

RANDA HAVEL ■ LEGAL

How to Employ Foreigners During the State of Emergency?

In connection with the COVID-19 pandemic, the government adopted a series of crisis measures which have an immediate impact on the employment of foreigners and their work in the Czech Republic.

These include:

- (i) a ban on entry for foreigners to the Czech Republic and a ban on leaving the Czech Republic; and
- (ii) suspension of the reception of new visa applications and applications for temporary and permanent stays in the Czech Republic, as well as the suspension or discontinuation of proceedings regarding previously submitted visa applications or applications for stays in the country.

The above crisis measures have a major impact on employers who employ foreigners from third countries (i.e. countries outside the EU/EEA and Switzerland). However, the projects and supplies of entrepreneurs who do not directly employ any foreigners but who use the services or supplies from foreign subcontractors can be also significantly influenced by these measures. In order to minimize the negative consequences of the above-mentioned prohibitions, we have prepared a brief overview for you of selected specifics related to the employment of foreigners at the time of the state of emergency.

Specifics of Entry of Foreign Workers into the Czech Republic During the State of Emergency

There are several exceptions to the general ban on entering the Czech Republic and the ban on traveling out of the country during the state of emergency which can be applied in the case of arrival of foreign workers. One of them is an exception for **workers who regularly cross the borders of the Czech Republic for the purpose of work (so-called cross-border workers)**. This exception is most often mentioned in relation to Czech employees commuting to work to Germany and Austria, but it can also be used the other way round (i.e. in relation to foreign workers coming from neighboring countries to work in the Czech Republic).

Although this exception applies in particular to workers who normally commute to work in a neighboring state daily or at regular intervals, it can also be used for the arrival of employees of foreign suppliers or subcontractors for the implementation of an international project (e.g. in the construction industry). However, it should be mentioned that these workers must be workers from neighboring countries of the Czech Republic. Moreover, these cross-border workers (commuters) must meet several prerequisites which differ according to the state from which they enter the Czech Republic. Therefore, it is always necessary to consider carefully whether this exemption is applicable in a particular case, all the more so since the rules for applying this exemption have changed several times in the state of emergency.

Another exception to the ban on entry for foreigners in the Czech Republic is the exception for **employees of critical infrastructure services**. This is an exception for foreigners who are to carry out urgent or emergency servicing of critical Czech infrastructure - i.e. infrastructure that is so important that any disruption of its functioning would have a serious impact on the security of the state, security of basic living needs of the population, human health or state economy. It follows from the above that only a limited group of entities will be able to benefit from this exemption (in addition to critical infrastructure operators, also certain major suppliers to such operators). The advantage of this exemption is that, unlike some of the exceptions for cross-border workers, it neither provides for a minimum period of stay nor for a maximum distance of the place of work from the borders.

In this context, it should be emphasized that the possibility of using any exemption from the ban of entry at the time of the state of emergency must always be assessed individually. For the application of individual exceptions, it may be decisive e.g. the worker's domicile, the content of the employment contract or the activity to be performed by the worker in the Czech Republic.

Specifics of Employment of Foreigners from Third Countries During the State of Emergency.

Currently, receipt of applications for residence permits is suspended at embassies of the Czech Republic. As a result of this measure, foreigners from third countries wishing to work in the Czech Republic can obtain a work permit, but they cannot receive a residence permit that is absolutely necessary for employment in the Czech Republic.

If foreigners are already working in the Czech Republic, then they can continue to work here during the state of emergency. This applies even if their work permit expires before the state of emergency ends. The validity of a work permit is automatically extended after certain conditions have been met, up to a period of 60 days from the date of expiry of the state of emergency. Also, foreigners whose residence permit expires during the state of emergency are entitled to remain in the Czech Republic for the duration of the state of emergency.

Foreigners working in the Czech Republic can change their employer during the state of emergency at any time. However, the change can only be made if (i) the new job is registered in one of the relevant central records of vacancies for foreigners maintained by the Labor Office of the Czech Republic or (ii) a new work permit is obtained. **In view of the above, it is recommended to employers who are currently interested in employing foreigners to focus primarily on recruiting foreigners already residing in the Czech Republic.**

If an employer is forced to terminate or not prolong their employment relationship with a foreigner due to the economic impact of the pandemic, they are asked by the Ministry of Labor and Social Affairs to assist such employees with registration of the status of a job seeker on the website of the Ministry of Labor and Social Affairs, or to provide them with assistance in dealing with the situation (e.g. assistance to return to their country of origin). If the employer fails to comply with this obligation, the employer is at risk of limiting participation in or exclusion from government migration programs.

We have extensive experience with the issue of employment of foreigners (including the application of individual exceptions to the ban on foreigners entering the Czech Republic during the state of emergency). We regularly monitor all restrictions and obligations arising from the crisis measures issued in connection with the state of emergency. We will be happy to provide you with legal assistance in this matter.

If you have any questions regarding the employment of foreigners, not necessarily only during the state of emergency, please contact Lenka Droscová lenka.droscova@randalegal.com or Jakub Adámek jakub.adamek@randalegal.com.

