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Summer holidays are over and school and work duties and responsibilities have resumed. In the course of the summer, new amendments to the Act on Residence of Foreign Nationals in the Czech Republic came into effect, along with a few of amendments to the Act on Employment. Due to tumultuous developments in the legislative procedure (and a fair number of amending proposals made by lawmakers throughout the deliberations), we have deemed it appropriate to review and sum up for you the changes to be on the lookout for.

Enjoy the read!

ACT ON RESIDENCE OF FOREIGN NATIONALS

The Act amending the Act on Residence of Foreign Nationals (of which we have already partially informed you in our April issue of HR News) has finally reached the end of legislative procedure (as Act No. 176/2019 Coll.), although the original draft has been amended quite a few times by the legislators. Our aim is to acquaint you with the most important changes that enter into effect on 31 July 2019.

Visa-free regime for researchers and students

Visa-free regime is being extended to holders of residence permits issued for the purposes of studying or scientific research by another EU Member State. The term „student“ in this context covers students in the meaning of given EU Directive. Such foreign nationals can then easily be employed to perform occasional or temporary work as they are exempt from the obligation to acquire work permits (or they can be employed for longer periods of time, in which case they only need to obtain a separate work permit).

Extraordinary work visas

Extraordinary work visas are a new type of long-term visas, i.e. visas issued for stays exceeding 90 days, and are the only one of these visas that are used for the purposes of employment (in most other cases, employee cards are used). Extraordinary work visas will only be issued based on Government regulations specifying the source countries and fields for which the visas will be issued, the maximum number of applications, submission deadlines, and information on whether visas will also be issued for temporary work agencies or whether agencies will be excluded from specific programs.

Such affords a possibility of adopting extraordinary measures by which the Government can respond to labour shortages or other extraordinary events on the labour market. This new possibility might, however, be considered to come somewhat late.

Extraordinary work visas, in essence, facilitate circular migration – foreign nationals stay only temporarily and eventually return to their country of origin. Extraordinary work visas are not to be confused with residence permits, as they do not result in foreign nationals' permanent residence in the Czech Republic (or family

re-unification). For this reason, there are certain restriction associated with this type of visas.

Extraordinary work visas are to be valid for a maximum of 1 year and will not be renewable (it is, however, possible to apply for such visa again). It will also not be possible to apply for another type of residence permit (including permanent residence) for the duration of stay based on extraordinary work visa (and stay based on an extraordinary work visa does not even count towards the 5 years of continuous residence in the territory required for the purposes of permanent residence).

Code of Administrative Procedure does not apply to the processing of the visas, so the procedure of issuing the visas should be relatively fast. Collection of biometric data is not required, which should further facilitate and speed up the process.

Apart from standard requirements, extraordinary work visas will require a separate work permit to be issued by the Labour Office of the Czech Republic. It will not be possible to issue the visa to so-called unreliable employers within the meaning of the Act on Employment.

Residence permits for the purpose of finding employment

The amendment introduces a new type of residence permits which allow students and research scientists who have finished their studies / their research in the Czech Republic to stay here for a period of 9 months (which cannot be extended) for the purposes of job-searching or entrepreneurship.

The permit is meant to bridge the gap between the end of studies or research and the start of work.

Change of employer

Another novelty (significant, but unfortunately completely non-conceptual) modifies the system of dealing with employee card holders who want to change their employers.

Change of employer in such cases no longer requires permission of the Ministry of the Interior – newly it should suffice to notify the change to the Ministry (at least 30 days in advance). At the same time, however, the law states that the Ministry will, within 30 days, state whether a given change of employer is permissible – this, of course, completely defeats the purpose. The Ministry even states on their website that employees

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cannot take up their new positions until the Ministry issues their statement.

Change of employer is further not possible in the first 6 months of employment and in cases where the new employer would be temporary work agency. Other restrictions apply to foreign nationals under government programs (e. g. under the “Regime Ukraine” project).

Unfortunately, the relation between change of employer and transfer of undertaking remains unresolved.

Foreign nationals and temporary work agencies

Prohibition on issuing employee cards (and other permits) for temporary work agencies was removed from the Act on Employment as of 29 July 2017. Now this change has been reflected in the Act on the Residence of Foreign Nationals. And along comes harmonisation of the process of issuing employee cards to employees who are to be employed by temporary work agencies and temporarily assigned to user.

Certificate of temporary residence

Temporary residence certificates for EU citizens will no longer be issued for an unlimited period of time but for a period of 10 years. This measure is purely for formal reasons and has no effect on the residence regime of EU citizens (they can stay in the Czech Republic without this certificate). However, it should be noted that certificates issued prior to the amendment will only be valid for 10 years from their issuance date (but at least until 31 December 2019 in cases of certificates issued more than 10 years ago). Therefore, if EU citizens are staying in the Czech Republic for such a long time and do not have permanent residence status, they should make sure to apply for extension of the temporary residence permit.

Foreign worker controls

The amendment authorizes Czech foreign police service to demand foreign nationals to submit work permits – up until now, only the labour inspection could do so. Such should facilitate controls of illegal work even without the participation of the labour inspection during actual inspections. Failure to submit documents will be, by itself, punishable by a fine in the amount of up to CZK 5,000 (approx. EUR 190).

Similarly, the foreign police service will be authorized to request documents from employers (or users) concerning the legality of the work of foreign nationals.

Integration of foreign nationals

One of the measures implemented by the amendment is the establishment of a network of centres for the support of integration of foreign nationals (as of 1 July 2020).

In connection with the institution of these centres, foreign nationals will be obliged to complete an integration course organised by such centres within one year from the date of their entry into the territory of the Czech Republic. Such obligation will apply to all foreign nationals with long-term residence permits (i.e. to employee card holders as well) and foreign nationals with permanent residence. Exceptions will include students, internally transferred employees and foreign nationals under 15 or over 61 years of age.

Foreign nationals will have to self-fund the course. The contents of the course will be determined by implementing legislation. The actual obligation to attend and complete the course will not take effect until 1 January 2021 – so foreign nationals will have enough

time to get ready.

Quota

Amendments further introduce a possibility of law or Government regulations setting quota limits on the number of different types of residence permits issued annually (these quota limits will apply to employee cards as well). If the quota limits are reached, applications will no longer be accepted (and applications submitted beyond the limits will be considered as not submitted). If this happens, it will be necessary to wait with applications until the next year. The measure is intended to provide the Government with effective control over economic migration.

Quota limits shall not apply to blue card applications, seasonal employee visas, or to cards of internally transferred employees.

ACT ON EMPLOYMENT

The above amendments to the Act on Residence of Foreign Nationals are accompanied by changes in the Act on Employment.

Free access to the labour market

A minor (but certainly positive) change is the extension of free access to the labour market to family members of researchers who are staying in the Czech Republic on the basis of a long-term residence permit for the purpose of living together.

Information obligation

A more fundamental change regarding information obligation has also been introduced. As we informed you in our April issue of HR News, there had been a development with regard to the information obligation relating to employees who were sent from abroad to work with Czech employers. The notification of this posting is now made by the foreign employer, not by the Czech recipient of the employee.

This change is only logical as Czech employers to which foreign employees are posted often have limited information about them.

With this, however, comes the extension of the situations when it is necessary to notify the Labour Office. While this previously applied only to workers posted based on contracts with Czech entities (typically cross-border provision of services), the current legislation obliges foreign employers to report any performance of work by its employees in the Czech Republic. The law does not allow for any exceptions, so the information obligation might also apply to any short-term postings such as business meetings, conferences, etc. In such cases, insisting on the fulfilment of the information obligation might seem disproportionate, however, as long as there are no authoritative interpretations of the law or until further amendments are passed, the obligation should be fulfilled in all cases.

On top of that, as of today (more than a month after the change was adopted), the relevant form for foreign employers is still only available in Czech on the website of the Labour Office, not in any other language.

This year's 4th issue of HR News has been prepared for you by Ondřej Chlada

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