seat, place of residence, name or legal form of the entity entrusting the foreigner with the performance of work has changed, or the employment establishment or its part has been taken over by another employer,
2. the employment establishment or its part has transferred to another employer,
3. the entity entrusting the foreigner with the performance of work and the foreigner in question have replaced a civil law agreement with an employment agreement.

Can the employer provide accommodation for the foreigner performing seasonal work?

Yes. If the employer provides accommodation for the foreigner performing seasonal work, the employer is required to conclude an agreement in writing stipulating the terms for lease or use of the accommodation provided. The rent may not be deducted from the foreigner's remuneration. Prior to signing the agreement, the employer is required to provide the foreigner with a translation of the agreement into a language the foreigner is able to understand.

3.A. A TEMPORARY RESIDENCE PERMIT GRANTED TO PERFORM SEASONAL WORK

What is a residence permit based on performance of seasonal work?

This type of permit is available solely to foreigners performing seasonal work and can be sought when the foreigner's visa or term of stay pursuant to the regulations on visa-free traffic is about to expire.

The permit is granted to a foreigner whose purpose of stay in Poland is the performance of seasonal work for the same entity that has entrusted the foreigner with the performance of work so far or for another entity.

Who can be granted a temporary residence permit based on performance of seasonal work?

The permit is granted if the foreigner meets all the following criteria:

1. he/she entered Poland under a seasonal work visa or regulations on visa-free traffic in relation to an application for a seasonal work permit entered into the relevant register,
2. he/she has a seasonal work permit or an extended seasonal work permit valid for a period longer than the period of stay stipulated by the visa or the regulations on visa-free traffic,
3. he/she has a source of stable and regular income sufficient to cover the cost of living in Poland,
4. he/she has health insurance or proof of coverage of medical costs by the insurer,
5. he/she has accommodation in Poland.

The permit is issued for the term of the seasonal work permit or its extension. The period in question may not exceed 9 months calculated from the date of the foreigner's initial entry

into the territory of Poland discussed above in a given calendar year. The permit is issued by the voivode and the relevant proceedings are the same as in the case of an application for a temporary work permit granted for other purposes.

4. TEMPORARY RESIDENCE AND WORK PERMIT

What is a residence and work permit?

A residence and work permit is one of the available forms of legalizing the stay of foreigners whose primary purpose of stay in Poland is the performance of work, and the planned time of stay exceeds 3 months. This, in principle, applies to foreigners who are required to have a work permit, but also to foreigners who are not required to have a work permit, yet work is their purpose of stay in Poland (for example, if the foreigner performs work under the employer's declaration, and the term of their visa or term of stay under the regulations on visa-free traffic is about to expire, they may also apply for the permit in question). The primary difference between this permit and the "ordinary" permit is that to be able to work under the "regular" work permit, a foreign citizen must also have a residence entitlement, such as a visa, whereas the permit in question combines a residence and work permit.

4.A. A TEMPORARY RESIDENCE AND WORK PERMIT – THE PROCEEDINGS

Where and when should I apply for a temporary residence and work permit ?

To initiate the proceedings aimed at obtaining a temporary residence and work permit, **you must apply in person with the voivode** relevant for your place of residence. You are the party to the administrative proceedings in this case (as opposed to a work permit alone, where the application is submitted by the employer, who is the party to the proceedings). **The employer, however, must complete Appendix 1 to the application.** Upon submission, you will be fingerprinted. You can download the **application form** from the website of the Office for Foreigners at: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/formularze-wnioskow/>.

The application for a temporary residence and work permit may be submitted not later than on the last day of your legal stay in Poland. Due to the necessity to collect all the relevant documents, it is a good idea to start preparing the application as early as 2 months prior to the expiry of your residency. In most voivodeship offices, it is necessary to make an appointment for the submission of the application (by telephone or online), and the available free appointment dates tend to be remote. In most situations, the application must be enclosed with the result of the labour market test, which may take up to 21 days to obtain.



Important: If you fail to enclose the result of the labour market test, your application will not be processed, which means that no decision will be issued. Remember that under such circumstances, unless there are other grounds for your stay in Poland, your stay in Poland will become illegal.

Hence, it is highly recommended to obtain the labour market test first. The procedure is the same as in the case of an “ordinary” work permit, since the labour market test must also be requested by the prospective employer (see page 26).

When is the labour market test not required?

The labour market test is not required under the following circumstances:

1. when it is not required for an “ordinary” work permit (see page 27),
2. the foreigner is eligible for the performance of work without a work permit,
3. the foreigner is applying for a temporary residence and work permit to perform work under the same terms as stipulated in the previous temporary residence and work permit or “ordinary” work permit.

An application for a temporary residence and work permit may also be made if the foreign citizen is to work (or is already working and staying in Poland e.g. under a visa) under the employer’s declaration, if he/she has worked for the same employer for a minimum period of 3 months and under unaltered terms. In such circumstances, the labour market test is not required.

What documents should be enclosed with the application?

The application should be enclosed with:

1. 4 photographs,
2. 2 xerox copies of a valid travel document (passport),
3. the result of the labour market test (unless the foreigner is exempted from the obligation),
4. an agreement in writing concluded with the employer; if work is to be performed for the first time for a given employer, the agreement must stipulate the envisioned date of commencing employment upon obtaining the temporary residence and work permit,
5. a proof of health insurance,
6. a proof of having accommodation in Poland (such as a lease or use agreement, hotel booking, or a relevant statement provided by a flat owner),
7. tax statement for the previous year,
8. a statement issued by the Tax Office confirming no current tax arrears.

What else is important when applying for a temporary residence and work permit?

The amount of the remuneration stipulated in the contract concluded between the employer and the foreign citizen may not be lower than the amount of remuneration paid to

other employees performing work of a comparable type or in a comparable position in the same work time.

Also, to obtain the permit, the foreigner must have a source of stable and regular income sufficient to cover the foreigner's and her/his family members' cost of living in Poland. The source of income may be the agreement based on which the foreigner is seeking the relevant permit. The monthly income resulting from the said agreement must be higher than the income entitling to social welfare benefits. At present, the stipulated amount is PLN 634 per month for a single-person household, and for families – PLN 514 per person in the family (thus, a 3-person family must have a minimum joint income of PLN 1542).

What are the application fees?

The application fee is PLN 440, and the confirmation of the payment must be enclosed with the application. Also, there is a fee of PLN 50 for the residence card (where relevant, i.e. a positive decision has been issued).

What is the waiting time for the decision?

The decision should be issued within 30 days, yet in practice the waiting time tends to be much longer, and may take up to several months.

Is it possible to work legally while the residence permit proceedings are in progress?

Basically, a foreigner is not allowed to work while the proceedings are in progress. An exception to the rule is a situation where directly prior to the application, the foreigner worked under a temporary residence and work permit or an "ordinary" work permit, and the work is to be continued under unaltered terms.

At present, having performed work under the employer's declaration does not make it possible. The work may, however, be performed if the declaration continues to be valid while the proceedings are in progress. Also, it is possible to register a declaration that will be valid for the duration of the proceedings.

However, under the amendments scheduled to become effective on 1 January 2018, if the employer who employed a foreigner for a period not shorter than 3 months under a declaration entered into a relevant register submits, prior to the expiry of the declaration's term, an application for a work permit for the foreigner in question to be employed in the same position under a contract of employment, the foreigner's work under terms not worse than those stipulated in the declaration entered into the relevant register is considered legal.

When can't a foreigner obtain a temporary residence permit and work permit?

A foreigner cannot effectively seek a residence and work permit if:

1. he/she runs a business in Poland,
2. resides outside of Poland,

3. is seeking international protection or has been granted the refugee status, subsidiary protection, humanitarian protection residence or tolerated residence permit,
4. is temporarily detained, is serving time in prison, or has been placed in a guarded centre for foreigners,
5. is obliged to leave the territory of Poland, or has been issued a decision obliging them to return to the country of their origin,
6. under other circumstances when an “ordinary” work permit is refused.

Moreover, under the amendments to become effective on 1 January 2018, the permit may be refused if the employer does not have sufficient funds to pay remuneration, tax, or does not conduct actual activity that would justify entrusting the foreigner with the performance of work.

What information is included in the decision granting the residence and work permit?

The decision indicates the following:

1. the employer (unless the foreigner is exempted from the obligation of having a work permit),
2. the position the employer is to be employed in,
3. the minimum remuneration the foreigner is to be paid in the given position,
4. the foreigner’s work time,
5. the type of contract under which the employer is to perform work.

If the foreigner is to perform work for several employers, the terms of work performance should be stipulated separately for each of the employers.

If a positive decision is issued, the foreigner receives a residence permit card annotated “access to the labour market”. The permit card can only be received in person.

What to do if the decision is negative?

If a decision refusing a residence and work permit is issued, you may appeal the decision with the Head of the Office for Foreigners. The appeal is submitted through the voivode who issued the negative decision. The appeal must be submitted within 14 days from the receipt of the decision. The decision issued by the Head of the Office for Foreigners may be appealed with the Voivodeship Administrative Court in Warsaw.

4.B. CHANGE OF THE EMPLOYER AND LOSS OF WORK

Can a residence and work permit or the terms under which work is performed be changed?

Yes. If a foreigner wants to perform work for another employer or under different terms than stipulated in the permit, he/she should apply with the voivode for a fresh temporary residence and work permit. You cannot perform work for the new employer or under the new terms before you obtain a new permit.

A change of the employer's seat, place of residence, name or legal form, or takeover of the employer or its part by another employer, transfer of the employment establishment or its part to another employer, or replacement of a civil law agreement with an employment agreement do not require amendments in the existing permit, or the issuance of a fresh temporary residence and work permit.

What should I do if I lose my job?

If a foreigner has lost their job, and has a temporary residence and work permit, he/she is obliged to notify the voivode within 15 working days (i.e. typically 21 calendar days) of the loss of work with any of the employers listed in the permit.

In such a case, he/she has 30 days to find a new employer and apply for a fresh residence and work permit.

5. TEMPORARY STAY PERMIT IN ORDER TO PERFORM WORK IN A PROFESSION REQUIRING HIGH QUALIFICATIONS

What is a temporary stay permit in order to perform work in a profession requiring high qualifications?

This is one of the available types of temporary residence permits, referred to as the EU Blue Card. There are many benefits of the Blue Card, including the right to apply for family reunification in Poland immediately upon receiving the residence permit, or an easier path towards the status of a EU long-term resident (the foreigner's stay in other EU member states is calculated towards the required 5-year period of residence upon which the person may apply for a long-term residence permit).

A job in a profession requiring high qualifications is one where the foreigner needs skills acquired in the course of university education (being a university graduate) or for the performance of which he needs a minimum of 5-year professional experience at a level comparable with the level of qualifications acquired in the course of university education.

5.A. HOW TO APPLY FOR A TEMPORARY STAY PERMIT IN ORDER TO PERFORM WORK IN A PROFESSION REQUIRING HIGH QUALIFICATIONS – THE PROCEEDINGS

The application procedure is in general the same as in the case of applying for a temporary residence and work permit. You must submit the application with the voivode relevant for the your place of residence. You must enclose the **Attachment No.1 form completed by your prospective employer**, and the **Attachment No. 2 form, where you must detail your professional qualifications**. You will be fingerprinted upon the submission of the application. The application must be submitted in two counterparts. You must submit the application **not later than on the last day of your legal stay in Poland**.

You can download **the application form** with the relevant attachments from the website of the Office for the Foreigners, at: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/formularze-wnioskow/>.

The same principles apply in this situation as in the case of a temporary residence and work permit as far as the length of the procedure, the appeal mode and the possibility of performing work are concerned.

What documents should I attach with the application?

The application must be attached with **the same documents as in the case of a residence and work permit, as well as:**

1. documents confirming your qualifications,
2. a document confirming that you meet the eligibility criteria and all other requirements if you want to take up a job offer in a regulated profession,
3. a permit issued by a relevant authority where to hold a given position, work in given a profession or conduct another type of activity such a permit is required under separate regulations,
4. the employment **agreement**, home-based work agreement or civil law agreement under which you perform work, provide services or remain in a service relationship, **valid for a minimum period of 1 year.**



Important: The annual gross remuneration indicated in the agreement cannot be lower than the equivalent of 150% of the national average salary/wage in the preceding year, i.e. currently equivalent with PLN 5849.67 per month.

How is the situation of a Blue Card holder different from the situation of a holder of a residence and work permit?

A foreigner who has been granted a temporary residence permit for purpose to perform work in a profession requiring high qualifications receives a residence card annotated "EU Blue Card". After staying in Poland for 2 years under this permit, the holder of the Blue Card becomes entitled to perform work under altered terms without the need for changing the permit.

The holder of the Blue Card is also obliged to notify the voivode within 15 days if he/she loses the job.

You can find more information on the temporary residence permit based on a skilled job offer at: <http://tinyurl.com/ybunqu6y>.

6. WORK UNDER THE EMPLOYER'S DECLARATION

The declaration of the intent to entrust with the foreigner with the performance of work (hereinafter referred to as the "employer's declaration") enables short-term performance of work by foreigners without the need to obtain a work permit in Poland. The maximum period of performing work under the employer's declaration is 6 months within consecutive 12 months. The foreigner may also work under several declarations submitted by several employers. The person working under the declaration must have an agreement/contract in writing.



Important: The nationalities covered by the regulations governing the performance of work under the employer's declaration include the citizens of **Armenia, Belarus, Russian Federation, Georgia, Moldova and Ukraine.**

As of 1 January 2018, it will be possible to designate professions in which also citizens of other countries will be allowed to work under the employer's declaration. It will also be possible to perform work under the employer's declaration in the areas and sectors where seasonal employment may be taken up.

As of 1 January 2018, other important amendments to the regulations governing work under the employer's declaration will become effective.

6.A. REGISTERING THE EMPLOYER'S DECLARATION OF THE INTENT TO ENTRUST A FOREIGNER WITH WORK – THE PROCEDURE

The registration procedure must be performed by the employer. They must first complete a relevant form, providing the following information: the location where work is to be performed, the date of commencing employment and the period for which work is to be performed, the profession, the type of the agreement under which work is to be performed, and the gross remuneration.

The employer registers the declaration in the poviats Employment Office (*powiatowy urząd pracy*) relevant for the employer's seat or place of residence. To register the declaration, the employer is required to submit the following documents:

- ✓ the employer's personal identity document (if the employer is a natural person who does not conduct a business),
- ✓ the entry into the Central Business Activity Register and Information System (if the employer is a natural person who conducts a business) or into the National Court Register (if the employer is a legal person, e.g. a partnership).

The registration of the declaration is free of charge at the moment. Once it has been registered, the employment office includes relevant information on the form, concerning the registration of the declaration. The employer is required to hand over the original of the registered declaration to the foreigner in question. The foreign citizen may apply for a visa or a

temporary residence and work permit based on this document.

As of 1 January 2018, a registration fee will apply.



Important: The employer may register the declaration also prior to the foreigner's arrival to Poland.

Changes in the registration procedure due to become effective on 1 January 2018

As of 1 January 2018, the declaration will be entered by the poviata Employment Office into the declaration register. This means that the foreigner will be able to legally perform work under the declaration only after it has been entered into the register.

It will be possible to stipulate the date of commencing employment to be later than the date of registering the declaration.

The entry into the registry or the refusal of entry must take place within 7 days, unless any additional investigation is necessary, in which case the entry must be made within 30 days.

The starosta will be able to refuse to enter the declaration into the register under the following circumstances:

1. the employer has a criminal record of a specified type, just like in the case of the refusal of a work permit,
2. the designated limit of given declarations has been already exhausted, as discussed above,
3. the circumstances indicate that:
 - ✓ the declaration has been submitted to deceive the authorities,
 - ✓ the declaration is to be used for different purposes than the performance of work for a given employer,
 - ✓ the employer does not meet the obligations pursuant to conducting a business or entrusting other persons with the performance of work (e.g. does not conduct an actual business, does not have sufficient funds to pay remuneration, or is in tax or social insurance arrears).

6.B. THE TERMS OF PERFORMING WORK UNDER THE EMPLOYER'S DECLARATION

The declaration enables work for a given employer under the terms stipulated in the declaration. It is not possible to legally perform work for an employer other than stipulated in the declaration or under different terms (unless, obviously, you have a separate permit or employer's declaration enabling you to do so). Remember that if you take up employment with

a different employer or perform work under different terms than stipulated in the relevant declaration, your work will be considered illegal. Importantly, a registered declaration allows you to perform work in Poland only if your stay in Poland is legal.

Under the regulations to come into force on 1 January 2018, the entry of a fresh declaration of the intent to entrust a foreigner with the performance of work into the registry is not required where:

1. the employer's seat, place of permanent residence, name or legal form has changed, or the employment establishment or its part has been taken over by another employer,
2. the employment establishment or its part has transferred to a different employer,
3. the employer and the foreigner have replaced an a civil law agreement with an employment agreement,
4. the foreigner is a temporary worker, referred by the employer to another user employer than designated in the declaration, if the information concerning the job offered to the foreigner in question stipulated in the declaration other than the place of work performance have not changed.

Additionally, under the regulations to become effective on 1 January 2018, in such situations the employer will be obliged to provide the following information to the poviast Employment Office:

1. the fact of commencing employment by the foreigner, not later than on the date employment is commenced,
2. the foreigner has failed to commence employment, within 7 days from the date stipulated in the declaration entered into the registry as the date of commencing employment.

Where this obligation fails to be met, the foreigner is considered to have performed work from the date stipulated in the declaration, unless circumstances indicate that the foreigner commenced employment on a later date.

Both the entity entrusting the foreigner with the performance of work under the declaration of the intent to entrust a foreigner with the performance of work entered into the relevant registry, or the foreigner performing work under the declaration may notify the relevant poviast Employment Office of terminating employment.

Is it possible to extend the maximum period of work performance under the employer's declaration?

If the declaration designates the maximum permissible period of time (6 months) stipulated by the law, it cannot be further extended.

However, if the foreigner works under the employer's declaration (and is staying in Poland legally), they may apply for a work permit (if they have e.g. a long-term visa) or for a uniform temporary residence and work permit.

Where the foreign citizen has worked for a given employer for a minimum period of 3 months under the employer's declaration, and wants to apply for a temporary residence and work permit or for a work permit, the labour market test is not required.



Important: If the foreigner applies for a work permit or for a temporary residence and work permit, and the period of work stipulated in the employer's declaration has expired, the foreigner cannot legally perform work until he/she is granted a fresh permit.

However, under the amendments in regulations due to become effective on 1 January 2018, if the employer who employed the foreigner for a period not shorter than 3 months under a declaration entered into the registry prior to the date of termination of employment stipulated in the declaration applies for a work permit for the person in question to be employed in the same position under an employment agreement, the foreigner's work until the application is processed, if performed under terms not worse than stipulated in the declaration entered into the registry, is considered legal.

7. ILLEGAL PERFORMANCE OF WORK

What are the possible consequences of performing work illegally or in breach of the terms stipulated in the permit?

If a foreigner is required to have a permit to perform work in Poland, or works under the employer's declaration, he/she is obliged to perform in compliance with the terms stipulated in the permit or declaration.

If work is performed in breach of the terms in question, the Border Guard may initiate relevant proceedings and issue a decision obliging the foreigner to return to the country of their origin, and deport the foreigner from Poland. The decision obliging the foreigner to return to their country also entails a ban of re-entry into the territory of Poland and Schengen area member states. The foreigner may also be detained until the time of their deportation.



Important: The decision obliging the foreigner to return to the country of their origin is not issued where the employer made the foreigner perform illegal work by way of deception, exploiting error, professional dependency, or the inability to properly comprehend the undertaken action.

Under the Polish law, illegal performance of work is considered an offence punishable by a minimum fine of PLN 1000.

What are the possible consequences for the employer for entrusting a foreigner with the performance of work without the required valid document or in breach of the terms stipulated in the relevant permit?

Every employer entrusting a foreigner with the performance of work is required to request to be presented, prior to the commencement of the employment, with a valid document en-

titling the foreigner to stay in Poland, and to retain its copy for the entire period of the work performance.

Under the Polish law, entrusting a foreigner with illegal performance of work is an offence punishable by a fine. The employer is also liable to a fine if they make the foreigner perform illegal work by way of deception, exploiting error, professional dependency, or the inability to properly comprehend the undertaken action. Also, any employer who demands from a foreigner financial benefit for undertaking actions aimed at obtaining a work permit or another document that entitles to perform work in Poland is liable to a fine.

VI. BASIC EMPLOYEE RIGHTS AND HOW TO ASSERT THEM



1. TYPES OF AGREEMENTS UNDER WHICH WORK MAY BE PERFORMED

Types of agreements concluded between the employer and the employee (worker)

There are different types of agreements (contracts) concluded to enable performance of work. The most popular ones are:

1. an employment agreement (*umowa o pracę*),
2. a contract for services (*umowa zlecenie*),
3. contract for a specific task (*umowa o dzieło*),

How are a contract for a services and a contract for a specific task different from an employment agreement ?

A contract for a services and a contract for a specific task are the so-called civil law agreements (contracts), as they are governed by the civil law, not employment law. This means that **if you perform work under contract for a services and a contract for a specific task, you do not have any entitlements pursuant to (resulting from) an employment relationship**, such as the right to paid holiday leave, sick leave or paid overtime.

The primary differences setting a contract for a services and a contract for a specific task apart from an employment agreement include:

1. neither contract for a services nor contract for a specific task need to be performed under the direction of the commissioning person,
2. under civil law agreements, it is the contractor who decides where and when the tasks stipulated in the agreement are to be performed,
3. in the case of contract for a services, the contractor is not required to perform the stipulated tasks in person.

Type of agreement		
Employment agreement	Contract for a services	Contract for a specific task
The employee undertakes to perform a given type of work in the time and place stipulated by the employer, under the employer's direction. The employer undertakes to pay the employee.	The contractor undertakes to perform a given type of work for the employer (such as cleaning the garden or repairing home appliances).	The contractor undertakes to perform a specific task (such as making a piece of furniture or painting a picture) and the employer undertakes to pay the contractor for the completed task.

	The employer may only indicate how work should be performed.	The employer has the right to control the manner of work performance.
The terms under which employment agreement is terminated and periods of notice are stipulated by the law. The agreement may also be terminated by mutual agreement, whereby the requirements of employment law do not have to be met.	Both parties to the agreement may terminate the agreement at any time (with a period of notice, where the agreement stipulated one). A contract for a services precludes any provision preventing its termination due to substantial and compelling reasons.	Due to the nature of work to be performed by the contractor, contract for a specific task may only be terminated under specific circumstances directly indicated in the civil law code.
Entitlement to fully paid holiday leave	N/A	N/A
Entitlement to paid sick leave (80% of the worker's regular remuneration).	The contractor is entitled to paid sick covers the worker only if, prior to their sickness, they applied to be covered by voluntary health insurance, upon the completion of 90 days of an uninterrupted insurance period.	N/A
Entitlement to paid maternity, paternity and parental leave and non-paid leave to raise a child.	The contractor is not eligible for leave. If the person is covered by voluntary health insurance, they are entitled to a one-time maternity benefit, provided that the agreement was valid on the day the child was born. A work-for-hire agreement, as opposed to an employment agreement, is not extended by default until the day the child is born.	N/A
The period of performing work under an employment agreement is counted towards the years of service conditioning the length of holiday leave or pension and disability entitlements.	The period of performing work under a work-for-hire agreement is counted towards the years of service conditioning pension and disability entitlements, but it is counted towards the years of service affecting holiday leave.	N/A

The right to publicly funded health care.	The right to publicly funded health care.	N/A However, the worker may be covered by voluntary National Health Fund insurance by independently paying relevant contributions.
Entitlement to paid overtime.	N/A	N/A

Can I choose the type of agreement under which I want to perform work when starting a job?

The decision under what type of agreement to perform work is conditioned by the nature and manner of performing given work (see above). In practice, it is usually the entity offering a job that dictates the type of the agreement to be concluded. It is, however, noteworthy that any agreement, regardless of its name, is considered to be an employment agreement under the law where the following conditions are jointly met:

- ✔ the employee undertakes to perform work of a given type for the employer and under the employer’s direction, at a time and place stipulated by the employer,
- ✔ the employer undertakes to pay the employee.

It is not permissible to replace an employment agreement with a civil law agreement where the above conditions of work performance are met. Hence, it is possible that a given person signed a civil law contract such (contract for services or contract for a specific task), yet the terms and the manner of work performance in fact indicate that an employment agreement has been entered by the parties. Then, the person in question may request the labour court to determine that an employment relationship was formed between the parties. In such a case, the person may also seek payment of any dues (such as pay for accrued leave).



Important: Foreigners who perform work under a work permit or the employer’s declaration should be employed under the type of agreement specified in the relevant work permit or declaration, otherwise the performance of work shall be considered illegal. A change of the form of employment is possible only by way of changing work permit/declaration. However, as of 1 January 2018, the replacement of a civil law contract with an employment agreement will not entail the necessity to apply for a fresh work permit.

I have been referred for work by an employment agency – who is my employer?

Where the worker is referred for work by an employment agency, the agency in question is the worker’s employer, and the agreement is concluded with the agency. The agreement concluded between an employment agency and a temporary worker should specify the parties to the agreement and the date of the agreement, as well as stipulate the user employer (i.e. the

entity the employee is to perform work for), the period of work performance, and the terms of employment in the period of work performance, in particular:

1. the type of work to be performed, the number of working hours (expressed as *etat* in Polish),
2. the worker's remuneration, the time when it is to be paid, and the method of its payment.

The agreement with an employment agency is invariably concluded for a specified period of time. The agency cannot refer a given person for work for one user employer for a period longer than 18 months within consecutive 36 months (in the case of substituting an absent employee, for a maximum period of 36 months).

If a temporary worker suffers any harm, their claims should be addressed to the employment agency. Even though the so-called user employer is not the employer, they have certain duties towards the person performing work. They are required to ensure good health and safety practices in the workplace, provide appropriate work clothes and shoes, ensure individual safety measures, and in the case of work performed in particularly onerous conditions – a daily supply of beverages and one hot meal a day.

Gross and net remuneration (salary/wage) – why are there such large discrepancies between the remuneration stipulated in my agreement and what I actually get paid?

Gross remuneration is much higher than your take-home pay, because it includes all the contributions paid by the employer to the Social Insurance Authority (ZUS – Zakład Ubezpieczeń Społecznych) and the Tax Office (Urząd Skarbowy). These include:

1. a contribution towards income tax, paid by the employer to the Tax Office,
2. pension, disability and health insurance premiums, allowing the employee to receive a pension, disability, or sick leave pay,
3. health insurance contributions, entitling the employee to public funded health care free of charge.



Important: Regardless whether an employment agreement or a civil law agreement is concluded, it is the employer who is required to pay the above contributions! However, the consequences of the contributions not being duly paid affect the worker. For instance, if you need medical care and it turns out that your contributions were not duly paid, you will be charged with the medical bill (you will be, however, still able to claim reimbursement of the costs you have incurred from the dishonest employer). If you suspect that your employer does not duly pay your contributions, you can verify that at the nearest Social Insurance Office (ZUS).

The employer has offered me a high take-home pay, but officially they indicate a lower salary/wage in the documents. Are there any possible consequences?

Anything to that effect is a way of bypassing the law. If you have agreed to such conditions, under the law you are guilty of fraud, and will be deemed to have been evading tax by not

evidencing your income to the detriment of the State Treasury. This is punishable by a fine or even prison sentence. Every year, you are required to submit your tax return or personal income tax report, known in Poland as the *PIT*. If you declare in that report that your salary is e.g. PLN 2500, whilst it is, in fact, e.g. PLN 3500, you make a false statement, which is punishable by a maximum fine of up to 75% of your actual income.

2. PERFORMANCE OF WORK UNDER AN EMPLOYMENT AGREEMENT (referred to as full-time work)

What elements should an employment agreement include?

An employment agreement must be concluded in writing, and stipulate the parties to the agreement, the type of work to be performed, the employee's duties, the time and place of work performance and the employee's salary. By signing an employment agreement, the employee is protected by the provisions of employment law, thus the terms under which he/she is to perform work may not be worse than employment law stipulates. For example, the agreement may not include a clause stipulating a holiday leave shorter than indicated in the relevant regulations, or stipulate a salary/wage lower than the statutory minimal wage (in 2017, it is PLN 2000 gross for full time work). It is important to know that any provisions included in the agreement less favourable for the employee than those pursuant to employment law are deemed invalid. In such cases, you can assert your rights in the labour court.



Important: A lack of an agreement in writing does not mean that you have no rights. If you agreed the terms of your work with the employer, and performed work, an agreement was concluded, and you are entitled to remuneration (i.e. you have the right to get paid as agreed). You can evidence having performed work for a given employer e.g. with witness testimonies, photos from the workplace, or text messages from your employer.

What obligations does the employer have to the worker?

The primary obligations of the employer to the worker include:

1. producing an agreement in writing prior to commencing work (and, where necessary, providing the prospective employee with the agreement's translation to a language he/she is able to understand),
2. instructing the employee in respect of the duties covered by a given job, the manner of performing work and basic entitlements,
3. timely and due payment of salary/wage, including overtime,
4. payment of social insurance contributions and personal income tax contributions on behalf of the employee,
5. granting holiday leave and relevant leaves for parents in compliance with the regulations in force,

6. ensuring good health and safety practices in the workplace and conducting regular health-and-safety and first aid trainings,
7. acting in compliance with the regulations governing the termination of employment agreements,
8. keeping appropriate documentation regarding the matters governed by the employment relationship, and keeping employee personal records, as well immediate issuance of an employment separation certificate (*świadcstwo pracy*) upon the termination or expiry of the employment relationship,
9. respecting the employee's dignity and other personal interests, and counteracting any mobbing or discrimination practices,
10. facilitating the improvement of professional qualifications.

If your employer fails to meet the above obligations, you may assert your rights in court.

The employer makes me work on Sundays and public holidays. Is this legal?

Work on Sundays and public holidays is permissible in the following cases:

1. a rescue action,
2. a job involving continuous operations (i.e. the work cannot be discontinued for any period of time, such as production organized on a 24/7 basis),
3. shift work,
4. essential repair and redecoration,
5. transport and commuting,
6. work establishments providing services, catering and hospitality industry, and health care institutions.

The employer is obliged to facilitate another day free from work for an employee performing work on Sunday within a period of 6 days preceding or following the Sunday in question, and where this impossible, within the same settlement period (i.e. if you are paid a monthly salary, within the same calendar month).

The employer deducts my lunch break from my working time, and as a result I have to stay half an hour longer in work every day to make it up. Is this legal?

If, pursuant to your agreement, you work for a minimum of 6 hours daily, you are entitled to a minimum 15-minute break, calculated towards your working time.

The employer may establish one break of up to 60 minutes, not calculated towards the working time, designated as the lunch break. Thus, if you work full time, a 15-minute lunch break is calculated towards your working time, whereas any longer break may not be calculated towards your working time, allowing the employer to oblige you to make it up for.

In some seasons, the employer makes us work overtime. I have young children. Do I have the right to refuse staying late?

In principle, the employer has the right to entrust employees with performance of overtime work where it is essential for the business, and the employee is obliged to work overtime, obviously in compliance with the principles and limits stipulated by the labour code, as specified below.

Who may not be entrusted with the performance of overtime work?

1. Pregnant women,
2. persons taking care of a child up to 4 years old,
3. disabled persons (with deficiencies),
4. minors (16-18 years old),
5. persons performing work involving exposure to harmful concentrations.

When the performance of overtime work may not be entrusted?

1. When a given worker has exceeded the permissible working time limit of 150 hour per year,
2. when the amount of overtime on a given day is in breach of the principle of the uninterrupted rest period which should be 11 hours per day,
3. when the requirement of overtime work is in breach of the principles of social coexistence.



Example: The employee is a single parent of a 5 year-old child who attends a kindergarten/preschool/day care which closes at 5 p.m. Ordering the employee to work overtime after 5 p.m. may be considered as breach of the principles of social coexistence, as the employee must care for a child. The fact that the employee is not covered by the provision prohibiting entrusting him/her with the performance of overtime work, as the provision covers only parents of children up to 4 years old, does not entail unlimited possibility of making the person work overtime. Under such circumstances, it is a good idea to talk to your employer, and explain your personal situation preventing you from being able to stay late at work.

Our boss does not allow us to leave on a given day before we perform a given amount of daily work, depending on the needs of the company. Does he/she have the right to do that?

Whether the employer has the right to do so or not depends on the working time system used in your company and the employer's needs. Employment law stipulates different working time systems. Under the basic working time system, the working time is 8 hours per day and 40 hours per a 5-day working week. The total working time, calculated including overtime, may not exceed an average of 48 hours per week. Overtime is considered to be work

performed above the normal working time amount. However, it should be remembered that the labour code also stipulates the norms of the minimum daily and weekly rest. An employee is entitled to a daily uninterrupted 11-hour rest period, hence the employer cannot require the employee to perform work for more than 13 hours a day.

The employee is entitled to pay for overtime work at his/her basic rate plus premium pay amounting to 50% of the basic rate. For night work and work performed on Sundays and holidays, the employee is entitled to premium pay amounting to 100% of the basic rate. The employer may, however, decide (of their own accord or at the worker's request), to grant hours free from work in consideration for the overtime work performed by the worker, whereby the worker is not entitled to the above stated premium pay.

3. LEAVES

How many days of holiday leave am I entitled to?

In the case of full-time work, annual holiday leave is stipulated as 20 or 26 days. The extent of holiday leave depends on the years of service, calculated including the years of the employee's university education. If you have a total of less than 10 years of service, you are entitled to 20 days of holiday leave. A person with more than 10 years of service is entitled to 26 days of holiday leave.

Holiday leave is calculated in hours, with 1 day of holiday leave equalling 8 hours of work. Holiday leave is fully paid, which means that while you are on holiday leave you get your normal pay.

Am I entitled to holiday leave if I have been referred for work by an employment agency?

An agency worker is entitled to holiday leave in the extent of 2 days for each month when he/she performs work for one or more user employers. Leave is granted by the employment agency, and it is the agency that is responsible for payment in lieu of any unused leave. In the case of a person referred for work for a period shorter than 6 months, the agency agrees the possibility of granting holiday leave with the user employer. In the case of work performed for a given user employer for a period longer than 6 months, the agency is obliged to grant leave to the worker, with the user employer being obliged to facilitate the employee's leave. A temporary worker is not entitled to proportional leave, i.e. leave calculated proportionally to the period of time for which he/she performs work. The worker has the right to payment in lieu of leave not taken during the period of work performed for a given user employer, paid out by the temporary employment agency.



Important: A temporary worker acquires the right to 4 days of leave on demand in a given calendar year only if the temporary employment contract was concluded for a minimum period of 6 months.

What leave entitlements do parents have when a child is born?

When a child is born, employed parents are entitled to three types of leave:

1. maternity leave,
2. paternity leave,
3. parental leave.

All leaves listed above are paid. Maternal leave and 6 weeks of parental leave are 100% paid, whereas during the remaining 26 weeks of parental leave, the person taking leave receives 60% of their salary. Instead, the mother may also declare the wish to take care of her child for a total of 12 months covered by an averaged benefit in the amount of 80% of her salary. The parents' work time does not affect the length of maternity/paternity/parental leave. A person who is employed part time under an employment agreement is also entitled to a total of 52 weeks' leave (including 20 weeks of maternity leave and 32 weeks of parental leave). It is also possible to take non-paid leave, referred to as leave to raise a child (*urlop wychowawczy*), for a total time of up to 36 months. You may decide to take this type of leave at your convenience, at any time before the end of the year in which your child turns 6 years old.

How long is maternity leave?

A female employee who has had a child is entitled to maternity leave whose length depends on the number of the new children born. When one new child is born, the female employee has the right to maternity leave of 20 weeks, whereas and in the case of twins – to 31 weeks. Maternity leave is 2 weeks longer per every other child born at the same time (e.g. triplets – 33 weeks).

The worker may use up to 6 weeks of maternity leave prior to her due date. In such circumstances, she is entitled to the remaining weeks of statutory maternity leave after giving birth, until the statutory full extent of maternity leave runs its course. If the mother, upon having used a minimum of 14 weeks of maternity leave, decides to waive her rights to the remaining weeks of statutory maternity leave, the father is entitled to the remaining part of the leave in question.

What is paternity leave, and how long is it?

2 weeks' paternity leave can be taken only by the child's father, and it may be used before the child's second birthday. It can be split into two parts of 7 days each. Its length does not depend on the number of the children born. The father must apply for paternity leave at least 7 days in advance, and the employer cannot refuse to grant paternity leave. The father is paid in full amount for the entire period of paternity leave.

What is parental leave and how long is it?

Both parents are eligible for parental leave. It is 32 weeks long when 1 child is born, and 30 weeks long when more than one child is born at the same time.

Parental leave can be used by the father, mother, or can be shared by both parents at the same time (in such a situation, the parents can take shared parental leave for up to 16 weeks). Parental leave may be used in blocks, with the minimum extent of any of the blocks not being shorter than 8 weeks. In general, parental leave is taken directly following maternity leave, however parents may also decide to use their parental leave in up to 4 separate blocks before the child's sixth birthday.

When should I notify my employer that I want to take parental leave?

Parent leave is granted at the employee's request produced in writing. The application must be submitted not later than 21 days in advance. The employer is required to grant the requested leave. A female employee may submit, not later than 21 days from the date when she had her child, a request in writing to be granted full parental leave directly upon the completion of her maternity leave.

Parental leave may also be combined with performance of work for your employer, however only on a part-time basis, up to a half-time basis. In such a situation, parental leave is extended proportionally to the work time basis on which you perform work for your employer during your parental leave.

The worker may also give up the right to parental leave at any given time at the employer's consent, and return to work. In such circumstances, return to work takes place at the worker's request submitted in writing not later than 21 days in advance.

Can I request to be granted days free from work for the time of my religious holidays?

Freedom of conscience and faith is guaranteed in Poland, hence the employee has the right to leave on the day of his/her religious holiday. To take the day off work, you must submit a request in writing with your employer at least 7 days in advance. Remember that you must make up for the days of leave granted with the purpose of observing or celebrating a religious holiday that is not a public holiday in Poland.

4. INFRINGEMENT OF EMPLOYEE RIGHTS



Important: Below you will find various examples of how employee rights of foreign nationals working are sometimes infringed, provided by the staff of non-governmental organizations specializing in helping migrants.

My employer has not concluded an agreement in writing with me. What can I do?

An employment agreement made in writing is required by the law. Failure to comply means that the employer is entrusting the performance of work illegally (not that the worker is performing work illegally!), and as a result is liable to a minimum fine of PLN 3000.



Important: If you agree the terms of your employment agreement with your employer, and then the employer refuses to produce a confirmation of the terms in writing, this is considered inflicting harm or damage. In such circumstances, you may seek redress by way of taking a legal action (in court).

My employer keeps delaying my employment agreement in writing. Can the verbal agreement that we have be grounds for any claims against my boss?

Yes, an agreement made only verbally without a written confirmation is also considered legally binding. If you agreed the terms of your work and performed work for the employer in question, you have the right to be paid. You can evidence the employment agreement existing between you and your employer in court using all available legal means, such as witness testimonies, telephone calls, emails, text messages, recordings, photos from the workplace. In the case of a verbal agreement, you are eligible for the same claims as in the case of an employment agreement made in writing (claim for payment of remuneration, claim for leave, claim for paid overtime).

What can I do if my employer does not pay me?

If it is the case, you should send a request by registered mail for payment of the outstanding amount into your bank account or by a postal order. In the letter, you should specify a deadline, upon which you intend to take a legal action against the employer. If the stipulated deadline expires without the employer settling the outstanding amount, you can request the court to issue a payment order. This is a fast-track procedure, where no court hearing is held, and the court issues the payment order based solely on the submitted evidence (documents). If the employer does not lodge an objection, yet fails to pay you in full amount due, you can refer your case to the bailiff (court enforcement officer) who is required to collect the debt from the employer on your behalf. However, to pursue this path, you need an employment agreement in writing. If you have only a verbal agreement, you are limited to the traditional court path.

Sometimes, despite the payment order issued by the court, the employer does not settle the outstanding payment. You can then address the bailiff (court enforcement officer) to enforce the order. In the case of your employer's insolvency, you can seek the settlement of the amount due by the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych, FGŚP*) .

REQUEST FOR PAYMENT – A TEMPLATE

.....
(City/town, date)

.....
.....
(Your name, surname and address)

.....
.....
(Your employer's name and surname
or company name and address)

WEZWANIE DO ZAPŁATY

Na podstawie art. 476 Kodeksu cywilnego (Dz. U. z 1964 r. nr 16, poz. 93, z późn. zm.) wzywam Państwa do uregulowania należności za wykonaną przeze mnie pracę w okresie (the dates of your work not paid for), w wysokości (the amount due) złotych, na rachunek bankowy o numerze: (your bank account number), w terminie 7 dni od otrzymania niniejszego wezwania, pod rygorem skierowania sprawy na drogę sądową.

W razie braku zapłaty w wyżej wymienionym terminie będę zmuszony skierować sprawę na drogę sądową, powiadomić Państwową Inspekcję Pracy oraz domagać się odszkodowania, co spowoduje obciążenie Państwa dodatkowymi kosztami sądowymi, kosztami zastępstwa prawnego, jak również odsetkami za zwłokę.

Z poważaniem

.....
(Your name and surname)

.....
(Your signature)

I am afraid that my employer does not pay my social insurance contributions as required, and has not registered me for insurance purposes. How can I verify this?

The employer is obliged to register an employee with the Social Insurance Authority (*Zakład Ubezpieczeń Społecznych, ZUS*) for insurance purposes within 7 days from commencing employment, and then pay regular insurance contributions. You can find out if your employer pays the mandatory contributions by visiting the local Social Insurance Office (*ZUS*), or by opening a personal account on the ePUAP internet platform. If you find that your employer has failed to pay your social insurance contributions for the entire period of your employment or for some time, or that they have not paid the contributions in the full stipulated amount, you should first approach the employer, requesting settlement of the outstanding social insurance amount (in other words, to pay whatever they have been obliged to pay, but haven't) within 3 months from the day you obtain this information. The employer has 60 days to review your request, counted from the day of its receipt. If the situation does not improve, notify *ZUS* of your case by filing a so-called "complaint" (*reklamacja*). You can also notify the National Labour Inspectorate (*Państwowa Inspekcja Pracy, PIP*), however they will also refer the case to *ZUS*. *ZUS* will initiate proceedings aimed at enforcing the settlement of your social insurance contributions from your employer.

My employer pays me depending on their turnover. Is this acceptable?

No employer is allowed to transfer the risks associated with running their business to their employees. The essence of the employment relationship does not consist in achieving a given turnover or serving a given number of customers, but in performing work for the employer in general. Whether you have a lot of work to do in a given time or not, and regardless of how busy (or not) a given period is for your employer, you are entitled to remuneration, which means that you should get paid for the fact of being available to your employer. Obviously, it is possible to award a worker with extra money payable for the positive results of their work, in the form of a bonus or a commission depending on the company's turnover. Nonetheless, there must be a permanent basic component of the worker's remuneration, paid regardless of the circumstances on a regular basis. Linking the entire salary/wage to the company's turnover is deemed illegal, and the employee is under such circumstances entitled to claim the settlement of the difference between the amount of money he/she received each month and the statutory minimum wage.

My employer doesn't let me take my holiday leave. Can they do that?

The employer is obliged to grant you holiday leave every year, yet its dates must be mutually agreed in advance. It is a good idea to submit a request for a holiday leave in writing, and obtain your employer's consent on the holiday leave application form. However, even if you are granted the employer's consent for holiday leave to be taken on given dates, they may move your holiday leave to different dates under specific circumstances. Should this occur, if you have already incurred any expenses related to the planned holiday, such as a travel ticket

or an advance payment for a booking, the employer is required to reimburse you with the cost (pay you back). The only cases where the employer cannot refuse to grant you holiday leave is when it is to be taken directly following maternity or parental leave, or if you are aged 16-18 years old and it is your school break time.

Every worker is entitled to 4 days of the so-called “leave on demand” (*urlop na żądanie*). You must inform the employer that you want to take this form of leave not later than on the day when you want/need to take it, but before your working hours start. This can be done at your convenience, by email, text or telephone. However, even in this case, under special circumstances the employer may refuse to grant your leave.

Holiday leave may be split into parts, yet at least one of the parts must be not shorter than 14 consecutive days long.

In principle, holiday leave must be taken on an annual basis. If the employer does not allow you to take holiday leave, you may pursue your right of leave in court, by filing a suit against your employer for not granting you holiday leave. If you no longer work for the employer in question, you are entitled to payment in lieu of leave.

My employer deducts the costs of food, breaks and accommodation from my salary. Can they do that?

Your employer is not allowed to deduct money from your earnings. Your consent would have to be expressed in writing, whereupon it should stipulate the exact amounts to be deducted and the reasons why deductions are made. Any other deductions are deemed illegal. Exceptions from this rule, however, include deductions made under the circumstances stipulated by the law, namely:

1. your family support liabilities and other liabilities adjudicated by the court and issued a writ of execution,
2. any advance payments you have received,
3. any financial penalties imposed on you.

Remember that if you work in particularly harsh (onerous) conditions (e.g. on a construction site in winter time), your employer is obliged to provide at least one free hot meal during the day, without having the right to deduct any money from your earnings for the food provided. If the employer is not required to provide daily meals, or provides more meals than stipulated in the relevant regulations, any deductions from the employee’s earnings can only be made by the worker’s consent expressed in writing.

My boss makes me work in dangerous conditions – can I refuse?

If you believe the working conditions to be clearly dangerous or unhealthful, you have the right to refuse work, without the employer being able to claim gross dereliction of duty (failure to perform assigned duties) on your part. Make sure to report any such case to the National Labour Inspectorate (*PIP*). If, following your refusal to perform work under such circum-

stances, your employer refuses to pay your salary/wage, you are entitled to claim its payment. You can also immediately terminate your employment agreement based on the employer's fault, claiming damages.

The employment agency has referred me for work in an employment establishment where the working conditions turned out to be completely different than previously agreed. What can I do?

Under such circumstances, you may terminate your employment agreement immediately. Such termination must be properly justified, for instance by the working conditions posing a threat to your life or health. As far as other ways of dissolving an agreement with an agency are concerned, you may dissolve it only if the employment agreement stipulates such a possibility. For fixed term 14-day agreements, a 3-day notice period is required, whereas for agreements concluded for a period longer than 14 days, the notice period is 7 days. This, however, applies only to fixed-term agreements.

My employer literally fired me overnight. Is there anything I can do?

If the employer terminated your agreement unlawfully (in breach of the relevant regulations), you can take a legal action (file a suit in court) against them, claiming compensation for unlawful termination of an employment agreement.

A worker may be dismissed "overnight" only under the following circumstances:

1. gross dereliction of duty, which means failure to perform assigned tasks, e.g. not coming to work without an adequate explanation or for no valid reason, not returning to work from holiday leave on the designated date, abandoning work or work station, committing a crime during the employment agreement's term that would prevent further employment in the held position, where the crime is evident, or has been confirmed by the court's final and binding sentence,
2. self-caused loss of qualifications necessary to perform work in the position held by the employee in question (e.g. loss of a driving licence by a driver).

In any other case, the termination or dissolution of an agreement must either be made on notice, in keeping with the statutory notice periods, or by 'mutual agreement'. If you have been dismissed (fired), you may take a legal action, claiming return to work along with compensation for an unlawful termination of the employment relationship in an amount equalling your remuneration due for the period of notice (in the case of fixed-term agreements, only compensation may be sought).



Important: If your employer informs you that you have been fired, remain detached during the meeting and do not act in the heat of the moment. It is of paramount importance that you do not sign any declarations, statements or documents that you do not understand. You have the right to think any decisions through, and to understand the documents you are told to sign first. If you sign a 'mutual agree-



ment' statement, it will amount to you not being dismissed, but simply terminating your work agreement at your employer's consent. Should this occur, you will face major evidence difficulties when pursuing potential claims against your employer.

My boss said that he would only issue me with my employment separation certificate (świadectwo pracy) after I have accounted to him for all the office equipment I was entrusted with. Is this lawful?

You have the right to be issued with an employment separation certificate (*świadectwo pracy*), and it cannot depend on a previous clearance of anything. It is an absolute, unconditional duty that the employer has to the employee, with a statutory deadline of 7 days from the termination (separation) of employment, regardless whether you request your certificate or not. If you do not receive your employment separation certificate within the stipulated period, you can take a legal action in court and through the National Labour Inspectorate *Państwowa Inspekcja Pracy (PIP)*, which will impose a penalty notice on the employer. You can seek a court order of the employment separation certificate to be issued by the employer, as well as compensation in the amount of remuneration due for the period when you remained unemployed, however not exceeding 6 months.

5. ASSERTION OF EMPLOYEE RIGHTS

What authorities can I contact if my employee rights are not respected?

Every case of an infringement of employee rights warrants the intervention of the National Labour Inspectorate (*PIP*) or taking a legal action. If there are trade unions in your employment establishment, you may also seek their help.

What can a PIP inspector do to help me?

The National Labour Inspectorate (*PIP*) is an institution whose purpose is the protection of employee rights. Remember that the aim of their visit is inspecting the employer, not the employees. However, the inspector has the powers to request the personal identification documents of the persons he/she encounters at an employment establishment or place of work, and demand explanations or statements concerning the legality of their employment. The inspector may also control documents, e.g. compare social insurance statements issued by the employer against the information obtained from the employees concerning the actual salaries/wages they receive.

The inspectors have special control powers allowing them to:

1. order the employer to undertake a given action or measures, including discontinuation of work at a given employment establishment,

2. order the employer to immediately pay remuneration due (only in cases where the remuneration due is indisputable and evidenced by relevant documents),
3. request the employer to eliminate any irregularities,
4. bring an action at law (file a suit on your behalf) or join a pending case (e.g. one determining the existence of an employment relationship),
5. impose fines on the employer.

PIP also provides legal counselling free of charge, so you can contact the institution by telephone or in writing to find out what to do in a given situation involving your employer.

If a foreigner notifies relevant authorities of an infringement of employee rights, is he/she under any risk?

If your employment and stay in Poland are legal, and you have a document entitling you to take up employment, your situation is the same as in the case of any other worker. Notifying PIP of breaches of law is not associated with any adverse consequences for you. However, if you are working without the required permit or in breach of your permit, you are performing work illegally which is punishable by a minimum fine of PLN 1000.

Also, if PIP determines an offence consisting in entrusting a foreigner with the performance of work illegally, or in illegal performance of work by a foreigner, the inspector puts forward a motion for penalty to the court for the irregularities found. Additionally, PIP notifies the Border Guard, which may initiate proceedings aimed at obliging the foreigner to return to the country of their origin, and also the voivode, who may issue a decision revoking the already granted work permit or refusing work permits for foreigners to be employed by the given employer.

Why go to labour court?

It is worth going to labour court primarily due to the fact that all employee entitlements may be enforced in court. Court proceedings in cases governed by labour law are not expensive for the victim. Also, in many cases presumptions may be used to the benefit of the worker only, which means that the aid of proof is not required, and it is sufficient to show with a high probability that certain circumstances have taken place. As a result, the fact that you are not able to prove the occurrence of certain circumstances, should not deter you from filing a suit against a dishonest employer. Labour law cases take relatively short compared to other types of proceedings. The most common suits involve claims for outstanding remuneration and due interest, payment in lieu of holiday leave, compensation for an unlawful termination of employment relationship, determining an employment relationship to exist, correction of an employment certificate, or revokement of a disciplinary action taken against the worker.

What is the cost of the court proceedings and attorney?

A suit filed in cases related to labour law is not subject to court fees, except for means of appeal (where the fee is PLN 30). Exceptions to this rule are cases where the value of the case

exceeds PLN 50 000, where a fee of 5% of the case's value applies. You may appear in court without the help of an attorney, or be represented by an attorney of your choice or a court-appointed attorney (the cost of the attorney is then covered by the state). In the latter case, however, you must prove that you cannot afford an attorney of your own choice (i.e. you must apply for a court-appointed attorney and submit your financial statement).

The proceedings may generate additional costs, such as the cost of court-appointed experts, witnesses' commute to the court, or translation. You will only be liable for the costs in question, including the costs incurred by the employer, if you lose the case. Under particular circumstances, the court may refrain from charging the employee with any costs.

Are there any time limits within which I can assert my rights in court?

You can assert your rights within 3 years from the moment your claim becomes due and payable (e.g. from the moment when your remuneration should be paid).

6. HUMAN TRAFFICKING

Sometimes, dishonest employers and employment agencies specializing in employing foreigners act in such a way towards foreign nationals that under the law their dealings are considered human trafficking. Human trafficking involves, for instance, situations where a person is forced to perform work by way of exploiting their vulnerability, facilitating dependency, or by way of physical or psychological abuse.

Indicators of human trafficking may be recognized, for example, in the following story. An employment agency referred a foreigner for work on a farm. Upon arrival, the person was allocated lodging, whilst his passport was taken away to be returned only when he 'had made up' for the costs of his employment. No remuneration was paid even in small amounts, explained by the fact that he would get paid as soon as the job was completed, as for the time being his 'room and board' were provided anyway, so 'why bother'? The lodgings were monitored with surveillance cameras, and the workers were banned from ever leaving the premises on their own under threats of violence.

Who can I contact for help if I fall victim to human trafficking?

Human trafficking is a serious crime, punishable by a long prison sentence. It is a duty of the state to provide protection and help to victims of human trafficking. In Poland, the state exercises this duty through the National Consulting and Intervention Centre for Victims of Trafficking (*Krajowe Centrum Informacyjno-Konsultacyjne*), operated by non-governmental organizations. All persons who believe they might possibly be victims of trafficking may contact this institution for help, or notify the Police or Border Guard of their situation. Victims of human trafficking qualify for various forms of support, such as emergency aid, assistance with legalizing their stay in Poland, or voluntary return to their country.

The following forms of support are provided by the institutions in question:

National Consulting and Intervention Centre for Victims of Trafficking	Police, Border Guard
Operates a helpline	Operate a hotline for victims
Offers legal and psychological aid	Formally identify a person as a victim of trafficking thus endowing them with certain rights
Provides medical aid	Operate a witness protection programme
Provides free translation services	Ensure that the person identified as a victim of trafficking is kept anonymous and safe
Provides basic resources like food, clothing and personal hygiene products	Provide the help of an attorney
Provides temporary shelter	
Assists identification as a victim of trafficking	
Provides assistance with daily matters, including dealings with various authorities, offices and consulates	
Facilitates the person's voluntary return to their country of origin where relevant	



Important: The National Consulting and Intervention Centre for Victims of Trafficking is currently operated jointly by the La Strada Foundation against Trafficking in Persons and Slavery based in Warsaw and *Stowarzyszenie Po MOC dla Kobiet i Dzieci im. Marii Niepokalanej* based in Katowice (Mary the Immaculate Association for Help for Women and Children). Contact details: Krajowe Centrum Informacyjno-Konsultacyjne, telephone: (+48 22) 628 01 20, email: info@kcik.pl.

Can a person who is currently staying in Poland illegally and is a victim of human trafficking legalize his/her stay?

Yes. A temporary residence permit for victims of human trafficking may be granted to a foreigner who has established cooperation with an authority conducting proceedings regarding a human trafficking-related crime, and has terminated any contacts with the persons suspected for committing the crime in question. This type of residence permit endows the foreigner with many special rights, including eligibility for the performance of work without a work permit, or a ban of deportation.

If you believe you might be identified as a victim of human trafficking, but you need more time to consider whether you want to cooperate with law enforcement authorities, you can receive a special certificate of suspicion of being a victim of human trafficking. It is issued by the Police, Border Guard or Prosecutor's Office. During the certificate's validity period, your stay in Poland is considered legal. The certificate stays valid for 3 months from its date of issue, and if the foreigner in question is a minor – for 4 months from its date of issue.

This publication has been brought to you as a part of the “Navigating Poland II” project (<http://bit.ly/2lCivgr>), co-financed from the National Programme for the Asylum, Migration and Integration Fund and the government budget. It is one of the projects conducted by the Helsinki Foundation for Human Rights addressing the needs of foreign nationals living in Poland. It is aimed at facilitating integration of migrants in a legal and institutional dimension through free legal and integration assistance provided to foreigners along with information brochures and newsletters.

The Helsinki Foundation for Human Rights was established in 1989 by the members of the Polish Helsinki Committee which had been operating underground since 1982. Today, it is one of the largest non-governmental organisations protecting human rights in Poland. The Foundation’s activities include: monitoring and research concerning human rights, strategic litigation, human rights education in Poland and abroad as well as legal assistance provided to citizens of Poland and foreigners. The Foundation collaborates with international human rights institutions and since 2007 has enjoyed a consultative status with the United Nations Economic and Social Council (ECOSOC).

ISBN: 978-83-62245-68-0

This publication is distributed free of charge and is not intended for sale.

 **HELŚIŃSKA FUNDACJA
PRAW CZŁOWIEKA**

 **UNIA EUROPEJSKA
FUNDUSZ AZYLU,
MIGRACJI I INTEGRACJI**

Save haven