



## **Latest Ukrainian Immigration and Temporary Residents Permits Rules**

### **I. Ukrainian Immigration Rules**

Ukrainian immigration legislation (and practice) have always been a source of confusion and frustration among the foreigners. For many years a near complete lack of enforcement helped to alleviate many of the problems, which foreigner visitors are starting to recently encounter. Today, Ukraine is closer to Europe than ever before, and for the first time since 1991, Ukrainian customs officials are beginning to strictly enforce the visitation rules for foreigners to periods of up to 90 days within a 180-day term, unless different rules are applicable to visas.

At the same time, in September of 2017 changes to several laws, including the Law “On Employment of the Population” and “The Legal Status of Foreigners and Stateless Persons”, among others, has expanded the list of foreigners who can receive work permits and temporary residency permits. One of the key categories of foreigners who can obtain work permits in Ukraine will be those who are registered as private entrepreneurs that hire employees.

The Law “On Employment of the Population” now provides six categories of foreigners affected by the above-mentioned changes. Moreover, work permits will now be issued for a longer term for certain categories, providing them the opportunity to apply for 3-year work permits. The table below lists the categories of foreigners who require work permits and the maximum term of their work permits.

| No. | Category   | Work Permit Term  |
|-----|--|---|
| 1.  | High-paid professional foreigners (foreigners with a salary that equals at least 50 minimum monthly salaries – currently $3,200 \times 50 = 160,000$ UAH). | For the term of the labor agreement (contract), but no more than 3 years. |
| 2.  | Foreign investors (founders and/or participants and/or beneficiaries (controllers) of legal entities created in Ukraine.                                   |   |
| 3.  | University graduates from schools within the top 100 of globally rated universities set forth in the list issued by the Cabinet of Ministers of Ukraine.   |   |
| 4.  | Foreign employees in creative professions (foreigners who occupy positions which call for the creation of  |   |



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|    | copyright and/or related rights objects as their principal duty).  |   |
| 5. | Foreign IT specialists (foreigners who occupy positions connected with the development and implementation of computer programming (operational systems, computer programs and their components, websites, online services) and cryptographic means of protecting information in legal entities carrying out computer programming as their principal type of business (under the National Classifier of Types of Economic Activity) |   |
| 6. | Foreign employees on business trips (foreigners sent by foreign employers to Ukraine for the performance of a specific volume of works (services) on the basis of agreements (contracts) concluded between Ukrainian and foreign business entities)  | For the term of the agreement (contract), but no more than 3 years.   |
| 7. | Intra-corporate transferees (foreigners recognized as such according to Ukraine's schedule of specific commitments under the WTO's General Agreement on Trade in Services)   | For the term of the decision of the foreign business entity regarding the transfer of a foreigner for work in Ukraine and the contract concluded between the foreigner and the foreign business entity on transfer for work in Ukraine. |
| 8. | All other hired foreign workers (foreigners working under labor agreements (contracts) in Ukrainian business entities)   | For the term of validity of the labor agreement (contract), but no more than one year.  |

Work permits can be prolonged an unlimited number of times, provided the legal grounds for their issuance remain valid.

The recent changes also introduced a salary floor for work permits issued to foreigners as follows:



- no less than 5 minimum monthly salaries (currently 18,615 UAH) – foreigners hired for work in non-governmental organizations, charitable organizations and certain educational institutions;
- no less than 10 minimum monthly salaries (currently 37,230 UAH) – for all other categories of hired workers.

Please note that the above rates do not apply to work permits received in categories 1-5 of the above table. Of course, for high-paid professionals the minimum salary of 50 minimum monthly salaries (currently 186,150 UAH) will still apply. These rates only apply to the salaries of foreigners who received or prolonged work permits after September 27, 2017.

The Law “On Employment of the Population” now sets forth the rules for issuing work permits to foreigners who concurrently work in other jobs. A foreigner may work in different positions with one or more employers, provided that the foreigner receives a work permit for each position. High-paid professionals may work without an additional work permit in concurrent positions if the validity of his/her concurrent (secondary) labor agreement does not exceed the validity of his/her principal labor agreement.

The law also provides limitations regarding the performance of work by foreigners of the duties of a temporarily absent co-worker. Such parallel work is permitted only if it will last for no more than 60 calendar days within one calendar year.

The fee for issuance of a work permit is determined by Article 42<sup>4</sup> of the Law “On Employment of the Population”. The amount is tied to the amount of the minimum standard of living rate and the term for which the work permit is issued. Below are the current fees for a work permit:

| No. | Term of work permit or prolongation term | Fee for issuance or prolongation of work permit  |
|-----|--|--|
| 1.  | From 1 to 3 years                        | Six minimum standard of living rates established by law as of January 1 <sup>st</sup> of the calendar year in which the work permit application documents are submitted by the employer (currently 10,572 UAH) |
| 2.  | From 6 months to one year (inclusive)    | Four minimum standard of living rates established by law as of January 1 <sup>st</sup> of the calendar year in which the work permit application documents are   |



|    |                |   |
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|    |                | submitted by the employer (currently 7,048 UAH)   |
| 3. | Up to 6 months | Two minimum standard of living rates established by law as of January 1 <sup>st</sup> of the calendar year in which the work permit application documents are submitted by the employer (currently 3,524 UAH) |

Prior to September 27, 2017, the state did not collect an official fee for the prolongation of a work permit. After September 27, 2017, the state will now collect an official prolongation fee. The official fee must be paid by the employer within 10 business days from the date of the decision to issue or prolong a work permit. If payment of the state fee is not made on time, the work permit will be cancelled.

As an example, the documents required for an employer to apply for a work permit for employment of a foreigner in a local company are as follows:

- standard application form, confirming that the foreigner's position does not require Ukrainian citizenship by law and does not grant access to state secrets;
- a copy of the foreigner's passport data pages, translated into Ukrainian and notarized;
- a 3.5 cm x 4.5 cm photograph of the foreigner;
- a copy of the draft labor agreement (contract) with the foreigner.

For other categories, the list of documents is similar, but in place of the draft labor agreement (contract) the applicant will need to submit a document confirming the need for a foreigner's labor. For example, (i) the service contract for a specific volume of works to be performed by a foreigner in Ukraine concluded between a Ukrainian and a foreign business entity (for foreign employees on business trips); or (ii) decision of a foreign business entity to send a foreigner to Ukraine for work and a copy of the contract between the said foreign business entity and the foreigner to perform the work in Ukraine for a specific duration (for Intra-corporate transferee. In other cases, (i) proof of complete contribution of authorized capital (for founders, shareholders and beneficiaries/controllers of legal entities), or (iv) proof of computer programming as permissible legal activity of the employer (for IT specialists), the State Employment Center will independently verify this information from the unified state company register.



Upon receipt of all required documents, the State Employment Center has seven (7) business days to reach its decision to issue a work permit or three (3) business days to prolong a work permit or introduce any amendments thereto. Such amendments include:

- changes to the name of the legal entity (employer) and reorganizational changes (via merger or otherwise) or changes to the name of the private entrepreneur (employer);
- the foreigner's new passport, including name changes;
- change of the name of the position of the foreigner or his/her internal transfer to another position during the validity of the work permit.

An employer is obligated to notify the Employment Center and request cancellation of a work permit if:

- the labor agreement (contract) with the foreigner is terminated;
- the agreement (contract) between Ukrainian and foreign business entities under which the foreigner was sent to Ukraine is fulfilled;

The Employment Center will cancel a work permit at its discretion in the following circumstances:

- the employer fails to pay the state duty for the issuance or prolongation of a work permit within 10 days from the Employment Center's decision to issue a work permit;
- the employer fails to provide to the Employment Center a copy of the labor agreement (contract) with the foreigner within 90 days;
- false or incorrect information that couldn't be revealed during the work permit application consideration was provided by the employer;
- a lawful decision is issued to deport the foreigner;
- a foreigner's labor is used under conditions other than those set forth in the work permit or by another employer (except part-time work or temporary performance of work for an absent worker);
- the foreigner is sentenced for the commission of a crime.

Penalties for violations of the work permit rules, including work without a required work permit, failure to leave the country after expiration of a work permit, illegal registration of a foreigner (temporary residency), etc., can be imposed on the officers of the employer or on private



entrepreneurs who hire foreigners for work. The penalties range from 100 to 200 untaxed minimum incomes (currently 17 x 100 to 200 or from 1,700 UAH to 3,400 UAH). Further, an employer (including private entrepreneurs who hire foreigners from September 27, 2017) can be fined for the following:

- for labor agreements (contracts) or other agreements without proper procurement of a work permit – a penalty may be imposed for each individual in the amount of 20 minimum monthly salaries upon discovery of a violation (currently 74,460 UAH). Moreover, the employer's chief executive officer may be subject to a various personal administrative fines for violating or facilitating the violation of foreigners' stay in Ukraine (including work without a required work permit);
- for use of the labor of a foreigner under conditions other than those set forth in the work permit or by another employer – a penalty may be imposed for each individual in the amount of 10 minimum monthly salaries upon discovery of a violation (currently 37,230 UAH);
- violation of the requirement to notify the State Fiscal Service about the commencement of employment of a foreigner under a duly executed employment agreement entails a penalty upon the employer in the amount of currently 111,960 UAH per employee hired without notification to the fiscal service.

## **II. Foreign Residence Permits**

After receiving a work permit, the foreigner and/or his/her employer will need to take certain post-work permit steps in order to ensure the foreigner may reside in the country for over 90 days at a time. Firstly, especially for employment and tax purposes, the foreigner will need to apply for a tax identification code. This is a simple application procedure and requires up to 7 business days. This may be done concurrently with the work permit procedure.

Once the work permit is issued, the foreigner will need to apply for a long-term visa "D" at a Ukrainian consulate outside of Ukraine. Unfortunately, there are no current options for applying for a Ukrainian visa in-country. If the foreign citizen wishes to apply for a long-term "D" visa at a Ukrainian consulate other than the Ukrainian consulate in his or her home country, we strongly recommend confirming with the desired consulate whether they will issue a "D" visa to the foreign citizen. The visa "D" is specifically tied to the legal grounds for the issuance of such visa; for example, "for employment" or "work in a representative office of a foreign entity" or



“work in a representative office of a foreign bank” or “work in a technical assistance project”, etc. Therefore, the relevant documents will need to be affixed to the visa application (i.e., work permit, registration card of a technical assistance project, registration certificate of a representative office, etc.) along with the other standard documents required for visa applications. As a general rule, *long-term “D” visas are issued for a term of 90 days, during which the visa holder must register with the local authorities as described below.*

According to Ukrainian legislation, a foreigner employed in Ukraine must submit on a region-level (in Kyiv - Kyiv city level) the following documents in order to obtain a temporary residence permit:

- A foreigner’s application;
- Medical insurance policy for the entire expected period of a foreigner’s residence in Ukraine (usually over the duration of a work permit or other similar document);
- An application from an official beneficiary/recipient of a technical assistance project;
- A foreigner’s original passport with a D-type 90-day multiple entry Ukrainian visa (immediately returned after presentation) and with a stamp of the State Border Control Service of Ukraine documenting the fact of crossing Ukrainian border;
- Copies of the pages of the passport with personal data of the foreigner, the visa and the border crossing stamp;
- A notarized translation of the page of a foreigner’s passport with his/her personal data;
- An original receipt to confirm payment of the State duty tax (or document confirming exemption from payment of the state duty);
- 4 pictures of a foreigner 3.5 x 4.5 cm (printed on matted surface paper);
- A copy of a work permit or relevant document evidencing legal grounds for temporary residency;
- Tax identification code (if available);
- The obligation of the employer to notify the State Immigration Services and the State Employment Center on premature termination of the employment agreement/contract with the foreign employee (see penalty above).

The State Migration Service of Ukraine issues a decision to issue a temporary residence permit within no more than 15 days after submission of the complete package of documents. In case any





data referred to in the documents originally submitted to the State Migration Service of Ukraine when applying for a temporary residence permit form are changed, a foreigner must notify the State Migration Service of Ukraine within one month (for changes to passport and personal data) or 10 days (for changes to the beneficiary/recipient application data or medical insurance policy) after the change occurred.

A foreigner also is required to register his/her address of residence (hotel is not acceptable) in Ukraine within 30 calendar days after the date of issuance of a temporary residence permit. Such registration is performed by a local (district-level) office of the State Migration Service of Ukraine through local (district-level) Centers for Administrative Services. Importantly, the foreigner will need his/her landlord's permission to register in his/her temporary residence and the landlord's presence at the State Migration Service may be required. This can be complicated if the owner of the foreigner's leased premises is located abroad or does not wish to register the foreigner in his/her premises. Therefore, careful planning ahead is required so that the relevant powers of attorney can be executed and/or arrangements can be made with the foreigner's landlord to avoid any delay and penalties for untimely completion of registration.

In case of a change of residence, such change must be registered within 30 calendar days from the date of the move to the new residence. Removal from the register at the old residence may be done simultaneously with registration at the new residence.

In case a temporary residency permit will not be extended, the foreigner is required to de-register from his/her place of residence and exit Ukraine within a seven-day period. The temporary residency permit should be returned to the foreigner's employer or host, which will be required to submit it to the issuing immigration authority within 10 days from the date of de-registration.

Practically speaking, the foreigner should visit the immigration authority to make sure an annulment stamp is placed over the stamp in his/her passport which states that he/she was issued a temporary residency permit until "x" date. This is important if the foreigner will request temporary residency in Ukraine in the future. While failure to de-register and return a temporary residency permit does not entail any penalties, it can also cause problems for the foreigner's landlord in de-registering the individual and registering further individuals at their residence.