

Ukraine: new developments in the employment regime for foreign citizens

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Ukraine continues to gradually reform and streamline regulations regarding the employment of foreign citizens in Ukraine. On 15 October 2022, the Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Employment of Foreigners and Stateless Persons in Ukraine and the Provision of Employment Intermediary Services Abroad" (the "Law") became effective.

The Law simplifies access to the administrative service for obtaining work permits for foreign citizens (the "Permits"), improves the grounds for issuing and prolonging Permits, establishes equal remuneration conditions for both Ukrainian nationals and foreign citizens, and strengthens control over compliance procedures.

Although we believe that generally the developments as introduced by the Law will have a positive outcome for companies employing foreign citizens, some of the developments may nonetheless lead to unnecessary bureaucratic complications or even legal uncertainty.

The following are the most important positive developments under the Law:

- the special requirement providing for higher minimum wages for foreign citizens has been eliminated. From now on, equal remuneration requirements are provided for both Ukrainians and foreign citizens, thus employers do not have to commit to higher salaries for foreign employees, compared to Ukrainian;
- the basic maximum term of the Permits that are issued to the majority of foreign employees has been extended from one to two years;
- the Law introduced the possibility to apply for receiving and extending Permits via electronic means;
- the Law cancelled the requirement to obtain a separate Permit for every position within the same employer; from now on, all categories of foreign citizens are allowed to combine different jobs and take various positions with the same employer without obtaining separate Permits.

At the same time, although some Law amendments seem to be prompt and reasonable due to the war in Ukraine, they may cause additional complications and expenses for companies employing certain categories of foreign citizens, in particular:

- the term "special categories of foreigners" which covers and applies to IT specialists, highly paid professionals, founders and beneficiaries, graduates of universities included in the top 100 world rankings, employees of creative professions, and gig-contractors has been eliminated. This effectively means that certain privileges that used to apply to employees who qualified as "special categories of foreigners" do not apply anymore. For example, the provision allowing such foreign citizens to obtain Permits for an extended three-year term has been cancelled;
- fees for obtaining and extending Permits have been generally increased (depending on the term of the validity of a Permit);

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- the Law created confusion for Diiacity residents and IT professionals engaged by them. Incidentally or purposely, the statutory provisions that allowed Diiacity residents to engage foreigners under gig-contracts without Permits were removed by the Law. Thus, one may argue that such privilege of gig-contractors is no longer effective and that they must receive Permits on a common basis, which may be deemed as a violation of the principle of the stability of Diiacity regime conditions guaranteed by the state for 25 years.
 - At the same time, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" still contains the provisions evidencing that gig-contractors may work for Diiacity residents without Permits. According to the information provided by the Ministry of Digital Transformation of Ukraine, it has already initiated the legislative proceedings aiming to address this inconsistency, so hopefully the right of gig-contractors to work without Permits will be renewed.

Additionally, the Law introduced special additional procedures concerning the employment of Russian and Belarus nationals:

- the Law established the requirement to obtain approvals of the Security Service of Ukraine for receiving or extending Permits for Russian and Belarus nationals as well as nationals of other countries that are recognised as the threat to Ukraine;
- the Law prohibits the appointment (or engagement in labour and other activities in Ukraine) of foreign citizens who are included in the list of persons associated with terrorist activities or subject to international sanctions, as well as foreign citizens and stateless persons subject to special economic and other restrictive measures (sanctions).

Among the positive developments of the Law are the changes and clarifications regarding the intermediary services in the area of labour and employment. Most importantly, the Law addressed the longstanding ambiguity affecting the providers of outstaffing services. While before, the companies involved in outstaffing had to receive a special permit for their operations, as there was no regime for these special permits to be granted, the Law abolished that requirement.

Finally, the Law introduced into the statutory framework the principle that most good-faith and reputable intermediary employment agencies have been practicing – not charging employees for their intermediary services. Thus, the Law prohibits intermediary agencies involved in arranging employment abroad to receive fees, commissions and other remuneration from citizens to whom these services are provided. The payment for these intermediary services in employment abroad must be made exclusively by the employer.

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