

THE EMPLOYMENT OF REMOTE FOREIGN WORKER IN BELARUS

The Belarusian labour law provides for the possibility to conclude labour agreements for remote work.

Foreigners can also be hired under such an agreement. However, certain labour and migration law requirements shall be met.

For convenience, we can distinguish the following stages in the process of employment of the remote foreign worker:

- 1) receiving permissions
- 2) hiring
- 3) registration of the labour agreement in the citizenship and migration subdivision of the Republic of Belarus.

Receiving permissions

There is a priority of employment of Belarusian citizens as well as foreigners and stateless persons who have a permanent residence permit in Belarus.

In particular, this priority is ensured by obtaining permits for employment for other categories of foreigners.

The following permissions are key-note:

- 1) entry permit to Belarus (entry permit)
- 2) special permission for labour activity in the Republic of Belarus (special permission)

Currently, the Labour Code of the Republic of Belarus establishes the compulsory requirement of personal attendance of the employee while concluding the labour agreement for remote work.

Thus, the entry permit provides the foreigner with the possibility to arrive at Belarus to conclude labour contract for remote work.

As a rule, for arrival in Belarus, the foreigner shall receive a national visa of type C (short-term) or type D (long-term), double/multi entry-exit visa (for foreigners with sojourn permit).

In some cases, the foreigner can arrive at Belarus without a visa following the conditions of the international treaty or national legislation. For example, the citizens of the state-members of the Eurasian economic union can stay in Belarus without a visa for up to 90 days, the citizens of more than 70 countries – for up to 30 days upon arrival through Minsk National airport, etc.

Special permission is obtained by the employer. It shall be obtained for each foreign employee.

The exceptions from this rule are for:

- employers-residents of the High Tech Park of Belarus;
- citizens of the Russian Federation, the Republic of Armenia, the Republic of Kazakhstan, Kyrgyz Republic (in other words – citizens of states-members of the EAEU);
- Persons who are not subject to the Law of the Republic of Belarus “On external labour migration” (the list is in part 2 of article 2 of this Law). For example, the list includes foreigners, who received education in Belarus and apply for work within one year after acquiring a profession/certification.

Labour contract

The labour contract with remote foreign workers shall follow special requirements. Under migration legislation, the labour contract shall include the provisions about

- order, grounds for termination, modification and extension of a labour contract
- conditions of moving to Belarus, food, accommodation and medical care in the country (for example, such conditions may be formed as a special provision in case of the foreigner's arrival)
- the term of a contract, not exceeding the term of special permission (if it was issued), thus the labour contract can't be open-ended.

The contract shall be composed in Russian or Belarusian and native/another language a foreigner understands, and be subject to Belarusian law.

The labour contract shall include other compulsory conditions established by the legislation (information about the employer, the employee, the salary, the reference to the remote character of work, etc.).

Note, concerning remote work, the employer's obligations are already limited by the Belarusian legislation. For instance, such a limitation applies to the employer's obligation to ensure safe conditions and labour protection. The employer has only to familiarize the employee with the requirements for labour protection when working with equipment and tools the employer provides or recommends to use. Other obligations of the employer on safe working conditions and labour protection may be set in the labour contract.

Moreover, a remote worker chooses his place of work by himself and the employer is not obliged to control the employee's location.

Within a month from the date of signing the labour contract, the employer shall register both its exemplars in the citizenship and migration subdivision of the Republic of Belarus.

Taxes and other obligatory payments

A Belarusian employer is obliged to withdraw the sums of the income tax on individuals and other obligatory insurance contributions to the Social Protection Fund of the Republic of Belarus (SPF) from the employee's salary.

The rate of income tax in Belarus is 13%.

The amount of contributions to the SPF from the employee is 1% of income, from the employer - 34% of the employee's income.

There is a specific feature in the calculation of compulsory insurance payments to the SPF for HTP residents. Such payments aren't charged on the part of employee's income that exceeds a single average monthly salary in Belarus for the previous month.

For instance, in November 2020, the average salary was set at 1300.50 Belarusian rubles (approximately 423 euros). Thus, for employers-residents of HTP and their employees, contributions to the Social security fund for December 2020 are charged on the amount of 1300.50 Belarusian rubles. For the rest income of the employee, contributions to the Social security fund aren't charged.

Bear in mind, that foreigner's income received from the Belarusian employer is taxed in Belarus, whether during the term of the labour contract he stays in Belarus or not.

Under the Double Taxation Treaties, no tax exemption is provided for income from labour activity in Belarus.

However, a remote foreign worker has the right to obtain from the tax authority a certificate of payment of taxes in Belarus for the application in his state the exemption from income tax (other equivalent tax) under such a Treaty.

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