

Working on the different terms than specified in the work permit as irregular work of migrants

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Abstract:

Despite some recent facilitations in the access to the Polish labor market, many migrants still need to obtain the work permit, which – when combined with the accurate resident permit – gives the right to work legally in Poland. Not to go into details of this procedure (which, by many employers, is still seen as too complicated and too bureaucratic), it is worth to analyze the problems that migrants face in their everyday life.

In Poland, legal work is still hedged around by complicated regulations. What we see in practice is that migrants, in spite of having the legal basis for work and accurate resident permit, still tend to work illegally. In many cases, however, they are not aware of it until they start the procedure of legalization of stay in Poland or until the routine control reveals it. Therefore, in many cases, the problem with irregular employment is directly connected, firstly, with a lack of awareness of migrants, and secondly, with neglecting the law by the employers.

In 2011, The National Labour Inspectorate controlled the legal basis of work of over 14.5 thousands of migrants. From this number, around 6.5 thousands of migrants were obliged to obtain the work permit in Poland. Irregular work was found in case of 901 migrants. Every second migrant who worked illegally did not have a valid work permit.¹ The results of this control clearly show that the problem of irregular employment among migrants is connected not only with the lack of valid work permit. According to the binding law, working without valid visa, or valid resident permit entitling a migrant to work legally, working on a different post or on different terms than indicated in the work permit, working without work permit or without legal contract is considered as irregular employment.²

¹ Report of the National Labour Inspectorate (2011):

http://www.pip.gov.pl/html/pl/sprawozd/11/sprawozdanie_2011.pdf (Polish only)

² Legal basis (20th of April 2004):

<http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867685&pT=details&sP=CONTENT,objectID,873075> (Polish only)

Working on the different conditions than stated in the work permit, in most cases, means that the job contract was changed or the wage is lower than stated in the work permit.³ This is caused by both sides - migrants and employers. Migrants who search for legal work, as a weaker party in the work relation with the employer, usually tend to agree to every offered work condition. Migrants are not the party in the procedure of obtaining the work permit,⁴ they do not know the regulations and laws, they are not aware of their rights and duties – what in consequence can lead to the wrong impression that they can work for any entity and on any position regardless of the type of their work permit. On the other hand, employers tend to neglect their duties – especially, they disregard the obligation to state the work conditions in the work contract and translate the contract to language understandable by the migrant.⁵ Deliberate law-breaking by employers and employees (in order to maximize profit and minimize expenses) is a separate issue.

Working on the different terms than specified in the work permit causes a number of negative consequences, which, in case of migrants and their vulnerable position on the labor market, are more serious and acute. An employer who hires a migrant in an illegal manner, e.g. on different conditions than specified in the work permit, commit an offence. An employer convicted of an offence can receive decision on refusal of issuing a work permit for a foreigner.⁶ In case of migrants the consequences are much more serious. Working contrary to the laws can lead to deportation of the migrant and a decision to ban the border crossing (Polish or whole Schengen Zone) from one to three years.⁷ Working on the different terms than specified in the work permit can also lead to the negative decision on the application for temporary resident permit. The negative decision is based on logic that if the work was irregular it cannot be treated as stable and regular income, therefore the migrant does not meet the requirements of the application. In addition, financial punishment could be imposed on both – employer as well as migrant.⁸ Employers are the only party in the process of applying (or prolonging) for the work permit, even though in many cases they use the help of the work

³ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20090160084> (Polish only)

⁴ Article 88a pt 2, Act of 20 April 2004 on the promotion of employment and labour market institution: <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867685&pT=details&sP=CONTENT,objectID,873075>

⁵ Article 88h pt 1, Act of 20 April 2004 on the promotion of employment and labour market institution: <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867685&pT=details&sP=CONTENT,objectID,873075>

⁶ Governor (*wojewoda*) shall issue decision on refusal of issuing work permit for a foreigner, when the employer within two years after being convicted of an offence of entrusting illegal work performance to a foreigner was again convicted of similar offence; (art. 88j Act of 20 April 2004 on the promotion of employment and labour market institution: <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867685&pT=details&sP=CONTENT,objectID,873075>)

⁷ 88th article, The Foreigners Act (13 of June 2003): http://bip.udsc.gov.pl/?cid=61&bip_id=244 (Polish only)

⁸ 120th article Act of 20 April 2004 on the promotion of employment and labour market institution: <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867685&pT=details&sP=CONTENT,objectID,873075>

agencies – since they find the procedure way to complicated. The procedure of prolonging the work permit is, on the other hand, found less complicated.

Data collected by the Department of Labor Market (Ministry of Labor and Social Policy) show that the number of issued work permits in 2012 is similar as in 2011, which basically means that getting the work permit is still the only way to legalize work for many foreigners. For others, such as citizens of Belarus, Georgia, the Russian Federation and Ukraine - who can work for six months during the year on the basis of a declaration registered in the Labour Office –obtaining a work permit is a more profitable way because the work permit is issued for definite period of time not longer than 3 years. The stable and regular income is even more important since meeting these requirements can lead to obtaining the status of the EU resident.

The article has been written as part of the project Migration to the Centre supported by the European Commission - the "Europe for citizens" programme, and the International Visegrad Fund.

This article reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Funded by the Europe for
Citizens Programme
of the European Union

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• Visegrad Fund
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