

Legal Alert – 2 August 2013

NEW PROCEDURE FOR ISSUING EMPLOYMENT PERMITS TO FOREIGNERS

A new procedure for issuing, extending and canceling Employment Permits for foreigners (foreign nationals and stateless persons), approved by the Cabinet of Ministers Resolution No. 437, took effect on 5 July 2013 (the "**Resolution**").

The Resolution introduces the following novelties.

1. Application by the Employer for the Employment Permit

Employer must notify its local State Employment Service about vacant positions no later than 15 calendar days before it applies for Employment Permit. Such notification is made as report form No. 3-PN, approved by Order No. 316 of the Ministry of Social Policy of Ukraine dated 31 May 2013 as approved by the State Statistics Service.

The number of documents to be submitted by the Employer with the Employment Permit Application to the local State Employment Service has been reduced from 15 to 7 items.

A new requirement is that the Employer must submit with the Employment Permit Application a document issued by a medical institution to certify that a foreigner is free from chronic addictions (alcoholism, drug addiction) and from infectious diseases, the list of which was approved by the Healthcare Ministry.

The Resolution identifies two special categories of foreigners the employment of whom is considered *a priori* sufficiently grounded:

- a foreigner who applies for a director/deputy director or another executive position at the company (enterprise, institution or organization) of which he/she is a founder or co-founder (in this case the Employer must additionally submit with the Employment Permit Application the properly attested copies of the founding documents of this company); and

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- a foreigner who is a holder of copyright and neighboring rights and is invited to work in Ukraine to exercise such rights (in this case the Employer must additionally submit with the Employment Permit Application the notarized copies of the documents identifying the item of copyright and (or) neighboring rights of the author and certifying the copyright).

2. Extension of the Employment Permit

To extend an Employment Permit the Employer must submit the Application (according to the prescribed form) with the following documents no later than 30 days before the current Employment Permit expires:

- 2 color photos 3,5 *4,5 cm;
- certificate issued by the Ministry of Internal Affairs;
- other documents stipulated in the amended procedure.

3. Consideration of the Application for the Employment Permit

The Resolution reduces the term for consideration for the issuing/extending the Employment Permit from 30 to 15 days, and the same term is prescribed for decisions concerning cancellation of the issued Employment Permits. The relevant decision is executed as an Order of the local State Employment Service and must be sent to the Employer no later than 3 working days after the date on which it was made; it is also posted on the official website.

The consideration of the Application for the Employment Permit is carried out by the commission that includes the representatives of the Ministry of Internal Affairs, State Immigration Service, State Security Service of Ukraine, Healthcare Ministry, State Frontier Service Administration, Federation of Trade Unions and Employers of Ukraine. The commission issues recommendations concerning the issuance or rejection of the Employment Permit.

A new positive development is that the fee to the State Employment Service must be paid within 30 calendar days after the positive decision was made to issue the Employment Permit (the fee amount remains the same - 4 minimal salaries). Failure to timely pay the fee, however, results in cancellation of the decision to issue the Employment Permit.

The Employment Permit is issued to the Employer within 10 working days after the date on which the fee is placed to the account of the Fund of Social Insurance against Unemployment.

Employment Permits are, as before, issued for a term of no more than 1 year, and they can be extended for the same term.

Once the Employer has received the Employment Permit, it must submit a copy of the relevant employment contract with the foreigner to the local State Employment Service within 3 working days after the contract is entered into.

Please also note that the Resolution stipulates free-of-charge issuance of an Employment Permit duplicate:

- A. if lost:** a request must be submitted with copies of the documents certifying that the Employer notified its local State Employment Service (which issued the Employment Permit), the State Frontier Service Administration and its local SCS office or the unit that issued a Ukrainian residence permit;
- B. if damaged:** the Employer must submit a request and return the damaged Employment Permit.

The Resolution stipulates grounds for the refusal by the State Employment Service to issue/extend the Employment Permit, in particular in case of simultaneous existence of the following circumstances:

1. availability of qualified employees in Ukraine (region) who can be employed in the vacant position requested by the Employer and meet the requirements stated by the Employer in the information concerning vacancies (report form 3-PN); and
2. refusal by the Employer to employ the Ukrainian national sent by State Employment Service (except for the decision to issue Employment Permits for the foreigners sent by a foreign employer to Ukraine to perform specific works (services) and the foreigners who are "intracorporate assignees").

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