

Foreigners Act and Act on posting of workers from 1 January 2021

Legal Newsflash

December 2020.

FOREIGNERS ACT

The new Foreigners Act regulates the terms for entry, movement, stay and work of third country nationals¹ in the Republic of Croatia.

— System of annual quotas will no longer exist labour market test introduced instead

The system of annual quotas for issuance of Work and Stay Permits (WSP) to third country nationals shall no longer exist.

From 1 January 2021, prior to filing an application for a WSP, the employer must contact the Croatian Employment Office (HZZ) and ask for a labour market test to be conducted. Through the labour market test, HZZ would check its records of unemployed individuals to determine if there are suitable unemployed individuals who could fill the position. HZZ must conduct the labour market test and notify the employer of the results within 15 days of the employer's request.

If the labour market test shows that in HZZ's records there are no individuals who meet the employer's requirements, or if the employer's requirements cannot be satisfied by migration of unemployed individuals in Croatia, the employer can apply for a WSP within 90 days from receiving a notification of the result of the labour market test.

The employer then needs to file an application for WSP with the competent police station. The police station then seeks HZZ's opinion.

Although the deadline for issuance of HZZ's opinion is not prescribed, it is prescribed that the police station must decide on the WSP application within 15 days from submission of a complete application. HZZ must issue a positive or negative opinion within a deadline which allows the police station timely processing of the application.

The new Act sets out the conditions which the employer must fulfil in order to receive a positive opinion from HZZ (e.g. have a certain number of EEA nationals employed, no outstanding debts for public charges, etc).

The manner and proceeding for conducting of the labour market test and the issuance of HZZ's opinion are to be regulated by underlying by-laws, which must be rendered until 30 June 2021.

— Issuance of a WSP without a labour market test

Until 8 January 2021, the Managing Committee of the HZZ must render a decision on positions for which there is no requirement to conduct a labour market test (e.g. positions for which there is a shortage on the Croatian market, strategic investment projects).

— Issuance of a WSP without a labour market test and without an opinion from HZZ

Conducting of a labour market test and obtaining of a positive opinion of HZZ are not required:

- if hiring a seasonal worker in the field of agriculture, forestry, hospitality and tourism in Croatia, for up to 90 days in a calendar year,
- if applying for an extension of a WSP where the employer and the employee remain the same,
- if applying for a WSP in one of 30 cases listed in the Law. These cases are equivalent to those where a WSP outside of the annual quota could have been obtained under the old law (e.g. key personnel, employment in the foreigner's own company or a craft, EU blue card holder, intra-corporate transfers, etc).

— Issuance of a confirmation of work

There has been a decrease in the number of activities which can be performed based on a confirmation of work, and confirmations of work can be issued only up to 30 or up to 90 days in a calendar year (depending on the work activity in question).

[1] Third country national is an individual who is not a national of an EU country, an EEA country, or Switzerland.

— Temporary stay of digital nomads

The Law introduces digital nomads as the new category of third country nationals who can regulate their temporary stay in Croatia.

A digital nomad is defined as a third country national who is employed and performs work via communication technologies for a company or own company established abroad, and who does not perform work for or provide services to Croatian employers.

A digital nomad can regulate temporary stay in Croatia for a period of up to one year, after which there must be at least 6 months interruption to be able to regulate temporary stay on the same basis again.

— Long-stay (D) visa

The Law regulates the long-stay (D) visa which is issued to a third country national who requires an entry visa for Croatia, provided that such third country national has regulated temporary stay in Croatia or obtained a WSP.

— No criminal record

A third country national applying for a temporary stay for the first time must submit an evidence showing that the third country national has not been sentenced for crimes in the state whose citizen the third country national is, or in the state where he/she resided for longer than a year before coming to Croatia. Certain categories of third country nationals are exempt from this requirement.

ACT ON POSTING OF WORKERS TO REPUBLIC OF CROATIA AND CROSS-BORDER ENFORCEMENT OF FINES

The Act regulates the matters related to work of posted workers in a comprehensive manner, taking into consideration three EU Directives: Directive 96/71, Directive 2014/67 and Directive 2018/957 ("the Directives"), whose aim was to improve the position of posted workers.

Who must comply with the Law, and who is a posted worker?

- The Law applies to foreign employers (seated in the EEA, Switzerland, as well as third countries) that post their workers to work in Croatia for a limited period, for the purpose of temporary or occasional cross-border provision of services:
 - a) on the foreign employer's account and under its direction, under a contract concluded between the employer making the posting and the party in Croatia for whom the services are intended,

- b) to the Croatian branch office or a company owned by the same group as the foreign employer, or
- c) as a temporary employment agency, posting its worker to a user in Croatia, provided that there is an employment relationship between the foreign employer and the posted worker throughout the posting.

Which terms and conditions of employment are guaranteed to posted worker?

- A posted worker is entitled to certain terms and conditions of employment, as guaranteed at the level of Croatian legislation and universally applicable Croatian collective agreements (provided that the Croatian law is more favorable for the employee than the law that is applicable to the employment relationship), starting from the first day of work in Croatia, as follows:
 - longest duration of working hours and shortest duration of breaks,
 - shortest duration of paid annual leave,
 - compensation for the work performed, including increased compensation for overtime work,
 - protection of employee's health and safety at work,
 - protective measures for pregnant women, women who have recently given childbirth, and minors,
 - terms of hiring-out workers by temporary employment agencies,
 - equal treatment of men and women and protection against discrimination,
 - compensation for traveling, food and accommodation costs,
 - accommodation quality at the level guaranteed to domestic workers.
- If the posting exceeds 12 months (or 18 months, if an extension for an additional 6 months is approved), in addition to the above, all other terms and conditions of employment that domestic workers are entitled to as per the Croatian legislation and universally applicable Croatian collective agreements (with the exception of those governing formalities concerning entering into and termination of employment, non-competition and voluntary pension insurance system), shall apply to the posted worker.

Administrative obligations of a foreign employer

- Prior to the commencement of a posting, the foreign employer must submit to the Croatian Labour Inspectorate a posting declaration. In the posting declaration, the foreign employer must appoint a person in Croatia who would be responsible for safekeeping of legally prescribed documents related to employment of the posted worker(s), as well as a contact person in Croatia

who would be authorized to cooperate with state authorities, receive and send documents, requests, notices and other letters on behalf of the foreign employer.

- In addition to the documents that had to be kept in Croatia in the past, some additional documents will have to be kept, i.e. documentation related to protection of health and safety at work, an A1 certificate / Certificate of Coverage evidencing to which social security system the worker belongs throughout the posting.
- Documentation must be kept in Croatia for two years after the end of posting (earlier: five years after the end of posting)
- Foreign employer must issue a written decision on appointment to the contact person and to the person responsible for safekeeping of legally prescribed documents.
- The Law provides that the posting declarations would be submitted through an online application (instead of submission to a designated email address).

Implications for Croatian employers

A Croatian employer must be careful not to use the work of a foreign posted worker who is not lawfully employed abroad.

From the perspective of a Croatian employer posting its worker to work in another EU member state, it must be determined in what manner the Directives have been implemented in the national legislation of that particular member state. Therefore, prior to making a posting, a Croatian employer must:

- determine the guaranteed terms and conditions of employment applicable in a particular state, pursuant to its domestic legislation and pursuant to applicable domestic collective agreements, and
- determine its administrative obligations connected with the posting, in order to comply with the same in a timely manner.

Paul Suchar

Partner

Tel. +385 1 5390 032

psuchar@kpmg.com

Hrvoje Pajtak

Attorney at Law

Tel. +385 1 5390 062

hpajtak@kpmg.com

Suzana Delija

Attorney at Law

Tel. +385 1 5390 252

sdelija@kpmg.com

KPMG Croatia d.o.o

EUROTOWER,

Ivana Lučića 2A/17

Tel: +385 (0)1 5390 000

Fax: +385 (0)1 5390 111

info@kpmg.hr

home.kpmg/hr

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG Croatia d.o.o., a Croatian limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

© 2020 KPMG Legal s.r.o. advokátní kancelář – Branch Office Zagreb, branch of a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.