

Business in Ukraine

legal aspects

Labor aspects of legislation

Foreign entrepreneurs pay a lot of attention to labor issues while opening their business in Ukraine. A lot of things depend on a person who will make day-to-day operative decisions in the process of business activities. In the majority of cases foreigners bring human resources as well as production facilities, financial resources, and equipment. It is not by chance that they prefer foreign managers. First of all, investor should be confident that the most important decisions in business activity of the company would be controlled by his/her fiduciary. Secondly, often only foreigners possess necessary skills in particular production, marketing, or management field. Thirdly, the project connected with necessity to tune up output of highly competitive articles should apply the knowledge of western technologists that are aware with imported machinery. That is why the issue of employment and labor activities of foreigners in Ukraine is always urgent.

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In accordance with Ukraine's constitution, foreigners have equal rights and obligations in labor relations with citizens of the state. Meanwhile, the fact that a foreigner generally should get a working permit to be eligible for employment in Ukraine is a specific peculiarity of foreign employees' status. This procedure is governed by current labor legislation of Ukraine and other legislative acts of Ukraine. Foreign citizens can immigrate to Ukraine to be temporary employed and work pursuant to duly issued permit.

The policy of issuance is no less interesting than the specific list of documents that should be submitted to authoritative bodies. Working permit is issued to a foreigner under conditions that there are no employees-citizens of the state that can fulfill particular kind of job or if there are sufficient grounds of foreign specialists' labor expediency. Only companies – payees of fees to the State fund of employment assistance, registered in local employment centers – have the right to employ foreigners.

It is necessary to submit all the documents for getting of working permit to the State employment center. The following is the list of documents:

- application;
- substantiation of the necessity to use the labor of foreigners and capacity to create necessary conditions of staying and activities;
- copy of a contract (if it was concluded);
- copy of a charter (provisions of the representative office) and certificate of state registration authorized by a notary;
- list of foreigners stating their full name, last name, date of birth, number of passport, profession, and sex;
- copy of draft contract between the employer and employee;
- document (order, abstract from a protocol, mandate) drawn in a due manner that certifies the right of an employer representative to represent its interests in an employment center;
- copies of documents on education or qualification authorized by a notary;
- certificate of the state tax office on payment of all prescribed taxes and fees by an employer;
- receipt of payment for considering the application.

In addition Center of employment requires to submit Protocol of founders' meeting or a proxy on appointment of general director as well as a copy of an employee's passport that is registered in the interior affairs' bodies.

Decision whether to grant work permit or reject an application should be delivered in 30 days at the latest. Applicant is informed about the decision in writing. As a rule, work permit is granted for up to one year term. The term can be extended. To this end the applicant should address the State employment center no later than in a month before termination of the previous working permit validity.

There are a number of cases when working permit cannot be granted, despite situation on the labor market and trends of its development. Such situation can happen in the following cases:

- there is information contrary to the legislation of Ukraine in submitted documents;
- the contract envisages that labor conditions of a foreigner are worth than those of Ukrainian citizens fulfilling the same job;
- facts that a foreigner or his/her employer has deliberately submitted false information of fabricated documents have been revealed;
- a foreigner is going to occupy a position or deal with the activities that should be occupied by a Ukrainian citizen in accordance with the legislation (for example, state official, judge, prosecutor, deputy, pilot of a plane, captain of a ship, and other positions equal to them);
- facts that the foreigner has violated laws of Ukraine during staying at its territory have been discovered;
- less than one year passed since the date of previous refusal to issue Ukraine's visa to a foreigner.

Payment for considering the application constitutes UAH 170 (approximately USD 35). If foreigners work without working permits issued by the state employment service of Ukraine, penalty in the amount of UAH 850 (about USD 170) is paid by an employer, while the foreigner is subject to deportation from Ukraine.

Ukrainian legislation in force does not envisage any limitations as to concluding of any civil contracts with foreigners. Parties are free to conclude an agreement, to choose a partner, and to determine the terms of the contract. Consequently, a company can conclude any civil contract with a foreigner on provision of services.

Foreigner's salary is paid in the currency of Ukraine. Meanwhile, employers should not forget about payment of taxes and different fees. At present the rate of income tax from the salary, regardless of its payment source, that is paid to a foreigner by an employer constitutes 15% from taxation base. Insurance fees should also be regarded.

In accordance with the legislation in force, any company should pay all fees from salary of a foreigner in the manner and pursuant to the rates established for citizens of Ukraine, except for fee for state obligatory social insurance in case of unemployment.

The approach to documents, which are prepared by the company to be submitted to state bodies with the purpose to get working permit should be professional, because approximately 40% of all applications are rejected. Derzhzovnishinform Center will provide qualified assistance in legal support of the business by conducting legal consultations, preparing legal opinions, reference notes, and explanations as to labor legislation. It will help in preparation of documents necessary for getting working permits for foreign citizens.

Payment of insurance fees (as of December 1, 2006)		
Types of fees	Employer	Foreign employee
Fee for obligatory state pension insurance	32,3%*	2%
Fee for obligatory state insurance from employment injury (industrial accident) and professional disease	0,87%	- / -
Fee for obligatory state social insurance due to temporary disability	2,9 %	1%
* – if not otherwise prescribed by international agreements of Ukraine ratified by the Parliament (Verkhovna Rada) of Ukraine		
** – insurance rates are differentiated by industries depending on professional risk of production		
It should be noted that 15% of the income tax is levied after all abovementioned fees are collected.		

Example of tax and fees calculation when gross salary is paid in the amount of UAH 1,000 (approximately USD 200)		
Types of taxes and insurance fees	The company pays	Paid from the salary of an employee
Fee for obligatory state pension insurance	323,00	20,00
Fee for obligatory state insurance from employment injury (industrial accident) and professional disease	8,70	- / -
Fee for obligatory state social insurance due to temporary disability	29,00	10,00
Income tax	- / -	145.5
The salary is	1 360,7 (expenses of the company)	824,5 (net income of the employee)

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