

Legal Alert

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BREXIT AND EMPLOYMENT OF UK CITIZENS

The upcoming end of the year means also the close of the transition period related to the withdrawal of the Great Britain from the European Union. Brexit entails a number of ramifications also in terms of employment. What are the obligations of an employer hiring UK citizens in connection with Brexit? What formalities must employees and their family members see to? How to hire UK citizens in 2021? Below please find our summary of the most important changes inevitably faced by employers at the turn of the year.

The rules of stay and work of UK citizens in the European Union during the transition period are set out in the Withdrawal Agreement. It provides for a transitional period that expires as of the end of December, during which the rules of stay and work of British citizens and their families remain unchanged. Starting from the New Year, residence and work of the UK citizens in Poland will be subject to the conditions for third country nationals (non-EU citizens).

Beneficiaries of the Withdrawal Agreement

As soon as the transition period ends, the UK citizens and their family members will retain the right of residence in Poland under two conditions jointly specified in the Withdrawal Agreement: (1) if they exercised their residence right in accordance with the legal provisions in force in Poland before the lapse of the transition period, and (2) if they continue to live in Poland thereafter. Pursuant to the Withdrawal Agreement, this group of British nationals becomes the beneficiary of the agreement and does not have to apply for work and residence permits when the transition period is over.

Employers who used to hire UK citizens before the expiration of the transition period do not have to worry about the legality of their stay and work, as long as the employment contract was performed in Poland before the end of 2020 and a British citizen is able to prove that he/she was residing at that time in Poland. In the case of this group of foreigners the requirement of legal residence in Poland comes down to a necessity of registration of the stay with the competent voivodship office. Pursuant to the applicable regulations, EU citizens are required to register no later than 3 months after they enter the territory of Poland. This obligation also applies to British citizens and their family members who settled in Poland during the transition period. Obtaining a certificate of registration of an EU citizen's stay before the end of 2020 will be an essential document to confirm the status of the beneficiary of the Withdrawal Agreement.

Replacement of resident documents

As of the New Year and as soon as the transition period is over, the UK nationals will be treated as third country nationals. The Brits, who have the status of beneficiaries of the Withdrawal Agreement, will need to have their residence permits replaced with new ones within the next year. From 1 January 2021, they will be able to submit applications for a new residence permit with the annotation „Art. 50 of the TEU, Art. 18 Sec. 4 of the Withdrawal Agreement”. Importantly, the existing certificates of registration of EU citizen residence will be effective only until 31 December 2021.

Employment of the UK citizens in 2021

Only UK nationals - beneficiaries of the Withdrawal Agreement will not need to obtain a work and residence permit. From 2021 onwards, employing a British person in Poland will require the prior obtaining of a work permit.

A work permit must be obtained before taking up employment, which means that only after receiving a positive decision, a British citizen will be able to legally start working in Poland. The procedure for obtaining a work permit is time-consuming, most often it takes 16 weeks (the application processing time may differ in different voivodships). HR departments recruiting UK nationals should include this in their hiring plans for the new year. Importantly, the submission of an application for a work permit does not require the presence of a foreigner in Poland, therefore it may be rationally planned by a future employer.

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