

Obtaining a licence for employment abroad

In recent years, more and more Ukrainians are moving to work abroad. According to the official data, as of 2019, the number of migrant workers from Ukraine has reached approximately 3 million. The main target countries for labor migration are Poland, the Czech Republic, Portugal, Italy, and Canada.

Under such circumstances, Ukrainians often use services of intermediary firms offering to quickly find a job and to assist in obtaining a visa or work permit in the target country. The legitimate intermediary firms have all the registration documents and licences necessary for providing intermediary services related to employment abroad issued by the Ministry of Economic Development of Ukraine.

If a company intends to provide intermediary services related to employment abroad, such activities shall be carried out exclusively on the basis of a licence, being the only permitting document granting a company the right to mediate in the employment of Ukrainian citizens abroad.

The procedure for issuing a licence and licensing conditions for intermediary activities related to employment abroad are established by Resolution of the Cabinet of Ministers of Ukraine No. 1060 dated 16 December 2015.

An application for a licence shall be the main document to obtain a licence for providing services related to employment abroad, which must be submitted to the Ministry of Economic Development of Ukraine.

Other documents can be divided into two groups:

1. Documents from the Ukrainian company receiving the licence:

- a document certifying the title to the premises or a lease agreement. The premises must be non-residential in nature, equipped with computer equipment and a printer. The information on the working hours and the licensee's name must be placed at the premises entrance;
- a copy of the foreign economic agreement on the provision of intermediary services related to employment abroad, concluded with a foreign business entity, where a draft of an employment agreement (contract) in Ukrainian or in the language used in the target country signed by the foreign employer shall be an integral annex thereto; such an employment agreement (contract) must include obligations assumed by the foreign employer and information on working conditions. These documents must be in two languages (in Ukrainian and in the foreign partner's language) or in the foreign partner's language only. In case the respective agreements are in a foreign language, they must be translated into Ukrainian and the translator's signature must be certified by a notary public. The draft employment agreement must contain information on working conditions, working hours, social package, wages in UAH equivalent (not less than the minimum wage in the country of employment), and insurance premiums;
- a certificate stating that the licensee's activities are not controlled by

the residents of other states carrying out acts of armed force against Ukraine.

2. Documents from the foreign partner:

- a copy of the document confirming the foreign partner's registration, information on the foreign company registration (extract from the trade register of the foreign country);
- a copy of the permit or licence to employ foreigners (if its availability is provided for by the foreign country legislation);
- a copy of the document (usually an agreement/contract) confirming the relationship between the foreign intermediary and the foreign employer;
- a copy of the licence or permit for intermediary business activities related to employment of foreign nationals issued by the competent authority of the country of employment;
- a copy of the collective agreement between the foreign employer and the trade union organization (if available) or a copy of a statement signed by the foreign employer stating that such an agreement has not been concluded.

Additionally, Resolution of the Cabinet of Ministers of Ukraine No. 1060 contains organizational requirements and obligations for the licence holder concerning carrying out of economic activity related to the intermediary services of employment abroad.

In particular, such activity must be carried out in non-residential premises only. Information must be placed near the entrance to the premises indicating the licence holder's name and working hours, while information about the following must be available inside the premises:

- the licence holder's full name, its location and phone numbers, last name, name and patronymic of its head and/or owner;
- copy of the extract from the Unified State Register of Legal Entities, Private Entrepreneurs and Non-Governmental Organizations;
- information about the decision of the licensing authority on licence issuance or a copy of the licence (if available), or an extract from the Unified State Register of Legal Entities, Private Entrepreneurs and Non-Governmental Organizations with indication of the date of licence issuance and the issuing authority;
- the list of states in which the licence holder is entitled to have clients employed under concluded foreign economic agreements (contracts) on the provision of intermediary services related to employment abroad;
- general information on the nature of future work, types of professional activity in which employment is offered, conditions of work and residence in the employment country certified by the licence holder;
- contact phone number of the controlling authority in the field of licensing;
- the Laws of Ukraine On Licensing of Economic Activity Types, On the Basic Principles of State Supervision (Control) in the Field of Economic Activity, extracts from the Laws of Ukraine On Population Employment, On Foreign Labour Migration, On Consumer Rights Protection as far as services provision is concerned;
- customer feedback book.

The key obligations include the following:

- carrying out of economic activity only within the framework of the foreign economic agreement (contract) concluded between the licence holder and a foreign economic entity;
- conclusion of agreements with clients on the provision of intermediary services related to employment abroad only in a written form;
- regular provision of information on the number of persons employed abroad to the licensing authorities;
- submitting information about concluded agreements on the provision of intermediary services related to employment abroad, upon request of the licensing authority;
- keeping the register of unified client registration;
- own website availability.

It should be noted that in order to carry out intermediary business activities related to employment abroad and obtain the respective licence the company must have at least one employee with a university degree in law. If the company does not have such an employee, it is necessary to enter into a legal services agreement with a third party, e.g. a law firm or a law office.

After filing all the necessary documents, provided that they comply with the applicable laws, the Ministry of Economic Development of Ukraine shall, within ten business days, decide on the issuance of a licence for intermediary activities related to employment abroad and publish its decision on the official website. And only after that, the licensee must, within ten business days, pay the state duty for the issuance of a licence. The state duty for obtaining a licence (as of 1 July 2020, the state duty amounts to UAH 2,197, which is about EUR 75) is one living wage for able-bodied persons applicable on the date of the decision to issue the licence. Failure to pay the state duty within the time period established by the law shall be considered a ground for the licence cancellation.

Moreover, it should be noted that activities without a licence or non-compliance with licensing conditions entail the imposition of administrative fines from one thousand to two thousand non-taxable minimum incomes (from UAH 17,000 to 34,000, i.e., approx. from EUR 570 to EUR 1,140) with or without the confiscation of manufactured products, tools, raw materials and money received as a result of such an administrative offense.