

November 2014

In focus: Law on Employment of Foreign Nationals

Introduction

On November 25th 2014, the National Assembly of the Republic of Serbia adopted the Law on Employment of Foreign Nationals (hereinafter the “**Law**”). The Law entered into force on December 4th 2014, with the exception of provisions in Articles 5 - 8 which shall be applied from the day of accession of the Republic of Serbia to the European Union.

Until the Law entered into force, the field of employment of foreigners was regulated by the Law on conditions for establishment of the employment relationship with foreign nationals which was passed in 1978.

Application of the Law

In principle, the conditions for employment provided by the Law are applied to all foreigners who are to be employed in the Republic of Serbia. However, the Law recognizes and exhaustively provides exceptions from this rule, i.e. cases in which employment of foreigners is possible without the obligation to obtain the permit for employment.

Equal position

With the new Law, the rights and obligations of foreigners and domestic citizens are equalized in terms of work, employment and self-employment, as well as in terms of rights in the case of unemployment.

Permits for employment

The Law differentiates between the following permits for employment (hereinafter collectively referred to as the “**Permit for employment**”):

- I. **personal employment permit** which is reserved for foreigners who have permanent residence permit, refugee status or belong to a special category of foreigners (e.g. asylum seekers, victims of human trafficking). This permit is issued at the request of the foreigner and it empowers him/her to employment, self-employment and application of rights in case of unemployment;
- II. **the employment permit** which is divided into three categories:
 1. **permit for the establishment of employment**, which may be issued under the conditions set by the Law only to a foreign national who has temporary residence permit.

2. **permit for special cases of employment** which is issued under the precondition of possession of the temporary residence permit and other conditions set by the Law:

a) **to referred persons**, i.e. foreigners employed by the employer registered abroad who are referred to the Republic of Serbia for performance of jobs or providing of services, or who are referred for the purpose of performance of jobs or providing of services based on the agreement on the procurement of goods, procurement or lease of machines or equipment and their delivery, instalment, assembly, repair or training for work on said machines or equipment, in a period lasting no longer than 90 days;

b) **for moving of the employee within a company** registered abroad. This permit is issued at the request of the company's representative office or its affiliated company which is registered in the Republic of Serbia, for the purpose of referring or transferring the employee employed on the position of director, manager or specialist for a certain area ("the key

personnel") or exceptionally for an employed trainee;

c) **to independent professionals**, i.e. self-employed natural persons registered abroad for providing of services who, on the grounds of an agreement concluded directly with the domestic employer or final user of services, performs services in the Republic of Serbia.

3. **permit for self-employment**, i.e. employment of the foreigner who possesses temporary residence permit in a business entity or other form for performance of business activities, in whom the foreigner is the only or the controlling member.

The permit for establishment of employment and the permit for special cases of employment are issued at the request of the employer, while the permit for self-employment is issued at the request of the foreigner.

The employer at whose request the employment permit is issued is, among other, obliged not to refer the foreigner to be employed with another employer, to sign the foreigner up for compulsory social security and to bear the costs of issuance of the employment permit.

Conditions for employment of EU citizens

The Law contains very liberal provisions regulating employment of foreign nationals

coming from EU countries, i.e. EU-member states, the European Economic Area or the Swiss Confederation. These provisions also relate to members of families of EU citizens if they are not citizens of EU countries, but they possess temporary residence permit or permanent residence permit. If not otherwise provided by an international agreement, citizens of EU countries and members of their families (under the above mentioned condition) are entitled to free access to the employment market i.e. employment, self-employment and application of rights in case of unemployment, which means that they do not need the Permit for employment. The Law also provides that this permit is not needed by employees coming from non-EU countries, if they are referred to work in Serbia by employers with seats in EU countries. The application of the above mentioned provisions is postponed until the accession of the Republic of Serbia to the EU.

The procedure for issuance, extension, cancelation and cessation of validity of the Permit for employment

In terms of the procedure for issuance and extension of the Permit for employment, as well as the procedure for its cancelation, i.e. cessation of its validity, the first instance decision-making is entrusted to the National employment service, while the Minister competent for employment matters has jurisdiction in the second instance.

The Law stipulates that the Permit for employment is issued for the period determined in the request for its issuance

which may not be longer than the period determined by the Law and the period of duration of the foreigner's residence. The request for extension is to be submitted 30 days at the earliest and 15 days at the latest before expiry of the validity of the previous permit.

The Law exhaustively provides the reasons for cancelation and cessation of validity of the permit for employment.

The manner of issuance, i.e. extension of the Permit for employment, the manner of proving the fulfillment of conditions and necessary proof for the issuance or extension of these permits, as well as their form and content are more closely regulated by the Rulebook on permits for employment, which entered into force on December 20th 2014.

Limitations regarding employment of foreign nationals

The Law provides the possibility for the Government of the Republic of Serbia to limit the number of foreign nationals who may obtain the Permit for employment in case of occurrence of disturbances on the employment market, in accordance with the migration politics and the status and trends on the employment market.

The validity of permits which were issued before the entrance of the Law into force

In the final provisions, the Law provides that foreign nationals who have established the employment relationship or who are working based on the permit for establishing the employment relationship,

which is issued on the grounds of provisions valid until coming into force of the Law, continue to work until the expiration date of such permit.

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