

# *Engaging foreign labour in Ukraine*



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Foreign businesses often choose to operate in Ukraine through their local subsidiary companies or representative offices. Both of these legal forms of doing business require engaging local or foreign workforce.

Normally, a foreign company hires local or foreign personnel through its Ukrainian subsidiary or representative office. The majority of labour law provisions apply equally to Ukrainian and foreign nationals.

*The employer of a foreigner also must pay taxes and local benefits, as well as notify the tax authority about the foreign employee's income and paid-up taxes on a quarterly basis.*

Foreign employees enjoy the same benefits, guarantees, and protections available for Ukrainian employees under Ukrainian labour laws and the employer's internal labour rules, policies and procedures.

Ukrainian law establishes special procedures for hiring foreign nationals that must be followed by the Ukrainian employer to avoid administrative liability or even deportation of a foreign national.

**Table 1.** Documents required for employing a foreigner, depending on the legal form

	Visa	Work permit	Service card	Residence permit	Registration of the place of residence
Subsidiary company	●	●		●	●
Representative office	●		●	●	●

## Visas

Foreigners originating from the countries subject to a visa free regime with Ukraine do not enjoy this regime when coming to Ukraine with the purpose of employment and have to file for a D-type (long term) visa.

Every foreign employee who is going to be officially hired by either a Ukrainian subsidiary or a representative office must obtain a D-type visa, bearing the respective mark – “Work in representative office” (“Робота в представництві іноземної компанії”) or “Employment” (“Працевлаштування”).

*Notwithstanding that the name of the D-type visa contains the words “long term” this visa is valid for 45 days only as it serves as a transitional document based on which the residence permit is obtained.*

This means that if a foreigner is already in Ukraine on a tourist or business visa (or on a short-term visa, under the new visa regime) at the moment of issuance of a work permit or service card, this person has to leave the country, apply for a D-type visa (on the basis of the work permit or the service card) and then enter Ukraine again.

Usually, the need in visa arises after obtaining the work permit or the service card. A foreign employee files an application for a D-type visa at his/her country's consular office or the embassy of Ukraine. Such visa cannot be obtained in Ukraine.

With this visa a foreign employee comes/returns to Ukraine and files an application for either a temporary residence permit or a permanent residence permit.

If the country of a foreigner's origin has secured a visa free regime with Ukraine, it is not necessary for such foreigner to file for a D-type visa if he/she intends to apply for a permanent residence permit and is not going to work in Ukraine until such permit is granted.



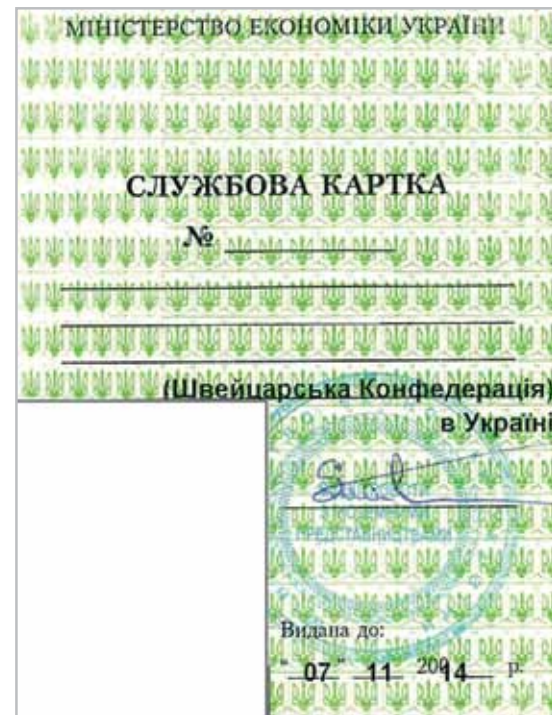
## Service Card

Ukrainian law does not require work permits for foreigners who are going to work for representative offices.

Foreigners are employed by representative offices based on the service card issued by the Ministry of Economic Development and Trade of Ukraine (the "Ministry of Economy") for up to 3 years. The service card can be extended.

Service card is valid only for work in particular representative office. Thus, every time a foreigner changes his/her place of employment in the representative office of a foreign company in Ukraine he/she must obtain a new service card.

As a matter of practice, many representative offices still file for work permits for their foreign personnel.



## Work Permit

Every foreigner has to obtain a work permit prior to commencing his/her employment with a Ukrainian subsidiary company. Applicable regulations provide for the exhaustive list of documents required to be filed by an employer with the respective local employment centre for obtaining work permits. An application for a work permit and the supporting documents are filed by the Ukrainian company intending to hire a foreign national.

*Foreigners **permanently** residing in Ukraine do not require work permits.*

The employer must be able to demonstrate in each case of filing documents for obtaining work permits for its foreign employees that the employees with similar qualifications cannot be found in Ukraine.

A draft employment agreement/contract must be filed as part of the work permit application package.

ДЕРЖАВНИЙ ЦЕНТР ЗАЙНЯТОСТІ  
МІНІСТЕРСТВА ПРАЦІ ТА СОЦІАЛЬНОЇ  
ПОЛІТИКИ УКРАЇНИ

STATE EMPLOYMENT CENTRE  
OF THE MINISTRY OF LABOUR AND  
SOCIAL POLICY OF UKRAINE

ДОЗВІЛ НА ПРАЦЕВЛАШТУВАННЯ № \_\_\_\_\_  
EMPLOYMENT PERMIT від «\_\_\_» \_\_\_\_\_ р.

Виданий роботодавцю \_\_\_\_\_  
на використання праці на посаді (за фахом) \_\_\_\_\_  
громадянина \_\_\_\_\_  
(іменем/ім'ям)  
(М.П. та прізвище)

дата народження «\_\_\_» \_\_\_\_\_ р.  
паспортний документ № \_\_\_\_\_

Дійсний до «18» 02 2012 р. М.П.  
Дійсний до «\_\_\_» \_\_\_\_\_ 200\_\_ р. М.П.  
Дійсний до «\_\_\_» \_\_\_\_\_ 200\_\_ р. М.П.

підпис \_\_\_\_\_ підпис \_\_\_\_\_ підпис \_\_\_\_\_

The work permit application and the supporting documents are considered by a commission specially created at the respective local employment centre and consists of the representatives of the Ministry of Internal Affairs, State Intelligence Service, State Border Control Forces, State Tax Administration, etc.

The work permit is issued for a specific position within one company only. Termination of an employment agreement/contract with a foreigner results in termination of the work permit. Transfer of the foreign employee within the group of companies in Ukraine is also recognized as termination of one employment and beginning of the new one. Thus, every time a foreigner changes his/her place of employment in Ukraine, he/she must obtain a new work permit.

The reasons for hiring a foreign employee have to be well grounded and carefully drafted. Consultations with the respective employment centres are recommended at the stage of preparing the set of documents for obtaining the work permit.

As a matter of practice, a decision on the issuance of a work permit is usually granted within 30 – 40 days from the date of the documents filing.

The additional proof of the issuance of the work permit is a special stamp put in the foreigner's passport.

A work permit may be issued for a term of up to one year (in most cases) with a possibility for extension.

The duration of the respective employment agreement/contract should correspond with the term of validity of the work permit.

If an employment agreement/contract is going to be prolonged, the employer must file a new work permit application and the supporting documents for the work permit extension not later than 1 month before the date of expiry of the initial work permit. It is strongly recommended to file for a new work permit three months before its expiration. This early filing will give the employer a chance to fix possible typos and other imperfections in the submitted documents.

Failure to observe the established one-month term for filing for the work permit's extension will serve as a ground for the employment centre's commission to refuse in granting a new work permit. In this case the affected foreign employee will have to cease working for the Ukrainian employer and leave Ukraine in order to avoid violating the visa regime not later than on the last day of the initial work permit's validity.



The law mandates the Ukrainian employers using foreign labour to:

- inform a local employment centre on the dates of commencement and termination of each foreigner's employment;
- ensure that the passport of a foreign employee is registered with the local migration service office and notify the respective local employment centre on this;
- inform in writing the local employment centre, migration service office and the border control agency in case if a foreign employee did not show up at work without any good reason during 3 consecutive days of his/her intended date of the employment commencement, according to a respective employment agreement/contract.

A duly issued work permit is a ground for a foreigner to file for a proper type of visa, register his/her place of temporary residence in Ukraine and to obtain a temporary residence permit. Thus, obtaining a work permit by a Ukrainian company is usually the first formal step to be taken while employing a foreigner.

## Temporary residence permit

All foreign employees, including those working for a representative office have to obtain a temporary residence permit to legally stay in Ukraine during their employment.

A temporary residence permit could be obtained by following a simple procedure. The law provides for the exhaustive list of documents required to be filed by a foreign employee applying for the temporary residence permit. To obtain a temporary residence permit for a foreign employee:

- subsidiary company files the set of documents together with the respective work permit;
- representative office files the same set of documents together with an invitation to a foreigner issued by the representative office and certified with the stamp of the Ministry of Economy.

УКРАЇНА  
ПОСВІДКА  
на тимчасове проживання в Україні  
серія № \_\_\_\_\_

\_\_\_\_\_ (прізвище)  
\_\_\_\_\_ (ім'я/ініціал)  
\_\_\_\_\_ (громадянство/громадянства)  
\_\_\_\_\_ (дата народження)  
\_\_\_\_\_ (півня)  
\_\_\_\_\_ (прізвище посвідченої сторони) \_\_\_\_\_

Місце виходу: \_\_\_\_\_  
Дійсно до: 16 серпня 2013 року  
(підпис, печатка) \_\_\_\_\_ (прізвище посадової особи)  
Продовжена до: \_\_\_\_\_ 20 \_\_\_\_\_ року  
(підпис, печатка) \_\_\_\_\_ (прізвище посадової особи)

Указом якого надано до відпуску згідно з Порядком оформлення і видачі посвідки на тимчасове проживання

The term of validity of the temporary residence permit shall not exceed the term of the respective work permit or service card, and the respective employment agreement/contract.

The additional proof of the issuance of the temporary residence permit is a special stamp put in the foreigner's passport.

Eligible foreign employee must file for extension of a temporary residence permit not later than 15 days before it expires.

If an application for a temporary residence permit is satisfied, a foreign employee must file a corresponding application with a local migration service office for registering his/her place of residence in Ukraine.

Within 7 days after a temporary residence permit expires a foreign employee must cancel his/her residence registration and leave the territory of Ukraine.





## Permanent residence permit

In certain cases foreigners may be eligible to apply for a permanent residence permit.

A permanent residence permit is issued (1) on the basis of quotas established by the Cabinet of Ministers of Ukraine (e.g. foreigners who invested the hard currency equivalent of at least USD 100,000 in Ukrainian business and officially registered such investment, or foreigners with exceptional professional qualifications which are in great demand in Ukraine, etc.), or (2) on the quota free basis (e.g. a foreigner who is officially married to a Ukrainian citizen for over 2 years, or a foreigner who is a child or a parent of a Ukrainian citizen, etc.).

<b>УКРАЇНА</b>		<b>2012 р.</b>
<b>ПОСВІДКА</b>		(коли і звідки прибув)
<b>ПОСТІЙНЕ ПРОЖИВАННЯ</b>		
серія _____	номер _____	
_____ (прізвище, ім'я)		
_____ (по батькові)		
_____ (число, місяць, рік народження)		
<b>м.Київ</b>		
_____ (місце народження)		<b>17 липня 2012 року</b>
<b>громадянин</b>		дата видані
_____ (громадянство/підданство)		Дійсно до « <b>БЕЗСТРОКОВО</b> »
		(особистий підпис)
		(підпис посадової особи, прізвище І.П.)

The law provides for the exhaustive list of the groups of foreigners eligible for a permanent residence permit, whether issued on the basis of quotas or the quota free basis.

The additional proof of the issuance of the permanent residence permit is a special stamp put in the foreigner's passport.

After acquiring a status of the permanent resident a foreigner may face a double taxation problem which may require a separate advice of the tax lawyers.

## Registration of the place of residence

Within 10 days from the date of coming to Ukraine by a foreign employee such foreigner must register his/her place of residence based of the earlier obtained temporary (permanent) residence permit.

Such registration is confirmed by a stamp put in both, a passport and a residence permit.

This registration is made with a local immigration service office.



For this purpose a foreign employee will have to provide the local immigration service office with a copy of the apartment/house rental or purchase agreement or documents confirming the foreigner's title to the respective premises.

## IMPORTANT!

To be legally admissible in Ukraine, all official documents issued outside of Ukraine have to be duly notarized and apostilled (legalized) in the country of their issuance. The further translation of such documents into Ukrainian language has to be certified by a Ukrainian notary.

## Formalizing employment arrangement

The employment relationship in Ukraine, including with foreigners, is established by an employment agreement/contract between an employer and an employee. The employment agreement/contract contains the terms of employment, including the name of the position, description of work to be performed by the employee, obligation of the employee to observe the internal labour rules and other internal policies and procedures, obligation of the employer to ensure the

adequate working conditions, the amount of salary for performance of employment duties and many others.

A written employment agreement/contract can be concluded before or on the date of issuing a hiring order by the employer and becomes effective on the date of the hiring order. It must be signed by the employee as the party to the employment agreement/contract.

## Global policies

Ukrainian law provides that a number of mandatory employment related regulations can be adopted by Ukrainian entities (including foreign owned), in particular a collective bargaining agreement, internal labour rules, labour safety regulations, and some other documents, depending on the specifics of a particular company's business.

*All employment related documentation must exist in Ukrainian notwithstanding the entity's form or ownership.*

Ukrainian subsidiaries of multinational companies often approve other important internal regulations (e.g. anti-corruption/anti-bribery, data protection, etc.) in accordance with their global corporate policies.

The global policies are not per se enforceable in Ukraine. To be legally binding on foreign and local employees of the Ukrainian entities, these policies and related internal documents must be based on Ukrainian law and incorporated into the document system of a Ukrainian subsidiary/representative office as local policies. Such local policies may incorporate provisions of applicable foreign acts (e.g. FCPA, UK Bribery Act 2010) and respective global corporate policies and procedures to the extent permitted by Ukrainian law.

The contents of this publication are for information purposes only. They do NOT constitute legal advice or other professional advice and should NOT be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.





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