



As from July 30, 2020: the revised Posted Workers Directive (EU) 2018/957 will enter into force in France

July 2020

Posted workers are perceived as a source of social competition between Member States. The difference of social contributions can be attractive but new obligations introduced by the revised Directive will be taken seriously.

Key changes to the revised Posted Workers Directive

The main changes introduced by the revised Directive are as follows:

- ✓ application to posted workers of all the mandatory elements of remuneration (instead of the “minimum rates of pay”);
- ✓ application to posted workers of the rules of the receiving Member State on workers’ accommodation and allowances or reimbursement of expenses during the posting assignment;
- ✓ for long-term postings (longer than 12 or 18 months), application of an extended set of terms and conditions of employment of the receiving Member State.

“Equal pay for equal work”

Reminder: According to the Law n°2015-990, France is already taking into account the elements of wages for the minimum rates of pay (see the EU case of February 12 2015, Sähköalojen ammattiliitto ry, C-393/13).

Now, posted workers will benefit from the principle of same remuneration as local workers.

The concept of same remuneration covers all local mandatory constituent elements of remuneration in the host State by national law, by regulation, by industry-wide agreement and by interprofessional agreement.

France has exclusive competence to set rules on remuneration matters.

Member States will publish on an official website the information focused on the elements of remuneration.

Please note that it will be necessary to compare the total gross pay of posted workers with local workers ones.

New rules added in the “hard core” minimum standards

Under the 1996 Posted Workers Directive, rules included in the core minimum standards were following (article L1262-4 of French Labour Code):

- Maximum work periods and minimum rest periods;
- Minimum paid annual leave;
- Minimum rates of pay including overtime rates;
- Conditions of hiring out workers through temporary works agencies;
- Safety, health and hygiene at work;
- Pregnancy and maternity protection;
- Equal treatment between men and women.

The set of core minimum working conditions is expanded to include:

The conditions of an accommodation if provided by the employer applying in the host Member State;

The same mandatory indemnities/allowances as local employees in order to cover expenses actually incurred on account of the posting, such as travel, board and lodging when posted workers are away from home for professional reasons.

The employer must reimburse such expenses in accordance with the national law and/or practice that applies to the employment relationship.

Limitation of the period of assignment

The revised Directive provide that the rules on assignment may be applicable for a maximum of 12 months. The period may be extended by 6 months on the basis of a reasoned notification, without exceeding a total of 18 months.

If the posted worker is replaced by another in the same position, the 12 months will be calculated cumulatively.

The calculation of the 12-month secondment period will also take into account any ongoing postings starting before July 30, 2020.

⚠ **With regards to the duration under labour law (18 months) and under social security law (24 months according to the EU Regulation n°883/2004), a distortion could be created. No revision of the EU Regulation for a possible coordination is scheduled yet.**

After this period, posted workers are entitled to all mandatory working conditions of the host Member State.

In France, the application of this provision will not be expanded to the company-wide agreements (i.e. the posted worker is not bound to the host company by an employment contract).

However the revised Directive will exclude from this principle the rules related to the conclusion and termination of employment contracts and the supplementary occupational retirement pension schemes.

Sanctions

- ✓ Prohibition or suspension of services provision if non-compliance with rules with respect to posting workers.
- ✓ New administrative fines (EUR 4,000 per breach, EUR 8,000 in case of repeated offenses recorded within a period of 2 years).

Our team remains at your disposal for any question you may have in relation to posted workers.

Contacts



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