



Hiring a Third-Country National - Only After Verification of Legal Stay

Employers who hire third-country nationals must obtain documents to confirm that their stay in the territory of Poland is legal, as otherwise they may face a number of financial sanctions or criminal penalties.

The Act of 15 June 2012 on Effects of Employing Aliens Illegally Residing in Poland ("the Act") is intended to transpose to the Polish law the regulations of the EU Directive 2009/52/EC providing for a system of sanctions against employers of illegally staying third-country nationals. The regulation is aimed to control adverse effects of employing individuals illegally residing in the European Union, such as budget losses (connected with the grey zone in the job market), disruption of competition between enterprises and deterioration of employment conditions as well as reduction of remuneration. Both the Directive and the Act are intended to reduce the effects of illegal migration, in the first place by introduction of a number of sanctions, inclusive of criminal penalties, connected with hiring third-country nationals illegally staying in the European Union, and thus forcing employers to abstain from taking advantage of labour provided by individuals who are not entitled to stay in the European Union.

As defined in the Act, a third-country national / alien is a person who is not a citizen of the European Union, a Member State of the European Free Trade Agreement (EFTA), Switzerland, and a person who is not a family member of citizens of said countries.

The Employer who hires an alien must demand that prior to employment commencement, they produce a valid document authorizing them to stay in Poland, and he must also retain a copy of said document throughout the period of employment of the alien. The Directive and the Act also apply to hiring workers in a way other than under a contract of employment, in particular to situations where work is done under a civil law agreement. It should also be emphasized that the Act and the Directive are focused on combating illegal migration, and thus they provide for the legal effects not so much of employing aliens who have no

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work permit, but aliens who hold no permit to stay in the territory of the European Union and Poland.

The entrepreneur who fails to comply with the obligations stipulated in the Act must face a series of sanctions:

- The employer shall be liable to pay any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.
- Expenses incurred for remuneration to the third-country national, including social security contributions in the portion paid by the remitter, shall not be recognized as tax deductible, which is stipulated in the amended wording of the provisions of the Personal Income Tax Act and Corporate Income Tax Act.
- The employer who is a legal person may in certain circumstances be excluded from the entitlement to public benefits, aids or subsidies, or obliged to refund the aid or subsidy granted.
- The contractor and subcontractors shall, in certain situations, be jointly liable for the payment of remuneration, cost of alien's expulsion, as well as fines imposed as a result of the subcontractor hiring the alien.
- The employer may also be subject to criminal liability for a breach of the obligations imposed by the new regulations, if he:
 - employs a minor illegally staying in Poland,
 - persistently repeats to employ an illegal immigrant,
 - hires a significant number of illegal immigrants.
 - hires a third-country national having no right to stay in Poland in particularly exploitative working conditions,
 - employs illegal immigrants who are victims of trafficking in human beings.
- Where the employer, shareholder, partner, general partner or member of a governing body is sentenced (in case of registered partnerships, professional partnerships, limited partnerships, limited joint-stock partnerships as well as limited liability companies and joint stock companies) for the crimes under Article 9 or Article 10 of the Act, the employer shall, for the period of 1 year of the criminal court's judgment becoming final, be excluded from applying for award of a public procurement contract.

It should be emphasized that the employer who employs third-country nationals at the moment of entry in force of the Act, i.e. on 21 July 2012, shall, within 45 days, supplement their personal file with the documents confirming their entitlement to stay in Poland.

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The Act has implemented an additional important obligation, i.e. the obligation to obtain and retain documents confirming that the third-country national stays in Poland legally. Hiring of illegal third-country nationals in Poland will be subject to heavy sanctions, including financial and criminal penalties. Particular attention should be paid to the new regulations by those employers who operate in the public procurement market and take advantage of public funds.

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