

MFA INFORMATION ON EMPLOYMENT OF LOCAL STAFF

1. Hiring local employees

Diplomatic missions and their members have the right to hire local employees. The term "local employee" signifies a Polish citizen or a foreigner who is legally resident in Poland on the basis of a long-term residence permit. Persons who stay in Poland on the basis of short-term visas or under visa-free travel regime may not be employed. Local staff should be taken on the basis of an employment contract that conforms with the European Union labour law. Diplomatic missions and members of their staff must respect these laws when engaging local staff. Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (Official Journal of the European Union of 2008 L 177) is the basic legal act in this regard. In accordance with the quoted Regulation, it is up to the parties to choose the law governing the employment contract. However, employees should not be deprived of the protection afforded them by the law which would apply by default, and which cannot be derogated by an employment contract (mandatory rules).

The Labour Code Act of 26 June 1974 (Journal of Laws of 2014, item 1502) lays down key rules of the protection of workers' rights in Poland. Pursuant to Articles 18.1 and 18.2 of this Act, provisions of an employment contract may not be less advantageous to the employee than the binding labour law. If this requirement is not met, such provisions are null and void, and are replaced by relevant labour law provisions. It is irrelevant whether the employee has agreed to such provisions in writing.

This means that Polish labour law has unconditional binding force (*ius cogens*) with regard to the protection of employees' rights. Derogation from this law to the detriment of the employee is not permissible.

The only exception to the above rule is Article 25 of the Rome I Regulation, whereby the provisions of the Regulation do not apply to an international agreement with conflict-of-law rules concerning contractual obligations, where the European Union member state is a party to such agreement. In such a case, provisions of the international agreement are applied to determine the law applicable to individual contracts of employment.

As payers, diplomatic missions must also calculate, deduct from an ensured person's income, account for, and pay contributions for each calendar month on account of:

1. Social insurance – under the Social Insurance System Act of 13 October 1998 (consolidated text, Journal of Laws of 2015, item 1214, as amended),
2. Labour Fund – under the Promotion of Employment and Labour Market Institutions Act of 20 April 2004 (Journal of Laws of 2013, item 674, as amended),
3. Health insurance – under the Public-Funded Healthcare Benefits Act of 27 August 2004 (Journal of Laws of 2008, No. 164, item 1027, consolidated text).

The Ministry of Foreign Affairs does not issue identity cards to this category of personnel. However, the diplomatic missions are requested to submit a list of their local staff on an annual basis.

Moreover, the Ministry organizes regular briefings on labour law for the diplomatic corps accredited in Poland. Materials from these meetings are posted on the MFA website in the Diplomatic Protocol section.

According to the widely recognized concept of limited state immunity, jurisdictional immunity of a foreign state does not cover civil law actions (*acta de iure gestionis*) undertaken by that state's organs in the territory of another state. Consequently, the diplomatic mission of a foreign state does possess the capacity to be a party in labour law cases under Polish law. This means that a member of the diplomatic mission's local staff can effectively bring a labour law claim before the Polish court. The defendant's absence (diplomatic mission's representative) during the trial does not preclude holding the trial and handing down a judgement.

If no appeal is made within the prescribed period, the court's judgement (sentence or decision) becomes valid.

2. Employment of family members

Family members of the EU diplomatic missions' staff, and of the mission staff of countries that have signed bilateral agreements with Poland about the employment of family members, can be employed in Poland while retaining their privileges and immunities.

Applicable to employment issues are the following regulations of the Minister of Labour and Social Policy, which came into force, respectively, on 29 January 2009 and on 2 February 2009, and are based on Article 90.1 and 90.5 of the Promotion of Employment and Labour Market Institutions Act of 20 April 2004 (Journal of Laws of 2015, item 149, as amended):

- Regulation of the Minister of Labour and Social Policy of 29 January 2009 on issuing work permits to aliens (Journal of Laws of 2009, No. 16, item 84);
- Regulation of the Minister of Labour and Social Policy of 29 January 2009 on instances in which work permits for aliens are issued regardless of the particular criteria of issuing work permits to aliens (Journal of Laws of 2009, No. 16, item 85);
- Regulation of the Minister of Labour and Social Policy of 2 February 2009 changing the Regulation on performance of work by aliens without the necessity to obtain work permits (Journal of Laws of 2009, No. 21, item 114).

Under Polish law, persons who take on jobs on the basis of bilateral agreements concerning the employment of family members of diplomatic missions' staff in Poland that provide for reciprocal issuance of work permits, should submit their applications to the Ministry of Foreign Affairs at least 45 days prior to starting work or the expiry of the existing permit. The relevant procedure is described below:

- a) a note concerning gainful employment of a family member of mission staff should be submitted to the Ministry of Foreign Affairs;
- b) the note should include the Polish employer's application for a foreigner's work permit in Poland (application forms are available at the Marshal's Office of the Mazovia Voivodeship, 3/5 Plac Bankowy, and on the Office's website at www.mazowieckie.pl);
- c) all blank spaces must be filled in, make sure to tick "A" where it says "the type of permit." The application's attachments should be listed in point 4 of the application. Applications should be filled in in legible capital letters, in the Polish language;
- d) the Ministry provides the Embassy with a work permit issued by a territorially competent voivode.

If family members are entitled to immunity from administrative and civil jurisdiction of the receiving state, pursuant to Article 31.1 (c) and Article 37 of the Vienna Convention on Diplomatic Relations of 1961, such immunity will not apply to any activities related to gainful employment. Immunity from criminal jurisdiction of the receiving state applies to all acts performed in the course of gainful employment.

Pursuant to the Vienna Conventions, family members are subject to tax and social security regulations of the receiving state with regard to all matters concerning gainful employment pursued in that country.

If gainful employment is to be taken up by a family member of the staff of a diplomatic mission or consular post of a state with which no bilateral agreement has been concluded, or a family member of the staff of an international organization, this fact should be notified to the Diplomatic Protocol. At the same time, the mission should waive privileges and immunities to which that person has been entitled until then, and return his/her ID card issued by the Polish Ministry of Foreign Affairs. Thereafter, the family member of the staff of a diplomatic mission will be treated like any other alien seeking gainful employment in Poland.

**This document is a summary of the information provide in the Polish language document
"Informacja MSZ nt_PL"**