



**SLEZSKÁ
UNIVERZITA
V OPAVĚ**

Bursar's Methodological Instruction No. 2/2019

**Employment of Foreign Nationals
and Performance of Work Abroad**



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Article 1

INTRODUCTORY PROVISIONS

- 1) This guideline regulates the framework procedure for resolving employment relations with employees of the Silesian University in Opava (hereinafter referred to as "SU" or "the employer") who are not citizens of the Czech Republic (hereinafter referred to as "foreigners") and the employment context for the performance of work of SU employees abroad.
- 2) The issues addressed by this methodological guideline are governed by applicable legislation, in particular Acts No. 262/2006 Coll., the Labour Code, No. 435/2004 Coll., on Employment, No. 341/2005 Coll., on public research institutions, No. 589/1992 Coll., on social security contributions, no. 48/1997 Coll., on public health insurance, No. 187/2006 Coll., on sickness insurance, no. 155/1995 Coll., on pension insurance, No. 592/1992 Coll., on insurance premiums for general health insurance, No. 589/1992 Coll., on social security premiums and contributions to the state employment policy, No. 586/1992 Coll., on income taxes, No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and regulations and directives of the European Parliament and the Council (EC) (e.g. regulation 883/2004 of 29 April 2004 on the coordination of social security systems, Regulation 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004, Directive 96/71/EC of the European Parliament

and of the Council concerning the posting of workers in the framework of the provision of services) and other international agreements or conventions to avoid double taxation.

3) Due to the diversity of legislation applicable to different countries and situations and other adjustments given by bilateral interstate agreements, it is necessary to verify all the contexts governing the specific conditions of a given employment relationship or applicable to a given country in each individual case of employing a foreigner and working abroad.

4) For the purposes of this Directive, the term:

member State – EU/EEA Member State or Switzerland;

PaM – HR and Payroll Department of the Rectorate;

patron – an employee responsible for ensuring the basic conditions necessary for the conclusion of an employment relationship with an employee;

employment relationship – an employment relationship with an employee on the basis of an employment contract or an agreement to perform work outside the employment relationship;

EP Regulation - Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (available on the website of the Ministry of Labour and Social Affairs www.mpsv.cz);

EP Directive - Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (available on the website of the Ministry of Labour and Social Affairs www.mpsv.cz);

concurrent activity – pursuit of a concurrent occupation or gainful employment pursuant to Article 13 of the EP Regulation;

EU employee - a foreigner who temporarily resides or permanently resides in an EU/EEA Member State or Switzerland or is a family member of an EU/EEA or Swiss citizen or a family member of Czech citizens;

3Z employee – a foreigner who is a citizen of a "third country", i.e., does not meet the condition for EU employees.

Article 2

Before Entering an Employment Relationship with a Foreigner

- 1) Before entering an employment relationship with a foreigner, the head of the part that intends to employ him/her shall designate a patron at the same time as making such a decision. As a rule, it should be a manager or other employee of the organizational unit to which the foreigner will be assigned.
- 2) The patron is a person to whom the foreigner can contact in matters related to securing his/her working and living conditions at the SU, and at the same time he/she is a contact person for PaM employees ensuring the employment of a foreigner in a legal context; in this context, he/she mainly mediates securing the requirements of PaM towards the foreigner and vice versa and is responsible for the smooth progress in dealing with the necessary related legal agenda.
- 3) The patron is obliged to request personal data and information about the facts decisive for the conclusion of the employment relationship (see Annex No. 2a/2b – Questionnaire for the employment of a foreigner) with sufficient time in advance and to prepare a proposal for the employment of a foreigner (see Annex No. 1) from the patron and to hand over these data to the Patron no later than 4 - 6 weeks before the planned commencement of the employment

relationship (a longer period is required if the patron intends to employ an employee who will need a work permit to work in the Czech Republic).

- 4) If the foreigner's entry is carried out on the basis of an internationally open selection procedure, this period should be taken into account when determining the date of commencement of employment.
- 5) On the basis of the submitted documents, the PaM employee shall ensure the implementation of other related steps necessary for the conclusion of the employment relationship. In the event of the intention to conclude an employment relationship with an employee who will need a work permit, it is in particular the obligation to inform the Labour Office about the vacancy.

Article 3

Basic Prerequisites for Employment of Foreigners

- 1) The procedures for ensuring the administrative formalities of the employment of foreigners on the part of the SU vary depending on whether they are EU or 3Z employees.
- 2) According to the nationality of the foreigner, the necessary steps must be ensured related to:
 - residence permit,
 - a work permit and reporting obligations to the Labour Office,
 - determining the jurisdiction over social security legislation,
 - registration to health insurance companies,
 - the determination of tax residence,
 - the occurrence of other claims or obligations.
- 3) For **an EU employee**, in particular, it is necessary to determine the country of affiliation to social insurance, i.e., to verify whether the SU will be his or her sole employer, or whether he or she will be engaged in a concurrent activity, i.e., in particular:
 - to carry out other work for another employer in another Member State or in several Member States,
 - to pursue a paid activity as a self-employed person in another Member State or in several Member States,
 - to carry out work in another Member State which, under the legislation of that State, will be regarded as official work.

In case of parallel activities, the Member State to whose social security legislation (including health insurance) the EU employee will be subject must also be designated. The EU employee shall present such by a certificate of affiliation to the Social Security Administration (form A1) to Social Security Administration of the Member State concerned. In the absence of concurrent activity, an EU employee certifies this by submitting a Statement of Honour on a single employer (see Annex 3a/3b).

- 4) In case of a **3Z employee**, it is necessary to document the title on the basis of which he will perform work in the Czech Republic, i.e., whether he/she is a foreigner who will need a work permit (e.g., blue card, employee card, IP permit, and a valid residence permit) or:
 - a) has free access to the labour market (e.g., has a permanent residence permit, carries out continuous educational or scientific activities as a pedagogical, scientific (research) worker or academic employee of a university, constantly prepares for a future profession in the

Czech Republic, or is the above-mentioned worker who is a participant in a scientific meeting in the maximum length of 7 consecutive calendar days or a total of 30 days in a calendar year, etc.),

- b) will work as a scientific researcher under the Hosting Agreement and the SU' obligation to pay the costs.
- 5) Proof of the information and supporting documents referred to in paragraphs 3 and 4 shall be strictly necessary for the administration of the other activities and for ensuring the necessary conditions for the conclusion of the employment relationship.
- 6) In addition, the 3Z employee is always obliged to secure and document a residence permit.
- 7) All foreigners must submit information on the tax residence (domicile) for the assessment of tax obligations and possible tax benefits, taking into account the provisions of the relevant double taxation treaty between the Czech Republic and his or her country of origin; this information will be documented by the Honorary Declaration on Tax Residence (see Annex No. 4a/4b).
- 8) Each foreigner is also obliged to undergo an initial medical examination in accordance with the applicable internal SU standards in the SU contract facility. The fee for the initial medical examination is paid by the employer.
- 9) If the foreigner is not registered with a health insurance company (he/she has not yet had an employment relationship in the Czech Republic) and if he/she does not explicitly apply for registration with a health insurance company of his/her choice, the PaM employee will ensure his/her registration with the Public Health Insurance Company.
- 10) The foreigner is obliged to provide the employer with the bank account number in the Czech Republic or in another Member State for sending the salary (for a bank account maintained in a Member State, IBAN, swift, name and address of the bank must be provided); if he does not do so, the salary may be paid only in cash.

Article 4

Activities Carried out by the PaM Department

- 1) On behalf of SU, PaM employees provide communication with competent authorities, in particular the Labour Office, social security administration, health insurance companies, etc., and provides all cooperation and professional support in solving the necessary requirements of the employment relationship both to the foreigner and the patron.
- 2) **In connection with the entry of a foreigner into employment at SU**, the PaM personnel:
 - examine the conditions for concluding an employment relationship from the point of view of the possibility of employing a foreigner (the need for a work and residence permit),
 - announces a competition to fill the post in question,
 - if the SU intends to employ a foreigner on the basis of a work permit, at least 30 days before the conclusion of the employment relationship, the SU notifies the Labour Office of the vacancy,
 - ensures registration obligation towards the Labour Office (in particular, notification of taking up employment (at the latest on the day of taking up employment), notification of not taking up employment, termination of employment, etc.), or Police of the Czech Republic (department of foreign police or employees of 3Z),
 - performs the registration or registration of the employee for health insurance,

- sends out a foreigner for an initial medical examination.

PaM Payroll Accountant:

- verifies the determination of the country of affiliation for EU employees,
 - performs the registration or registration of the employee for social insurance,
 - verifies the evidence of the tax residence of the foreigner or register it with the competent tax office.
- 3) The incoming employee/foreigner and the patron are obliged to provide the maximum possible cooperation for the activities referred to in paragraph 2.
 - 4) In order to find out the basic information about the social security conditions of EU employees, methodological sheets for insurance contributions to Member States are available on the intranet of the SU in the Employee/Guides and Procedures menu. When recruiting an EU employee who is subject to the social security legislation of another Member State to whose system the SU has not administered contributions yet, first PaM staff shall require checking the conditions for administering contributions to that Member State in the Methodology sheet for national insurance contributions.
 - 5) In the event of complicated conditions for the payment of insurance premiums for EU employees to the social security system of a Member State, the services of an external consultancy may be used for their administration on the basis of a contract concluded for the needs of the SU. The costs of administering the contributions of individual employees are covered by the Parts.

Art. 5

Obligations of Employees - Foreigners

- 1) A foreigner is obliged to cooperate with PaM and provide information and documents necessary to fulfil the legal prerequisites of his employment in the Czech Republic. The foreigner is obliged to comply with the relevant generally applicable legal regulations and international agreements governing the employment of citizens of a given country abroad, or specifically in the Czech Republic, and to comply with them.
- 2) In the case of simultaneous activity (see Article 3 (3)), the EU employee is obliged to apply to the Social Security Administration in the relevant Member State for a certificate of affiliation to Social Security Legislation (form A1) without delay after confirming the possibility of employment at the SU; the patron is obliged to draw attention to this obligation and verify its fulfilment on an ongoing basis.
- 3) If an EU employee works at the SU on the basis of an agreement between the SU and an employer from another Member State, proof of compliance with the working conditions applicable in the Czech Republic may be required by the State Labour Inspection Office (see EP Directive); the employee should therefore have a copy of the employment contract with his employer, the document on the basis of which he performs his activity in the Czech Republic and the documents on salary, all including translation into Czech.
- 4) If an EU employee is not covered by health insurance while working at the SU in the country of residence, he/she may apply to the health insurance company with which he/she is registered in the Czech Republic for a document confirming the right to the full care in the country of residence (form S1).
- 5) Employee 3Z, who will need a work permit to work at the SU (see Article 3 (4)), is obliged to deliver the documents necessary for the conclusion of the employment relationship immediately

after confirming the possibility of employment at the SU; the patron is obliged to notify the employee 3Z about this obligation and to convey the documents to PaM.

- 6) During the employment relationship, the foreigner is obliged to notify PaM of any change in personal data, any material fact or a change in previously reported facts that could result in a change in the employee's jurisdiction regarding his/her tax residence or social security legislation (only EU employees) immediately, no later than within three working days.
- 7) In the event of non-compliance or breach of obligations by the foreigner, resulting in non-compliance with binding deadlines or obligations of the SU towards the relevant institutions, the foreigner is responsible for the damage incurred by the employer in connection with this (e.g. duplicate payment to the social security system of both states, unjustified tax advantages, any fees, penalties or costs of legal representation of the employer related to the retroactive determination of the employee's affiliation to social security law).
- 8) **Upon termination of the foreigner's employment** on the date specified in the employment contract (non-employment contract), the patron shall ensure, in good time, the usual settlement of obligations arising from the employment relationship. In addition to ensuring normal obligations related to the termination of employment, PaM is also responsible for providing information to the Employment Office about its termination.
- 9) If the employment relationship with the foreigner is to be terminated before the date specified in the employment contract (agreement on work outside the employment relationship), the patron is obliged to notify PaM of this fact immediately and at the same time develop the necessary cooperation in order to secure the obligations related to the termination of employment properly, in particular in relation to the relevant institutions.

Article 6

Posting of Workers to Work Abroad

- 1) The Employee shall perform work abroad in particular:
 - a) when participating in conferences, work placements, study visits, increasing or deepening qualifications, i.e., at the expense of the SU or on the basis of a free agreement between the SU and a foreign entity, as part of organized exchange programs, etc., and the employee is not remunerated by another foreign entity for this work;
 - b) on the basis of an agreement between SU and a foreign entity, i.e., within the framework of the remuneration service provided by SU to this entity, while the employee is not remunerated for this work by another foreign entity (the remuneration will be received by SU);
 - c) on the basis of an agreement individually negotiated between an employee of the SU and a foreign entity; the employee usually receives salary or other remuneration from another entity abroad in addition to the salary from the SU.
- 2) Prior to commencing work abroad, the employee is obliged to verify the specific conditions of work abroad for each individual case, to which PaM employees will provide the maximum possible cooperation, especially when it comes to securing obligations towards the relevant institutions in the Czech Republic. Compliance with related obligations towards social and health insurance institutions and tax authorities both abroad and in the Czech Republic is the responsibility of the employee.

- 3) The general rules on work and residence in another Member State and in third countries apply in a similar way to foreign nationals working at SU (see Article 3). An important criterion for determining certain obligations is the duration of work abroad.
- 4) If the employee performs work abroad and stays there in connection with employment for more than 183 days, he/she must identify his/her tax residence; the period must be determined according to the relevant double taxation agreement (available at <https://www.mfcr.cz/en/legislativa/dvoj-zdaneni/overview-platnych-smluv>). If the employee becomes a tax non-resident of the Czech Republic, he/she is obliged to notify PaM within 3 working days (in the country where he/she becomes a resident, then he/she can apply for local tax benefits or reliefs).

Article 7

Specific Conditions of Work in Another Member State

- 1) In particular, when working in another Member State, it is necessary to follow the EP Regulation, according to which the employee is subject to the social security (including health insurance) legislation of only one Member State, the basic rule for determining the relevant legislation being the rule of the State of the place of employment. Exceptions to this rule are then allowed (see paragraphs 6 and 9), which must be demonstrated and supported by a Certificate of Social Security Compliance (Form A1).
- 2) The certificate of affiliation to social security legislation (form A1) is issued by the OSSZ on the basis of the "Joint application of the employee and the employer for the issuance of a certificate of affiliation to social security legislation" (form pursuant to Section 104 (3) of Act No. 187/2006 Coll., on sickness insurance, as amended). The employee is obliged to process this application together with the PaM's payroll accountant before going abroad, according to the specific conditions of his work abroad (see the EP Regulation). The request, including the required attachments, shall be submitted by the employee to the OSCE competent according to the place of his/her permanent residence, which, based on the assessment of compliance with the specified conditions, shall issue him/her with a Certificate of Entitlement to Social Security Legislation (Form A1). The employee must inform the OSSZ about the temporary or concurrent work in the Czech Republic and in another Member State by submitting this application no later than 30 days from the date of its commencement.
- 3) The most common exceptions to the rule referred to in paragraph 1 include the so-called "**posting**", where the employee usually performs work for the SU in the territory of the Czech Republic and is temporarily posted to the territory of another Member State to perform the same work or part of it abroad as part of the employment relationship with the SU (see Article 6, paragraph 1, letters a) and b), or Article 12 of the EP Regulation) for a period of maximum 24 months. In such a case, the employee remains covered by the legal regulations of social security of the Czech Republic (he is not subject to the legal regulations of social security of the state where he performs work); he must be able to prove this fact on request by submitting a Certificate of belonging to the legal regulations of social security (form A1). Proof of affiliation to social security legislation should not be required from a worker if the work referred to in Article 6 (1) (a) is carried out in a Member State for less than 30 days, that is to say, the work ends before the obligation to notify the start of the service has arisen; the worker should, if necessary, be able to prove with appropriate documents the reason for and duration of the work carried out in the Member State.
- 4) Jurisdiction in respect of sickness insurance on posting to another Member State shall be established by the European Health Insurance Card (EHIC) issued by the health insurance

company with which he/she is registered, under which he/she is entitled to the necessary and necessary treatment under conditions similar to those enjoyed by nationals of the country concerned. In addition, he/she is obliged to ask the Department for Science and Foreign Relations of the part to arrange health insurance covering costs not covered under ordinary health insurance.

- 5) In the case of work carried out in another Member State on the basis of an agreement between the SU and an entity from that Member State pursuant to Article 6 (1) (b) (for example, conference lectures), the staff member may be required to prove compliance with the working conditions applicable in that Member State (see EP Directive or, where applicable, the arrangements (exceptions) applicable in that Member State); the staff member should therefore carry a copy of the contract of employment with the SU, the document on the basis of which he carries out his activity abroad, the salary assessment and the decision on the granting of the performance or management bonus, all including a translation into the relevant language; in the event that the minimum hourly salary resulting from these documents does not correspond to the minimum salary in that Member State, the staff member must request a certificate from the PAM confirming the payment of the minimum salary supplement.
- 6) Another exception to the rule set out in paragraph 3 may (subject to certain conditions) be the so-called '**overlapping of activities**', i.e., the simultaneous or alternating performance of work for SU and other profitable activities in another Member State (see Articles 6 (1) (c) and 13 of the EP Regulation, respectively). In order for an employee to remain covered by the social security legislation of the Czech Republic (he/she is not subject to the social security legislation of the country where he/she works), he/she must be able to prove this fact to a foreign employer at the time of commencement of gainful employment abroad by submitting a Certificate of belonging to the social security legislation (form A1).
- 7) In the case of overlapping activities in two or more countries, the rule is that the employee is entitled to full medical care in the country where he/she pursues his/her profitable activity under the law of that country. The specific country of affiliation to the sickness insurance scheme shall be determined according to the nationality of the social security legislation (form A1). If the employee is not subject to the social security regulations of the Czech Republic while working abroad, he is obliged to notify his health insurance company no later than 8 days from the moment when this fact occurred and return the European Health Insurance Card (EHIC). It may also ask the health insurance undertaking with which he/she is insured in a Member State to issue a document certifying entitlement to full care in the country of residence (S1 form).
- 8) According to local legislation, when a worker is posted to work in a Member State, registration of his residence may be required, in particular depending on his duration and the nature of his work; the employee is obliged to check the current conditions before travelling.
- 9) For basic information on working conditions and obligations during stay in individual Member States, internal Methodological Sheets for sending employees to the EU/EEA and Switzerland are available on the intranet SU in the Employee menu, folder Instructions and procedures. In accordance with the legislation, individual Member States are obliged to publish information related to working conditions on national websites accessible from a single place, namely: https://europa.eu/youreurope/citizens/national-contact-ooints/index_en.htm?topic=work&contact=id-611494

Article 8

Final Provisions

1) This Guideline shall enter into force and effect on the day of its publication on the Intranet.

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Enclosures:

Annex No 1:	Proposal to employ a foreigner
Enclosure No 2a:	Dotazník na zaměstnání cizince
Enclosure No 2b:	Questionnaire for employment of a foreigner
Enclosure No 3a:	Čestné prohlášení o jediném zaměstnavateli
Enclosure No 3b:	Affidavit on a single employer
Enclosure No 4a:	Čestné prohlášení o daňové rezidenci
Enclosure No 4b:	Affidavit about a tax residence

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