

Employing Ukrainian citizens in Poland—step by step

A practical guide

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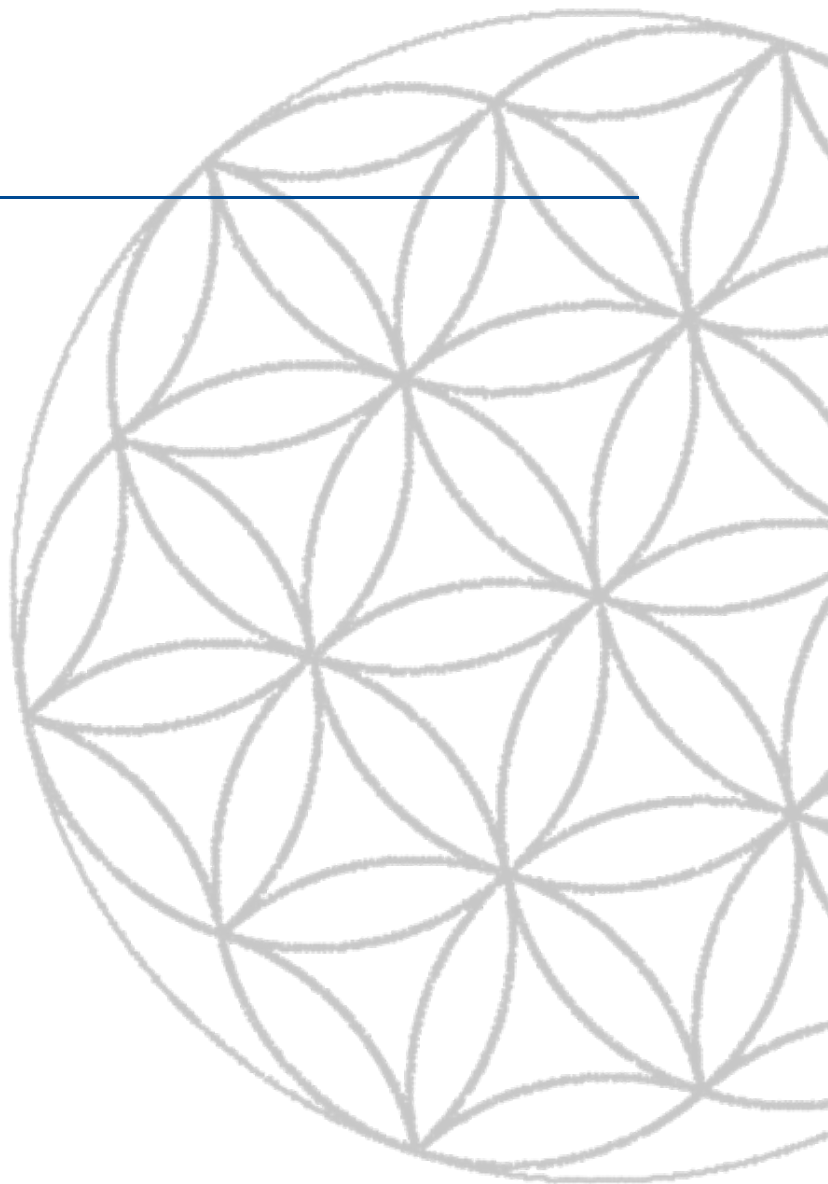


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Explanation of terms

Ukrainian Special Act	<p>Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict in the Territory of Ukraine of 12 March 2022:</p> <ul style="list-style-type: none">• Entered into force upon promulgation, i.e. 12 March 2022, retroactive from 24 February 2022, with the exception of several provisions• During the first year in force, it was amended or supplemented 14 times• The last amendment entered into force on 1 January 2023• Some provisions take effect on 1 April 2023
UKR status	<p>Special status of a citizen of Ukraine, granted under the Ukrainian Special Act, recorded in the PESEL register</p>
Covid Special Act	<p>Act on Special Solutions for Prevention, Countering and Control of Covid-19, Other Infectious Diseases and Emergencies Caused by Them of 2 March 2020</p>
Employer, employee	<p>In this context, also means parties to a civil contract (e.g. a contract of mandate) but not parties to a B2B contract (in which the person performing services conducts business activity)</p>

Step I – Recruitment

2.1. Job advertisement/offer

The employer cannot:

- Indicate in the job advertisement/offer that the employer wants to employ or prefers candidates of a **certain nationality**
- Make job ads or offers **only in a foreign language**
- Include in the advertisement/offer **requirements not justified** by the employer's needs but privileging a particular nationality (e.g. requiring fluency in Ukrainian for a position where knowledge of foreign languages is not relevant).

The employer may indicate that:

- The offer is **also** addressed to **foreigners**
- The employer will assist foreigners **in legalising work and stay in Poland** and legalising their families' stay in Poland.

2.2. At what stage of recruitment can an employer ask about citizenship?

There are no strict rules regarding when a candidate can be asked about his/her citizenship.

The candidate's nationality may affect the date when he/she starts work (e.g. due to the need to obtain a work permit). Therefore, it seems reasonable to obtain this information (as well as other information affecting the need for legalisation, such as the status of a full-time student in Poland) when a candidate expresses interest in a job offer and **qualifies for the next stage of recruitment** (e.g. face-to-face interview, language tests, etc). It is unreasonable to request personal data on a candidate's citizenship at the stage of submitting a CV.

The employer **has the right to deny a foreigner further participation in recruitment** on the basis of his/her residence status or entitlement to work in Poland, if objectively justified, e.g. the employer does not wish to get involved in the process of legalisation of the stay or work of a citizen of Ukraine in Poland or the legalisation process would delay the candidate's planned starting date of employment.

Step II – Verification of documentation (residence status in Poland)

3.1. Verification of legality of stay

If a candidate is a citizen of Ukraine, the employer must establish his/her right to legal stay in Poland. For this purpose, the employer should verify:

- The candidate's **passport** (biometric or national), or if the candidate does not have a passport, the **notification of assignment of a PESEL number** or an extract from the PESEL register (for the purpose of establishing citizenship, UKR status or other status, and the legality of entry to Poland)
- **Stay documents**, in particular:
 - National visa (D) or Schengen visa (C)
 - Temporary residence permit, permanent residence permit, or long-term EU resident permit and residence card
 - Residence document issued by another Schengen state
 - Certificate of grant of temporary protection by another EU member state
 - Stamp in the passport confirming submission of an application for a residence permit in Poland or other evidence of pending administrative proceedings.

If there are **overlapping bases for residence**, then the **more favourable** one may be relied on (except, among other things, for overlapping of UKR status with a temporary residence permit, temporary protection etc, as then the person is not eligible for UKR status—see section 3.3).

In the case of citizens of Ukraine, verification of documents exclusively authorising work (statement, work permit) is currently not necessary or warranted.

3.2. Verification of stay documents – list

What kind of residence permit does the foreigner have?	What is the validity of the residence document?	Was the foreigner present in Poland on 14 March 2020?	Is it necessary to check passport stamps?	Can the foreigner legally stay in Poland?	Can the foreigner cross the borders of Poland?
Schengen visa (type C)	Expired after 14 March 2020 but before 24 February 2022	No	Yes	No	No
Biometric passport (visa-free movement of 90 days within a period of 180 days to all Schengen states)		Yes	Yes	Yes, until 24 August 2023**	No
	At least until 24 February 2022	-	No	Yes, until 24 August 2023** or longer, until 90/180 days are exhausted for all Schengen states	Yes, if the visa has not expired
Permanent residence permit + residence card	-	-	No	Yes, indefinitely	Yes
Residence permit for a long-term EU resident + residence card					
Temporary residence permit (+ residence card)	Expired before 14 March 2020	-	No	No	No
National visa (type D)	At least until 14 March 2022	-	No	Yes, until 24 August 2023** or longer, according to the validity period of the document	Yes (Covid extension)
Certificate granting temporary protection by another EU member state	-	-	Yes	Yes, but up to exhaustion of maximum of 90/180 days for all Schengen states, other than the one that granted protection	Yes, if the 90/180-day period has not been exhausted
National passport (in the absence of other documents)	-	-	Yes	Yes, until 24 August 2023**	No
Evidence of proceedings for issuing a residence permit in progress	-	-	No	Yes, until final decision on the case is issued	No

**When a foreigner crosses borders, stamps are not always placed in the passport to confirm the person's entry and exit from a given territory. In case of doubt, it is recommended to collect a written statement from the citizen of Ukraine as to the periods of stay in Poland and outside, including other Schengen states.*

***It is anticipated that the legality of stay of persons with temporary protection will be extended until 4 March 2024.*

3.3. UKR status

The Ukrainian Special Act grants a **special status—UKR status**, recorded in the PESEL register, to a citizen of Ukraine who:

- Meets only the positive prerequisites:
 - Arrived to Poland due to war **starting from 24 February 2022**
 - Arrived **from Ukraine** or **other country** (longer stays outside Poland and outside Ukraine before arriving in Poland are problematic)
 - **Declares the intention to remain in Poland** (this can be expressed in any way)
- Does not meet any of the negative prerequisites, i.e.:
 - Does not hold a **residence permit**: permanent, long-term EU resident, temporary (including from another state)
 - Does not have, and has not applied for, **international protection (including refugee status)** in Poland, nor has declared an intention to do so (withdrawal of application eliminates this premise)
 - Does not enjoy **temporary protection** in the territory of an EU member state other than Poland
 - Did not leave Poland **for more than 30 days** (continuous period), unless the trip took place in connection with posting by the employer abroad for the performance of services or to a related entity.

To determine whether a given citizen of Ukraine holds UKR status, the employer should verify:

- Recently issued **notification of granting a PESEL number** and current **extract from the PESEL registry** confirming UKR status (not NUE status or any other record)
- **Entry and exit stamps in the passport** (if any), to exclude certain negative premises (in particular, leaving Poland for more than 30 days).

In principle, UKR status is granted to any citizen of Ukraine arriving to Poland after 24 February 2022. UKR status can be **lost** (due to the occurrence of a negative premise) or it can be **restored** or **re-granted**. Therefore, in practice, it is not so easy to verify whether a given citizen of Ukraine has current and correctly assigned UKR status. If in doubt, it is worth collecting an additional **statement** from the citizen of Ukraine, in which he/she confirms that there are no prerequisites for loss of UKR status.

A UKR status holder:

- Is staying legally in Poland **until 24 August 2023***
- Has the right to **travel** to other **Schengen** area states for up to **90 days** in every **180 days** on the basis of an electronic document **diia.pl** in the mObywatel application
- May apply for a **residence permit** through a special procedure (see section 3.4).

It is anticipated that the Council of the European Union will extend the period of legal stay of holders of UKR status—temporary protection—until at least **4 March 2024 (communication from the Polish Office for Foreigners of 30 March 2023).*

3.4. Further stay in Poland

Citizen of Ukraine	
Holding UKR status	<p>Currently, may only apply for a permit for temporary residence: (1) and work, (2) for the purpose of performing work in a skilled occupation (“EU blue card”), or (3) to conduct business activity, under the following conditions:</p> <ul style="list-style-type: none">• During the period from 1 April 2023 to 24 August 2023 (an application filed earlier will not be considered by the authority; an application filed later is filed during an illegal stay)• Without having to appear in an office and submit fingerprints (unless they were not taken during the PESEL registration)• The permit will be issued despite failure to meet the conditions for issuing such a permit or despite the existence of grounds for refusal. If grounds for refusal exist (e.g. entry in the Schengen Information System, defence reasons, lying or concealing the truth in the proceedings, marriage of convenience), then the permit is issued for a period of one year.
Not holding UKR status	<p>Must extend legal stay pursuant to existing general rules for obtaining temporary residence permits or visas (see section 9, “Further stay in Poland—selected general rules”).</p>

Step III – Employment

4.1. When can an employer legally employ a citizen of Ukraine?

A citizen of Ukraine can be legally employed in Poland if the following conditions are both met:

- The person **resides legally in Poland** (in principle, regardless of the basis of residence)
- The employer will register with the relevant district labour office a **notification of assignment of work to a citizen of Ukraine** (unless an exemption applies).

Notification is required e.g. in the case of temporary residence and work permits issued subject to obligatory notification (even if the citizen of Ukraine was employed under the same conditions before the authority's decision to grant the permit).

Notification is not required **if the work is performed on another basis**, in accordance with Art. 87 of the Employment Promotion Act, including on the basis of a permanent residence permit, a work permit, a declaration, or a permit exemption (e.g. in the case of full-time students).

Still, the employer can obtain a **declaration** or **work permit** for the citizen of Ukraine—this may be justified for example for the purpose of obtaining a national type D visa (visas are not issued on the basis of notifications).

4.2. Notification – key rules

The employer submits the notification online through the **praca.gov.pl** portal (it cannot be submitted in paper form). Therefore, to register a notification, one must have:

- A qualified **electronic signature** (compatible with eIDAS) or a **trusted profile**
- An **account on praca.gov.pl** (own and organisation's account)
- A **power of attorney** to represent the employer (if the employer or its authorised representative does not apply from their own account or representation is by multiple persons).

Notification:

- Must be registered **within 14 days** after the citizen of Ukraine starts work (one cannot indicate in the form a date earlier than 14 days back from the date on which the form is submitted)
- Is not subject to a fee, is not limited in time or quantity
- Requires the entry of data on, among other things, the employer, the employee and the assigned work, as well as **information on employment status** as of 23 February 2022 and as of the date of filing the notification
- Is not amendable (if there is an error or a need to make a change, a new notification must be submitted)
- Does not result in issuance of a certificate by the office (but an electronic version of the submitted notification can be downloaded).

4.3. Contract—type, length, language, other obligations

The same rules apply as for Polish citizens, including when it comes to entering into civil agreements. The use of civil (non-employment) agreements for citizens of Ukraine is permissible if the work is not performed under conditions characteristic of an employment relationship.

The duration of the agreement does not have to correspond to the period of validity of the document legalising work or residence (it can be longer—and can also be concluded for an indefinite period).

The agreement must reflect the conditions resulting from the document entitling the person to work. The conditions must correspond to the submitted notification.

An employment contract (this does not apply to civil agreements) cannot be conditional. For example, it cannot provide that it will take effect or that the worker will begin work subject to obtaining a residence permit. It must be concluded definitively.

The agreement (employment contract or civil contract) should be concluded in:

- **Polish** (in which case a translation of the agreement into a language the employee understands must be presented to the employee before signing) or
- **Polish and a foreign language** understandable to the employee or
- **Only in a foreign language** understandable to the employee (which the employee speaks), at the employee's request, provided that the employee was informed of the right to conclude the agreement in Polish.

The employer has the duty to give the employee **one copy** of the declaration or work **permit** (if obtained for him/her). There is no such obligation in the case of notification.

The employer is obliged to **keep copies** of the employee's **documents legalising his/her stay** for the entire period of the foreigner's employment, and monitor their continued validity.

The employer also has the duty to comply with all applicable laws in connection with employment of a citizen of Ukraine, including social security and minimum wage obligations.

Amending the contract terms

A notification to the labour office is sufficient for a citizen of Ukraine to undertake work for a new employer or under new conditions (regardless of the required changes in other documents).

Additionally, it is necessary to submit a **new notification** (it is not possible to amend it) if the conditions indicated in the previously submitted notification change. This does not apply to:

- Increase in working time/number of hours with a proportional increase in pay
- Salary increase
- Concluding another employment contract under the existing terms and conditions.

However, it is also essential for an employee who holds a temporary residence permit to inform the province governor (within 15 working days) or apply for a change to the temporary residence permit, according to the following scheme. Indeed, failure to comply with these obligations may result in revocation of a permit or refusal to grant another one, and thus loss of the right to stay in Poland and, as a result, loss of the right to work for a new employer.

Temporary residence and work	Amendment	What needs to be done?
	Employer	Apply for amendment of permit for temporary residence and work
	Position	
	Salary reduction	
	Working time	
	Type of agreement	

Temporary residence for the purpose of performing skilled work ("blue card")	Amendment	Is it necessary to inform the province governor?		Is it necessary to apply for permit amendment?	
		First 2 years	After 2 years	First 2 years	After 2 years
	Employer	No	Yes	Yes	No
Position					
Salary reduction					
Minimum working time	Yes	No			
Type of agreement					

Termination of employment

6.1. Dissolution of contract with a citizen of Ukraine

An employment contract with a foreigner may not provide for automatic termination if the employee loses the right to work or stay in Poland. It is always necessary to terminate contracts by one of the procedures provided for in the Labour Code.

The same rules apply as for the termination of contracts with citizens of Poland. Among others things:

- The employer must **indicate the reason** for termination of the employment agreement for an indefinite period
- As a rule, it is necessary to observe the **notice period** provided for by the applicable labour law (**note**: in principle, loss of the right to reside or work in Poland should not grounds for termination without notice).

6.2. Notification obligations related to termination of employment

- **Incumbent on the employer:**
 - In the case of a **work permit**, notification to the province governor who issued the permit, within **7 days** of the termination of work, if it occurred earlier than 3 months before expiration of the work permit.
- **Incumbent on the worker:**
 - In the case of a **temporary residence and work permit** or **“EU blue card,”** to inform the province governor who issued the permit of the termination of employment within 15 working days (note: a change of permit is not required if one has worked for 2 years on the basis of blue cards—then, it is only necessary to inform the province governor). This obligation is considered fulfilled if within 15 working days the employee submitted a request for amendment of the permit.

In the case of notifications, neither the employer nor the employee has any notification obligations.

Seconding employees who are citizens of Ukraine to perform work or provide services within the EU

To second a citizen of Ukraine employed in Poland to another EU state, it is necessary each time to verify the employee's right to:

- Cross the **Polish border** (leave Poland)
- **Travel** to and **stay** in the host state
- **Work** in the host state.

In principle, a **diia.pl holder** will be entitled to travel and stay in other Schengen area states for a total of **90 days** in each **180-day** period. The same applies to holders of temporary residence permits and national visas, as well as persons under temporary protection granted by another EU state.

Particular attention should be paid to stays based on **extensions** under the **Ukrainian Special Act** (for persons not belonging to a special category) and the **Covid Special Act**. They will not always entitle a citizen of Ukraine to travel outside Poland and, as a rule, will not allow travel to other states from the Schengen area.

The **right to work** abroad (which is not the same as the right to enter/reside) within the EU is usually possible for up to 30 days per year without the need for obtaining additional permits or visas, but this is always determined by the law of the host state, which must be verified.

In each case, it may be necessary to **meet additional obligations** (also applicable to secondment of Polish citizens), including:

- Ensuring minimum employment conditions applicable in the host state
- Registration of the secondment with the labour authority in the host state (equivalent of the Polish National Labour Inspectorate)
- Keeping defined documents related to employment in the host state.

B2B contract—an alternative to employment?

A business-to-business contract is a contract under which a person operating an individual business (sole proprietorship) provides services to another business entity.

A B2B contract cannot be used:

- In the case of **activity performed personally** (i.e. when the contractor's activity does not actually meet the conditions for business activity)
- In cases where "services" are performed **under the conditions of an employment relationship** (among other things, under the direction of the employer and at the time and place designated by the employer).

The right to conduct business activity in Poland on the same terms as Polish citizens is granted to citizens of Ukraine who meet **all** the following prerequisites:

- Reside in Poland legally
- Have a PESEL number (regardless of UKR status or lack thereof)
- Have registered business activity in Poland.

In the case of a **properly** applied B2B contract, the recipient of the services:

- Is not required to verify the legality of the stay of a citizen of Ukraine in Poland
- Is not obliged to legalise, or notify the authorities in any way of, the provision of services by a citizen of Ukraine in Poland.

Further stay in Poland – selected general rules

9.1. PERMANENT RESIDENCE PERMIT (residence card)

A citizen of Ukraine who does not have UKR status but remains in Poland legally may apply for a temporary residence permit to legalise his/her continued stay in Poland. The mere **submission of the application** for granting a temporary residence permit entitles a foreigner to stay legally in Poland until a final decision on the case is issued.

Depending on the purpose of one's stay in Poland, one can apply for:

- A **temporary residence and work permit**, which can be applied to most types of work performed for an employer in Poland
- A **temporary residence permit for highly skilled workers** (blue card), which applies to work in a profession requiring a university degree or at least 5 years of experience at a level comparable to a university degree
- A **residence permit for the purpose of conducting business activity**, which applies both to individual business activity and to serving on the management board of a limited-liability company or joint-stock company in which the foreigner holds shares, conducting the affairs of a limited partnership or joint-stock limited partnership by a general partner, and serving as a commercial proxy.

Type of permit	For residence and work	Blue card	For business operator
Validity	Up to 3 years (can be obtained multiple times)		Up to 3 or 5 years (can be obtained multiple times)
Waiting time	about 5–9 months		
Administrative fee	PLN 340–440 for permit and PLN 100 for residence card		
Authority	Province governor for the place of residence in Poland		
Main documents required	Application Proof of holding public health insurance or private medical insurance for travel to Schengen states in the amount of at least EUR 30,000		
	Information for the county executive (<i>starosta</i>) and documents confirming education, experience and qualifications (with exceptions)		Document confirming residence in Poland (e.g. lease)
		Employment contract or contract of mandate concluded for a period of at least one year	Certificates from the Social Insurance Institution (ZUS) and the tax office on the absence of arrears in social security contributions and taxes Documents related to business activity confirming income, employment, etc

Also, residence cards issued on the basis of permits entitle the holder to stay in other states from the Schengen area for a period not exceeding 90 days within each 180-day period.

9.2. NATIONAL VISA (D)

A foreigner can obtain a national visa (type D), e.g. on the basis of a previously obtained work permit or declaration (it cannot be obtained on the basis of a notification).

However, a visa to Poland cannot be obtained in Poland. **It should be applied for at Polish consulates abroad**, as a rule in the country of origin, which is currently much more difficult for citizens of Ukraine due to the operation of only one Polish consulate (in Lviv) and the mobilisation obligation in Ukraine.

Validity	91–365 days For shorter stays in Poland, a Schengen visa must be obtained (similar procedure applies) A visa can be obtained multiple times
Waiting time	The consulate has 15 days to process the visa application from the date of submission
Authority	Consul of the Republic of Poland
Main documents required	<ul style="list-style-type: none">• Visa application• Passport photo• Copy of passport and original passport• Documents confirming possession of sufficient financial resources to cover the cost of living during the entire planned stay and to cover the cost of return to Ukraine• Proof of holding public health insurance or private health insurance for travellers to states from the Schengen area for at least EUR 30,000 for the planned period of validity of the visa• Documents confirming the purpose of stay in Poland for more than 90 days

The national visa also entitles the holder to stay in other states from the Schengen area for a period not longer than 90 days in any 180-day period.

Authors



Magdalena Świtajska

adwokat, partner

Employment & Global Mobility practice
magdalena.switajska@wardynski.com.pl



Katarzyna Sawicka

adwokat

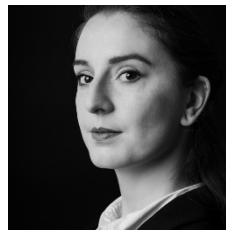
Employment & Global Mobility practice
katarzyna.sawicka@wardynski.com.pl



Aleksandra Wójcik

adwokat trainee

Employment & Global Mobility practice
aleksandra.wojcik@wardynski.com.pl



Aleksandra Jasinowicz

adwokat trainee

Employment & Global Mobility practice
aleksandra.jasinowicz@wardynski.com.pl

WARDYŃSKI & PARTNERS

AL. UJAZDOWSKIE 10
00-478 WARSAW
PHONE: +48 22 437 82 00, 22 537 82 00
FAX: +48 22 437 82 01, 22 537 82 01
E-MAIL: WARSAW@WARDYNSKI.COM.PL
WWW.WARDYNSKI.COM.PL

KRAKÓW

UL. LUDWINOWSKA 7/5
30-331 KRAKÓW
PHONE: +48 12 290 86 20
FAX: +48 12 290 86 21
KRAKOW@WARDYNSKI.COM.PL

POZNAŃ

UL. MARCELIŃSKA 90
60-324 POZNAŃ
PHONE: +48 61 651 87 00
FAX: +48 61 651 87 01
POZNAN@WARDYNSKI.COM.PL

WROCLAW

UL. GWIAZDZISTA 66
53-413 WROCLAW
PHONE: +48 71 348 86 00
FAX: +48 71 348 86 01
WROCLAW@WARDYNSKI.COM.PL