

# Five factors to consider in employing third country nationals (1/10/20)

To fill the labour gap, employers in Latvia are increasingly hiring workers from third countries.<sup>1</sup> An employment contract is the most common basis for employing third-country nationals. This article explores five factors to consider when it comes to entering into an employment contract with a third-country national.

## The level of pay

Latvian legislation requires the employer to pay at least a living wage to a third-country national staying in Latvia for employment.<sup>2</sup> The employer should be aware that it is illegal to employ a third-country national on a pay below the monthly average gross pay in the previous year, which is €1,004 according to the latest information published by the Central Statistical Office in February 2020. The employer must consider an extra condition for employing a third-country national on the basis of an EU Blue Card, not a visa or a work/residence permit. To employ such a third-country national in Latvia, their monthly pay must be at least €1,204.8 (for employment in an understaffed occupation<sup>3</sup>) or at least €1,506 (in other occupations).

## The language of employment contracts

Section 40(10) of the Labour Code provides that an employment contract must be signed in the Latvian language, but the employer must inform the worker in writing about the terms and conditions of the employment contract in a language they understand. Since most third-country nationals do not have a sufficient command of the Latvian language, this obligation is best carried out by drafting the contract in two languages, one of which must be Latvian.

## A trial period

It is advisable to insert a trial period clause in an employment contract with a third-country national to make sure the person really meets the employer's requirements for the job. An employment contract that does not specify a trial period is considered to have been entered into without a trial period. If the employer finds during the trial period that the employment relationship with the third-country national cannot be continued, then giving three days' notice is sufficient for the employer to terminate the employment contract without naming a reason for termination.

## An e-mail address

An employment contract with a third-country national should preferably include their e-mail address. The Labour Code allows the employer or the worker to notify termination of the employment relationship by sending notice to an e-mail address and using a secure electronic signature. This right may be exercised only if it is expressly granted by the employment contract.

## The effective date of the contract and the beginning of the employment relationship

Under section 35(3) of the Labour Code, the employer must ask to see a valid visa or work/residence

permit issued to the third-country national, except for cases listed by section 9(3) of the Immigration Act, where no check is required.

If the employer plans to employ a third-country national that has not yet taken out a visa or a work/residence permit, they should enter into a deferred contract. This contract should provide that the third-country national will begin the employment relationship from the date they obtain a visa or permit. It is important to note that the beginning of the employment relationship may be different from the effective date of the contract. So the contract can be entered into before the worker takes out a visa or permit if the contract provides that the employment relationship will begin from the date they obtain a visa or permit.

## Summary

Since an employment contract is the most common basis for employing third-country nationals, it is important to draft the contract in accordance with Latvian legislation:

1. The employer must provide the third-country national with the minimum wage if they are to be employed in Latvia;
2. Before entering into an employment contract with a third-country national, the employer must meet the statutory requirement for drafting it not only in the Latvian language but also in a language the worker understands;
3. The employment contract should stipulate a trial period so that it takes the employer only three days to terminate the employment relationship;
4. Giving an e-mail address in the employment contract makes it easy to send a notice of termination;
5. The employment contract with a third-country national should have two separate clauses specifying the effective date of the contract and the beginning of the employment relationship.

<sup>1</sup> Under section 1(14.1) of the Immigration Act, a third country is any country other than an EU member state, an EEA country or the Swiss Confederation.

<sup>2</sup> Cabinet Rule No. 225 of 25 April 2017 on the amount of funds needed by a foreign national and verification of the existence of funds

<sup>3</sup> Cabinet Rule No. 108 of 20 February 2018 on specialities (occupations) in which a significant shortage of labour is forecast and foreigners can be invited to work in Latvia