

## STATE POLICY ADDRESSING ILLEGAL FOREIGN EMPLOYMENT IN POLAND

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**Key words:** immigrants, foreigners, informal sector, illegal employment, demand for foreign employment.

### Abstract

Foreign employment in the informal sector in Poland has not been thoroughly researched to date, mainly due to the obstacles that are faced by researchers who are attempting to investigate the problem. This article focuses on the employment of foreigners in the informal sector in Poland, and it analyzes legal regulations and practices which aim to prevent illegal employment of foreign nationals. The implementation of a simplified procedure for the employment of foreign nationals was one of the most critical amendments to Poland's immigration policy in the last decade. This solution was met with considerable approval by Polish employers who submitted more than 780,000 and 1300,000 declarations of intent to employ a foreign worker in 2015 and 2016, respectively. However, the results of the inspections carried out by the National Labor Inspectorate give cause for concern. In 2014, nearly 70% of the foreigners named in the declarations of intent were granted a visa and entered Poland. It should be stressed that only 37% of them were employed by the company that issued the declaration.

### POLITYKA PAŃSTWA WZGLĘDEM NIELEGALNEGO ZATRUDNIENIA CUDZOZIEMCÓW W POLSCE

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**Słowa kluczowe:** imigranci, cudzoziemcy, szara strefa, nielegalne zatrudnienia, popyt na pracę cudzoziemców.

## Abstrakt

Praca cudzoziemców w szarej strefie w Polsce jest niedostatecznie zgłębnym tematem badawczym. Wynika to przede wszystkim z występowania znaczących trudnień w podejmowaniu i realizacji jakichkolwiek inicjatyw badawczych nad tym zjawiskiem. W artykule zwrócono uwagę na zjawisko zatrudnienia i pracy cudzoziemców w szarej strefie w Polsce. Sprecyzowano i przeanalizowano ponadto działania, które mają na celu zapobieganie tego typu praktykom. Jedną z najistotniejszych korekt kształtu polskiej polityki imigracyjnej w ostatnim dziesięcioleciu było wprowadzenie możliwości zatrudniania cudzoziemców na podstawie tzw. procedury uproszczonej. Rozwiązanie to spotkało się z bardzo dużym zainteresowaniem ze strony pracodawców – w latach 2015 i 2016 złożyli oni odpowiednio ponad 780 tys. i ponad 1,3 mln oświadczeń o zamiarze powierzenia wykonywania pracy cudzoziemcowi. Niepokojące okazują się wyniki kontroli realizowanych przez Państwową Inspekcję Pracy. Kontrole z 2014 r. wykazały, że prawie 70% cudzoziemców wskazanych imiennie w oświadczeniach złożonych przez poddanych kontroli pracodawców uzyskało na tej podstawie wizę i wjechało na terytorium Polski. Co niezwykle istotne, tylko 37% z nich podjęło zatrudnienie u wystawcy oświadczenia.

## Introduction

The demand for foreign labor is a part of the total demand for labor in the market. As an element of the global demand for labor, foreign employment is influenced by all of the factors influencing global demand. There are also a number of specific determinants which influence the demand for foreign employees, including:

- size of the native labor market<sup>1</sup>;
- availability of native-born employees whose skills match market needs<sup>2</sup>;
- degree of labor market segmentation<sup>3</sup>;
- structural changes in the labor market (KWIATKOWSKA 2007);
- differences in the wage demands of native-born and foreign employees<sup>4</sup>;
- liberalization of policies towards foreign employment in the domestic market<sup>5</sup>.

The demand for foreign labor can also be analyzed from the point of view of business theory. In a monograph entitled “The demand for foreign employees. Poland and its neighbors”, BEDNARSKI (2004) argues that the decisions regarding foreign employment are made by prospective employers, and the reasons why domestic businesses choose to employ foreign workers over native-born workers can be inferred only by surveying Polish companies. The goals of entrepreneurial activity should also be taken into account in such analyses (GARCIA-PEREIRO, DILEO 2015).

<sup>1</sup> The significance of this factor was emphasized in the neoclassical theory of migration; cf. MASSEY et al. (1993).

<sup>2</sup> This factor was stressed by JOŃCZY and KUBICIEL (2010).

<sup>3</sup> Refer to the dual labor market theory: DOERINGER, PIORE (1971), PIORE (1979).

<sup>4</sup> One of the key determinants of migration in the neoclassical theory of migration.

<sup>5</sup> The significance of this factor has been postulated by institutional economics.

Informal employment of foreigners in Poland has not been thoroughly researched yet. It is mainly because of the numerous obstacles that are faced by researchers who are attempting to investigate the problem. The Center for Migration Research at the University of Warsaw has made significant contributions to this area of research, including a part of the 1996 project entitled “Foreigners working in the informal sector in Poland”<sup>6</sup>.

This article focuses on the employment of foreigners in the informal sector in Poland. It analyzes legal regulations and practices which aim to prevent the illegal employment of foreign nationals.

The employment of foreign workers in the informal sector is determined by numerous factors. The key determinants are labor costs (wages and non-financial compensation) and the liberalization of policies towards foreign employment on the domestic market. This article focuses on state policies which address foreign employment in Poland. The main objective of the study was to answer a question as to whether the regulations which provide foreign nationals with greater access to the Polish labor market could affect the illegal employment of foreigners<sup>7</sup>.

The article presents basic information on the illegal employment of foreigners in Poland. It discusses state policy towards illegal foreign employment, with special emphasis on control procedures, their scale, range and the responsible authorities. The article ends with conclusions summarizing the analyzed information.

## **Legal regulations on foreign employment in Poland – basic information**

Only foreigners who have a legal right to stay in Poland are eligible for employment in Poland<sup>8</sup>. The terms and conditions for employing foreigners in Poland are regulated by Ustawa z 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (Dz.U. z 2004 r., nr 99, poz. 1001) as well as other normative acts, including:

- Rozporządzenie Ministra Pracy i Polityki Społecznej z 1 kwietnia 2015 r. w sprawie wydawania zezwolenia na pracę cudzoziemca (Dz.U. z 2015 r., poz. 543);
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 21 kwietnia 2015 r. w sprawie przypadków, w których powierzanie wykonywania pracy cudzoziemcowi

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<sup>6</sup> The research project gave rise to the following publications: ANTONIEWSKI (1997), IGLICKA (1999, 2000).

<sup>7</sup> The results of research investigating barriers to foreign employment in Poland have been discussed by: ORGANIŚCIAK-KRZYKOWSKA et al. (2013), PIOTROWSKI, ORGANIŚCIAK-KRZYKOWSKA (2014), KUBICIEL-ŁODZIŃSKA (2013).

<sup>8</sup> Foreigners' right to stay in Poland is regulated by Ustawa z 12 grudnia 2013 r. o cudzoziemcach (Dz.U. z 2013 r., poz. 1650).

na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę (Dz.U. z 2015 r., poz. 588);

– Rozporządzenie Ministra Pracy i Polityki Społecznej z 29 stycznia 2009 r. w sprawie przypadków, w których zezwolenie na pracę cudzoziemca jest wydawane bez względu na szczegółowe warunki wydawania zezwoleń na pracę cudzoziemców (Dz.U. z 2009 r., nr 16, poz. 85);

– Ustawa z 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej (Dz.U. z 2012 r., poz. 769).

In view of the provisions of the cited legal acts, the following categories of foreigners can be legally employed in Poland:

- foreigners with free access to the Polish labor market;
- foreigners who have been issued a work permit by the competent regional governors;
- foreigners who fall subject to the simplified employment procedure, if a prospective employer has submitted a declaration of intent to employ a foreign worker to a county labor office.

The groups of foreigners who can be employed legally in Poland without obtaining a work permit (the first category listed above) are specified in Art. 87, section 2, points 1–9 of the above act (Ustawa z 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. z 2004 r., nr 99, poz. 1001) and Rozporządzenie Ministra Pracy i Polityki Społecznej z 21 kwietnia 2015 r. w sprawie przypadków, w których powierzanie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę. The following groups of foreigners can be employed legally in Poland without a work permit:

- selected groups of foreigners who have been granted a temporary residence permit in the Republic of Poland;
- foreigners who are spouses of Polish citizens and foreigners in difficult circumstances indicated by the act;
- foreigners who hold a valid Polish Card;
- foreigners applying for immigrant status and spouses on whose behalf an application has been submitted (subject to detailed requirements specified in the act);
- foreigners who have the right to stay and work on the territory of the European Economic Area and the Swiss Confederation;
- foreign language teachers, academic teachers, trainers and instructors;
- foreign media correspondents;
- university students in the circumstances detailed in the regulation;
- athletes and personnel employed during organized sports events;
- providers of art services;
- members of the clergy performing work in connection with the held religious functions;

- members of the armed forces and civilian personnel employed in international military organizations on the territory of the Republic of Poland;
- employees delegated to work on the territory of the Republic of Poland for a maximum period of 3 months;
- personnel working for European Parliament deputies.

The following category of foreigners can be employed under a work permit in the following circumstances:

- foreigners who are employed on the territory of the Republic of Poland pursuant to a work contract concluded with an entity whose registered seat, residential address, branch, plant or another form of organized activity is situated on the territory of the Republic of Poland;
- members of the management board of a legal entity listed in the business register or a limited company who are staying on the territory of the Republic of Poland for a combined period of more than 6 months in 12 consecutive months;
- employees of foreign companies who have been delegated to work in the employer's or an associate's branch on the territory of the Republic of Poland for more than 30 days in the calendar year, pursuant to the provisions of the Ustawa z 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (Dz.U. z 1991 r., nr 80 poz. 350), relating to foreign employment;
- foreigners who are employed by a foreign company that does not operate a branch, plant or another form of organized activity on the territory of the Republic of Poland and foreigners who are delegated to perform temporary and occasional services (export services) on the territory of the Republic of Poland;
- foreigners who are employed by a foreign company and are delegated to the Republic of Poland for a different purpose than indicated in points 2–4 for less than 3 months in 6 consecutive months (Ustawa z 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. z 2004 r., nr 99, poz. 1001).

The third group of foreigners who are eligible for employment (based on a declaration of intent to employ a foreign worker submitted by a potential employer) are the citizens of the Republic of Belarus, Georgia, the Republic of Moldova, the Russian Federation, the Ukraine and the Republic of Armenia who can be legally employed under a written work contract for up to 6 months over a period of 12 consecutive months, regardless of the number of employers, if the employer's declaration of intent to employ a foreign worker has been registered by a county labor office competent for the employer's residential address or registered seat before the beginning of employment (Rozporządzenie Ministra Pracy i Polityki Społecznej z 21 kwietnia 2015 r. w sprawie przypadków, w których powierzanie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę, Dz.U. z 2015 r., poz. 588). The above procedure is referred to as a simplified procedure of foreign employment in Poland.

The implementation of the simplified procedure for the employment of foreign nationals was one of the most critical amendments to Poland's immigration

policy in the last decade. The first recommendations regarding more flexible employment options for foreigners were made in the Rozporządzenie Ministra Pracy i Polityki Społecznej z 30 sierpnia 2006 r. w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę (Dz.U. z 2006 r., nr 156, poz. 1116). The regulatory law introduced the option of employing citizens of neighboring countries for up to 3 months over a period of 6 successive months. The above solution covered only foreigners employed in section A, groups 01.1— 01.3 of the Polish Classification of Economic Activities pursuant to the provisions of the Rozporządzenie Rady Ministrów z 20 stycznia 2004 r. w sprawie Polskiej Klasyfikacji Działalności (PKD) (Dz.U. nr 33, poz. 289 i nr 165, poz. 1727). The introduced solution covered foreigners working in the following sectors:

- group 01.1 – production of agricultural crops; horticulture, including vegetable production;
- group 01.2 – animal breeding and husbandry;
- group 01.3 – production of agricultural crops combined with animal breeding and husbandry (mixed farming).

The terms of foreign employment under the simplified procedure have been amended by successive regulations by the minister competent for the labor market.

The Regulation of the Minister of Labor and Social Policy of 27 June 2007 amending the regulation on the employment of foreign workers without a work permit repealed the specification of PKD groups and introduced the employer's declaration of intent to employ a foreigner as the key document required for foreign employment under the simplified procedure (Rozporządzenie Ministra Pracy i Polityki Społecznej z 27 czerwca 2007 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę, Dz.U. z 2007 r., nr 120, poz. 824).

The simplified procedure has been amended by successive legal acts. The maximum period of employment was extended to 6 months over a period of 12 consecutive months, and new countries whose citizens are eligible for employment under the simplified procedure were added to the list. At present, the simplified procedure for the employment of foreigners in Poland applies to the citizens of the Republic of Armenia, the Republic of Belarus, Georgia, the Republic of Moldova, the Russian Federation and the Ukraine.

The main rationale behind the simplified procedure and the relevant amendments thereto was to counteract illegal employment of foreign nationals. The legislators were hoping to broaden legal employment opportunities for at least some seasonal workers employed in the informal sector by introducing a more liberal option than the work permit. The simplified procedure has been implemented nearly ten years ago, and it played a significant role in shaping foreign employment in Poland, including in the informal sector.

## Inspections monitoring the employment of foreigners in Poland

The National Labor Inspectorate has developed a list of practices which violate legal provisions regarding foreign employment in Poland. They include:

- employment of foreigners who do not have the right to stay in Poland (*Sprawozdanie z działalności... 2015*);
- employment of foreigners whose right to stay in Poland does not include the right to work (e.g. foreigners staying in Poland on a tourist visa);
- employment of foreigners without a work permit (applies to foreigners who are not eligible for employment without a work permit);
- employment of foreigners in other posts and on other terms than stipulated in the work permit;
- employment of foreigners without a work contract or a civil law contract.

Foreign employment in breach of the formal requirements of the simplified procedure (applies to foreigners who are eligible to work in Poland under the simplified procedure) should also be added to the above list.

Inspections monitoring the employment of foreign nationals in Poland are carried out by the National Labor Inspectorate (Legal Employment Department). The Inspectorate works with the following public agencies during the inspection process:

- regional governors;
- Polish Border Guard;
- Police;
- county governors;
- Polish Social Insurance Institution;
- revenue administration authorities;
- regional marshals.

The inspections are carried out to determine whether (*Procedury kontroli legalności... 2013*):

- foreign workers are employed legally;
- foreign workers have a valid work permit or whether the employer has submitted a declaration of intent to employ a foreign worker;
- foreign workers are employed in the posts and on the terms stipulated in the documents authorizing their employment;
- foreign workers are employed legally under a work contract or a civil law contract;
- work conditions comply with the provisions of a concluded civil law contract;
- foreign workers have been registered in the social security system;
- the employer pays Labor Fund premiums for every hired foreign worker;
- the employer complies with other requirements applicable to the employment of foreign nationals.



Selected results of the inspections carried out by the National Labor Inspectorate in 2014 to monitor the employment of foreign nationals are presented below.

In 2014, the National Labor Inspectorate inspected 2088 companies employing foreigners. A total of 15,700 foreign nationals employed by the inspected companies were controlled. The majority (60.8%) of the inspected foreign workers were Ukrainian citizens, followed by the citizens of Romania, Belarus, China and Bulgaria. A total of 873 workers were employed illegally in 193 companies. The following types of legal violations were most frequently reported:

- foreigners were employed without a work permit;
- foreigners were not employed in the posts and on the terms stipulated in the work permit;
- the employer did not conclude a work contract or a civil law contract with a foreign worker.

The highest number of labor law violations in companies employing foreign nationals was reported in the following sectors: business administration, industrial processing and construction (*Sprawozdanie z działalności... 2015*).

The results of inspections carried out in companies which had submitted declarations of intent to employ a foreigner to county labor offices produced interesting results. A total of 263 employers who had submitted declarations of intent to employ foreign workers under the simplified procedure had been controlled. Nearly 70% of the foreign nationals named in the declarations of intent were granted a visa and entered Poland. It should be stressed that only 37% of them were employed by the company that issued the declaration (*Sprawozdanie z działalności... 2015*).

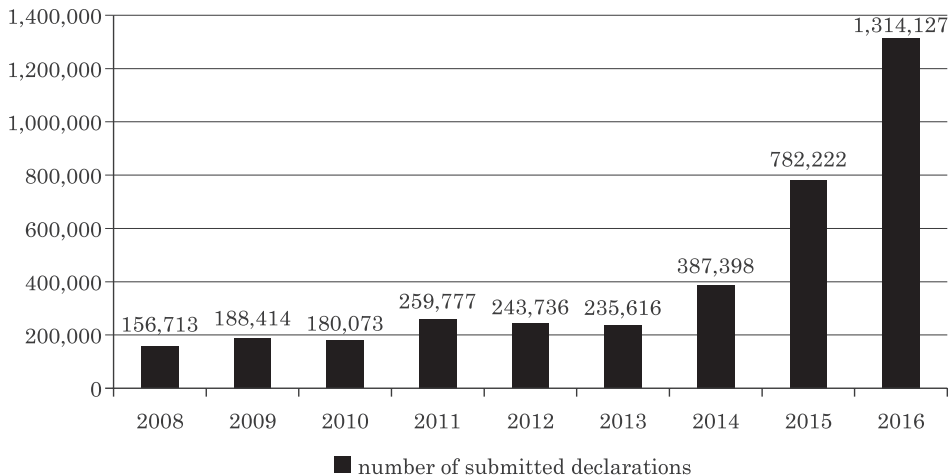


Fig. 1. Declarations of intent to employ a foreign worker submitted by Polish employers in 2008–2016

Source: *Cudzoziemcy pracujący w Polsce...* (2017).



The results of the above inspections should be interpreted with caution, and they should not be generalized to the entire population of companies employing foreigners. However, the cited findings constitute valuable data for analyzing the employment of foreign nationals in Poland. The results concerning foreign employment under the simplified procedure give particular cause for concern. To illustrate the scale of the problem, the number of declarations of intent to employ a foreign worker submitted to county labor offices in recent years is presented in Figure 1.

The number of submitted declarations increased over eight times in the analyzed period. The observed increase was particularly high in 2016, which indicates that the discussed issue is not a marginal problem. The results of the inspections carried out by the National Labor Inspectorate are quite alarming, and they could suggest that the simplified procedure for employing foreign nationals has failed to achieve its intended purpose. The problem should be analyzed in greater detail to determine whether the liberalization of state policy towards foreign employment has contributed to an increase in the number of foreign nationals who are legally entering Poland based on the declarations of intent, but are not employed by the company that issued the declaration.

## Conclusions

An analysis of the statistical data aggregated by the Ministry of Family, Labor and Social Policy in relation to the scale of the employment of foreign nationals has revealed several underlying problems that require a deeper reflection.

The simplified procedure has been introduced to create legal employment opportunities for foreign workers employed in the informal sector. The implemented solution liberalized the strict criteria for employment under work permits, and it provided foreign nationals with greater access to the Polish labor market. This legal instrument encouraged more Polish employers to submit declarations of intent to employ a foreign worker to county labor offices.

The simplified procedure could decrease illegal employment of foreigners; however, the analysis of statistical data indicates that declarations of intent were frequently abused by foreigners who regarded them as a mere instrument for legally entering the territory of the Republic of Poland. The results of the inspections carried out by the National Labor Inspectorate in 2014 revealed that nearly 70% of the foreigners named in the declarations of employment were granted a visa and entered Poland. It should be stressed that only 37% of them were employed by the company that issued the declaration.

The above observations indicate that changes in the legal procedures regarding foreign employment in Poland are imminent. The legislators should rely on the previous experiences to modify the existing procedures and tighten controls

on foreign workers entering the country. The simplified procedure has received criticism in recent years, and it could be repealed in the future. The discussed instrument should be replaced with a solution that provides foreigners with employment opportunities in Poland, but is less complex and time consuming than the work permit.

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