

Posted Workers Directive

Time for action

Overview

In a move to further guarantee that the rights and working conditions of employees are protected throughout the EU, employers today face greater obligations and liabilities in most Member States with respect to their international assignees and business travellers.

Since June 2016, the legislation mandated by the Posted Workers Enforcement Directive has led to strict practical requirements being imposed on employers in areas such as the tracking of overseas postings, and the retention of employment documents. These employer obligations are increasingly under the spotlight, with greater scrutiny and strict penalties being imposed for compliance failures. This publication provides context to the Posted Workers requirements, and gives a flavour of the ways that Deloitte can support you.

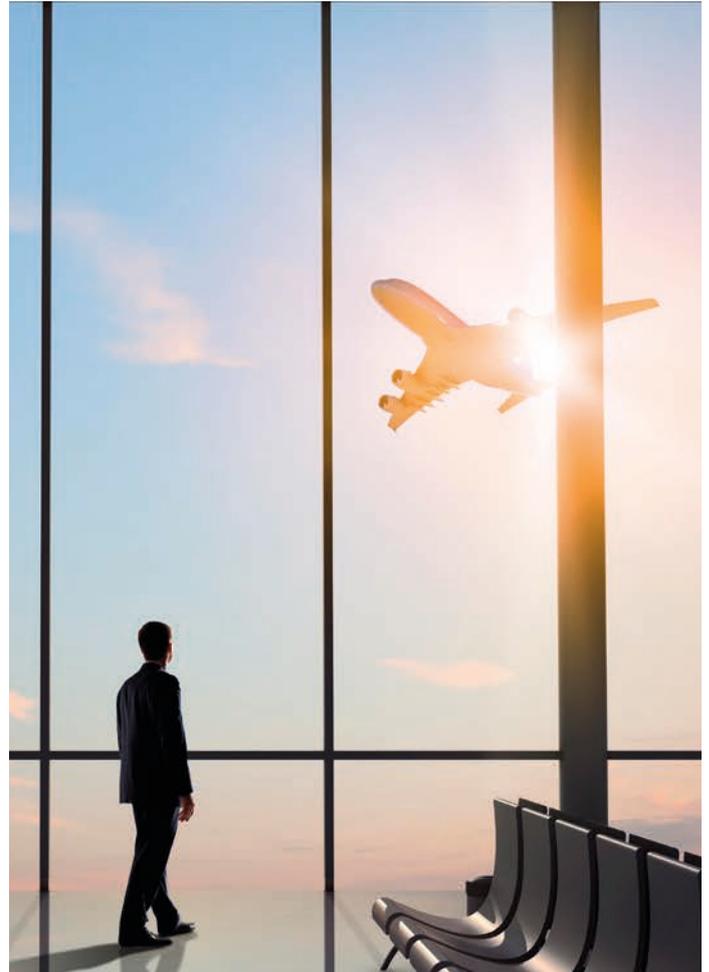


What is a posted worker?

A posted worker is a worker who, for a limited period, carries out his or her work in an EU member state other than the state in which he or she normally works.

Posted workers may be sent to another EU member state to carry out work for their employer's customers or clients, or to work for a subsidiary or associated employer established in that other state. Workers who are hired by an employment or placement agency to carry out work for a client in another EU member state are also posted workers.

The continued growth of mobility within the EU has created enforcement challenges at a national level.



Legal Background

Posted Workers Directive (1996)

The objective of the 1996 Posted Workers Directive (96/71/EC) was to guarantee that the rights and working conditions of posted employees are protected throughout the EU and to address a number of concerns such as 'social dumping' – the undermining of minimum local terms and conditions by the use of cheap foreign labour.

Under the PWD, Member States are obliged to guarantee to posted workers certain minimum terms and conditions of employment that are received by local workers in the host country. These include minimum wages, working time and paid leave.

The rapid growth in the number of intra-EU postings has created enforcement challenges at a national level, with a rise in abusive and fraudulent practices, particularly in certain labour intensive sectors. Questions were raised as to whether or not the PWD provided a sufficiently strong legal framework for ensuring sufficient protection of posted workers.

Posted Workers Enforcement Directive (2016)

In 2014 the EU adopted an Enforcement Directive to strengthen the protection of posted workers and stop circumvention of the rules. The aim was to enhance and harmonise the practical scope, execution, and enforcement of the Posted Workers Directive. EU Member States had to implement the new PWD **by June 18, 2016** into their national law. Some countries (e.g. Belgium, Spain, Italy and Poland) have decided to implement the provisions not only to the posting of workers between Member States, but also to workers coming from non-EU countries.

How will the PWD create a more structured enforcement?

Better information exchange between authorities

The Directive sets out requirements for information exchange, inspections and mutual assistance between Member States and their respective authorities when identifying breaches and enforcing rights.

This is facilitated by the EU Commission's internal market information system.

Cross-border enforcement of financial administrative penalties

The Directive creates a better system for penalties to be notified and recovered across borders within the EU.

Monitoring and compliance

The Directive sets out what information requirements individual Member States can impose on companies posting workers. Each member state is implementing the rules to varying degrees, presenting further challenges for employers.

Increased scope

Certain Member States have extended these sanctions to all overseas postings (not just EU postings), meaning individuals previously not captured/monitored will now require attention.



Employer requirements: time for action

The 1996 Directive was mainly of concern just to employers of blue-collar workers in certain labour intensive sectors such as agriculture and construction. The 2016 rules however extend compliance obligations to every mobile employee and every employer, regardless of the posted workers' pay and conditions, forcing more employers to pay attention for the first time. Combined with a much stronger enforcement approach from the EU, and strict penalties/sanctions for failure, now is the time for employers to focus on their responsibilities:



Prior notification

Most EU Member States now impose an obligation for foreign employers to report postings before the first day of work.

This creates new challenges for HR in terms of tracking cross-border workers who may travel 'under the radar' and who hadn't previously required tax, social security or immigration support.



Liaison person

Allocation of a liaison person for labour inspections and, in a few countries, designation of a contact person for collective bargaining with the social partners.



Retention of social documents

An obligation on employers to keep copies of employment documents (such as payslips, employment contracts and work schedules). These may also need to be translated into the official language(s) of the host country and to be retained for a certain period.



What if employers fail to act?

Failure to comply with PWD requirements can lead to fines for both the sending and receiving companies.

The measures also empower trade unions and other parties to lodge complaints and to take legal and/or administrative action against the employers of posted workers, if their rights are not respected.

A number of EU Member States have introduced very large fines of up to EUR 500,000 (payable by employers) where there is a breach of new registration requirements.



How Deloitte can help your organisation

Our robust and structured delivery model will help employers manage the administrative requirements of the PWD and prevent sanctions resulting from non-compliance.

The new rules effectively present a two-stage process for employers. The first, and arguably more challenging aspect, are the registration requirements. The second is ensuring on-going compliance with the PWD itself:

Registration and representation requirements

- Tracking and management of the notification and extension requirements, in accordance with local country processes in all 28 EU Member States.
- Document storage, where legally permissible.
- Acting where possible, as a representative with the local labour authorities on your behalf.
- Providing businesses with insights into their mobility challenges and risks beyond PWD.

Compliance with the Directive itself

- Reviewing compliance with minimum wage legislation, as well as other employment conditions such as working time, paid leave or health and safety rules.
- Support through labour inspections.



Central PWD knowledge and leadership



Project management



Local labour law expertise



Global mobility expertise



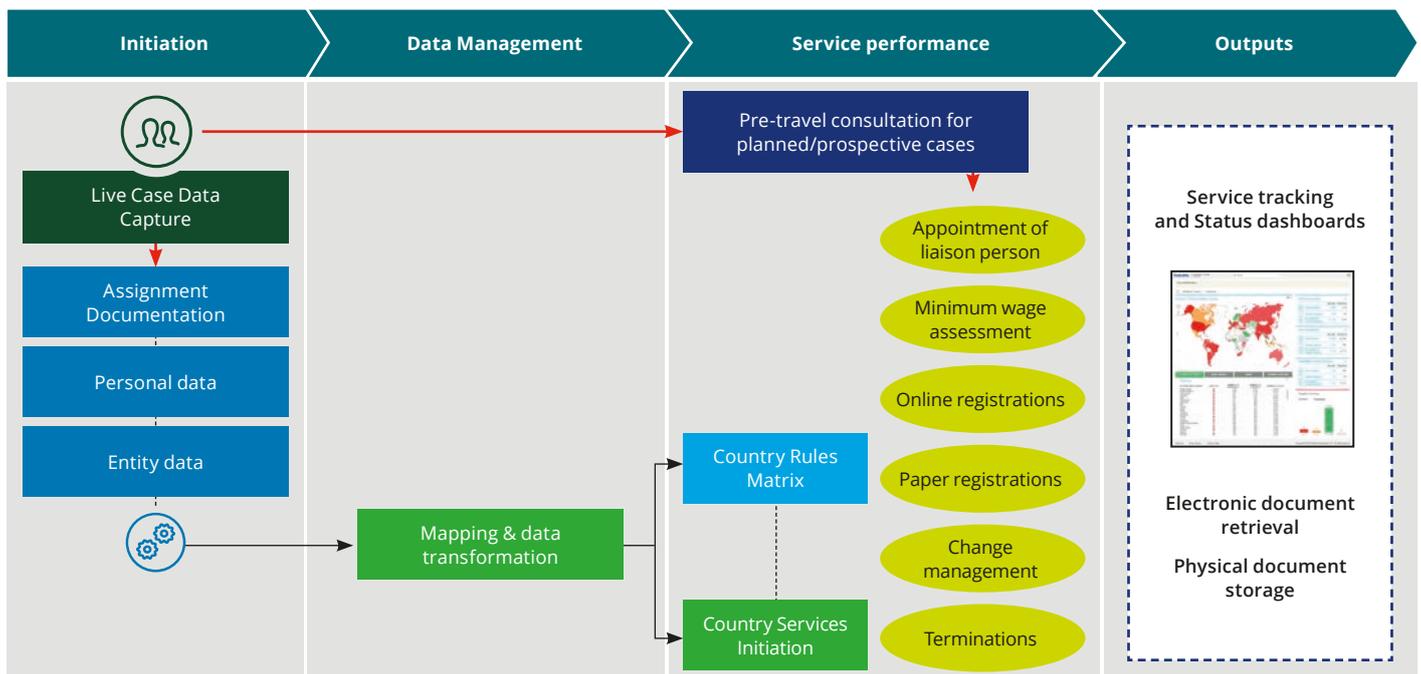
Expert back office teams



Multi-lingual capability

Operational Model

Swift execution from the initiation of cases through to processing of registrations is critical. Depending on the host country, certain activities will need to be processed in advance of the start of the assignment, whilst in some locations a specific timeline applies. Our delivery model is technologically focussed and our intuitive dashboards allow for transparent reporting. Below is an overview of our delivery model which can be tailored to client-specific needs.



Summary

The compliance landscape under PWD is evolving rapidly. The extent of implementation of the Directive is substantially different in each EU member state, with some locations such as Germany and the UK implementing almost no new regulations, while locations such as Austria have taken a much more compliance-heavy approach.

The increased scrutiny and onerous penalties that mean now is the time to ensure that your organisation has processes and policies in place in order to adapt to this new compliance environment.



Contacts



John Weekes
Partner

Global Employer Services

Tel: +44 20 7007 1466

Mob: +44 7823 533058

Email: jweekes@deloitte.co.uk



Filip Van Overmeiren
Contract Partner

Employment and Social
Security Law

Tel: +32 2 800 70 77

Mob: +32 486 90 11 98

Email: fvanovermeiren@laga.be



Renaat van den Eeckhaut
Partner

EMEA Global Employer
Services Leader

Tel: +41 58 279 6986

Mob: +41 79 578 4160

Email: rhvandeneeckhaut@deloitte.ch



Scott McCormick
Partner

Global Employer Services

Tel: +493025468313

Mob: +4915158002770

Email: scottmccormick@deloitte.de

Deloitte.

This publication has been written in general terms and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Deloitte LLP accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 2 New Street Square, London EC4A 3BZ, United Kingdom.

Deloitte LLP is the United Kingdom affiliate of Deloitte NWE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NWE LLP do not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

© 2017 Deloitte LLP. All rights reserved.

Designed and produced by The Creative Studio at Deloitte, London. J13505