



## Global Employer Services Immigration

### The new EU Practical Guide on Posting: key highlights

The European Commission published a Practical Guide on Posting, which aims at helping employees, employers and national authorities understand the rules on the posting of workers, including the applicable labour law, upfront notification obligations and the upcoming 2020 “equal pay for equal work” changes.

Understanding these rules is essential to ensure that workers are aware of their rights, and that the rules are correctly and consistently applied by national authorities and employers across the EU.

Several noteworthy points from the guide are highlighted:

- In almost all Member States and before workers are posted, employers have an obligation to provide a pre-travel notification to the relevant authority overseeing the posting. In most Member States, this notification is communicated online. In addition, an A1-form needs to be requested in the home country (in advance if possible).
- In principle, pre-travel notifications should not be required for many business trips, as these cannot be considered as provision of services. However, host country notifications currently apply to short-term business travelers in most Member States. It remains to be seen how they will react to the Commission’s recommendation.

- As of July 2020, the obligation for employers to respect the host country's "minimum salary" will change to a broader alignment of "remuneration". It is specified that remuneration includes all elements thereof mandated by law in the host country, or required by universally applicable collective bargaining agreements. In order to understand the amounts due, a comparison between the amount actually paid to the worker and the amount due under host country rules is needed.
- Host Member States have the obligation to create and maintain a single national website with information on the terms and conditions applicable to workers posted on their territory, including those stemming from collective agreements made universally applicable by national authorities, or applicable because they meet the above mentioned conditions.
- Certain elements paid to the worker in accordance with home Member State rules cannot be considered as elements of required remuneration in the host Member State: payments for overtime, payments for expenses actually incurred because of posting and any payment compensating the worker for additional work or for work completed under particular conditions (this cannot be deducted from the worker's salary).
- There are two categories of collective bargaining agreements that should be applied to posted workers in the host Member State:
  - Those which have been made universally applicable;
  - Those which are generally applicable to all similar undertakings of the geographical area, profession or sector concerned, or that have been concluded by the most representative social partners at national level and are applied throughout national territory.
 It is up to the host Member State to identify which collective agreements comply with the abovementioned criteria.
- Remuneration also includes any allowances specific to posting unless they are paid in reimbursement or compensation of expenditure for travel, food and lodging.
- The employer must reimburse the posted worker for travel, food and lodging expenditure in accordance with the national law and/or practice applicable to the employment relationship (generally the home Member State's law and/or practice). These amounts paid by the employer are paid or reimbursed in addition to the core remuneration.
- A posted worker who, during the posting assignment, is required to travel to and from the regular place of work in the host country, or is temporarily sent by the employer from that regular place of work to another work location, is entitled to any allowance or reimbursement of expenses required by the host country's law or generally applicable collective agreements.
- In case of long-term postings, all of the host Member State's required applicable terms and conditions of employment (except regarding termination and occupational pensions) are applied once the actual duration of the

posting exceeds 12 months (or 18 months following a justified notification from the employer).

- Employers who plan to post workers to another Member State need to communicate information to those workers in writing and before the worker's departure. This information, typically in an assignment letter, is mandatory for all workers posted for a consecutive period of more than four weeks, and contains:
  - the country or countries in which the work is to be performed;
  - the anticipated duration of the work abroad;
  - the currency to be used for the payment of remuneration;
  - where applicable, the benefits in cash or kind relating to the work assignments;
  - information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation;
  - the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
  - where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure for travel, food and lodging;

## Deloitte's view

The "equal pay for equal work" principle completely changes the landscape for posted workers. Each Member State is currently in the process of transposing the Directive and determining what "remuneration" exactly means before introducing the legislation needed to turn this concept into law.

These changes significantly increase the focus on posted workers in EU Member States. Given the likely increase in enforcement activity that will follow the introduction of these new rules, it is critical that employers with cross-border populations check whether they are compliant with the rules regarding applications for A1's and pre-travel notifications, before the framework becomes even stricter.

For every cross-border work-related activity (including "business trips") the employer, or any self-employed person concerned, is under the obligation to notify the competent (home) Member State, in advance whenever possible, and obtain an A1-form. In practice, most companies and social security authorities work with practical *de minimis* rules for A1-forms, unless possession of the latter is sanctioned or required for the pre-travel notification's filing.

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