



Global Employer Services Posted Workers Directive

PWD 2020 transposed in Belgian legislation: minimal impact but some key changes

On 28 June 2018, the European Union adopted the European Directive 2018/957 (revised Posted Workers Directive, PWD 2020). As covered in the [April Update on PWD 2020](#), all Member States are required to align their domestic legislation to the revised posting rules by 30 July 2020.

On 28 May 2020, Belgium adopted the Act containing various provisions on the posting of workers. On 18 June 2020, the Act was published in the Belgian Official Journal. This new law transposes the PWD 2020 principles into Belgian domestic legislation and will enter into force from 30 July 2020.

As expected, the Act does not have any substantial impact for employees assigned to Belgium, given that PWD is very broadly implemented in Belgium. Belgian labour law, in its near entirety, is already applicable to posted employees as of the first day of their assignment. Although there is no substantial impact, the Act still implements new principles that need to be taken into account going forward. A few key points of attention are explained below.

Equal Pay for Equal work

Since almost all parts of Belgian labour law are already applicable to posted employees assigned to Belgium, including

all salary conditions, the revision will have minimal impact in this area.

Nevertheless, there are two important changes to keep in mind:

- The notion of “remuneration” currently includes any allowances specific to posting unless they are paid as reimbursement of travel, board and lodging expenses. The Belgian Act now adds that if it is not clear which elements of a posting allowance are paid as expense reimbursements, rather than as additional salary, the entire allowance is then considered an expense reimbursement and will not be accepted as a remuneration element. Consequently, these allowance(s) will not be taken into account for comparing the amount actually paid to the employee and the amount due under Belgian salary requirements.
- Intra-Belgian work-related travel, board or lodging cost reimbursements, due as part of Belgian collective bargaining agreements that are declared universally binding, will also need to be provided to employees posted to Belgium.

Application of full mandatory labour law

The new rules state that after 12 months of posting, the host state’s full mandatory labour law provisions will become applicable, with the exception of termination rules and occupational pension schemes. For example, after the initial 12-month period, Belgian provisions relating to guaranteed pay in the event of an illness or accident will also become applicable to posted employees (limited to activities performed after this 12-month period).

It is important to note that in order to determine whether the 12 month limit of employment is exceeded for an assignment already in effect on 30 July 2020, the employment period immediately prior to 30 July 2020 must also be taken into account.

The 12-month period can be extended to 18 months based on a reasoned notification. Such reasoned notification must be submitted within statutory deadlines to avoid the extended scope of labour law provisions becoming applicable. For assignments that have already been operative for more than 12 months on 30 July 2020, but within 18 months, the reasoned notification must be made on 30 July 2020 at the latest.

Once again, from a Belgian point of view, there is no substantial impact resulting from this new rule, since almost the entirety of Belgian labour law is already applicable to posted employees as of day one.

Information for employers

Further to European PWD rules, Member States have to indicate the employment terms and conditions, applicable to posted employees in their territory, on their official national website. In Belgium, this information can be found on the

website for the Belgian Federal Public Service of Employment, Labour & Social Dialogue.

A new principle is that if this website does not mention the applicable employment terms and conditions, or does so inadequately, any mitigating circumstance needs to be considered when determining a fine for non-compliance. Consequently and where appropriate, this will lead to a reduction of this fine.

Deloitte's view

Our experts will monitor further progress in transposing PWD 2020 and the "equal pay for equal work" rule it introduces in other EU countries. Updates will be issued accordingly.

Whilst business travel has been on hold due to COVID-19 restrictions, cross-border movements are progressively resuming. Employers can use this reactivation period to define and implement new processes further to PWD. The following recommendations should be taken into account:

- In advance of the new rules coming into force on 30 July 2020, look to implement processes to ensure compliance with current legislation on posted employees – not only in Belgium but also in other EU countries (pre-travel notifications, appointment of liaison persons and social documents), both for assignees and business travellers;
- Monitor the latest developments regarding the revision of the Posted Workers Directive and its implications in every EU country, mainly with regard to "equal pay for equal work";
- Review which specific legislation and sectoral collective bargaining agreements need to be taken into account when sending people across the EU;
- Review payroll processes and consider which enhancements need to be put in place to enable salary uplifts for posted employees, definitely from low-wage to high-wage countries;
- Assess the current legal framework of posted employees, such as assignment letters, annexes or employment agreements, as well as expat or international mobility policies, to determine whether it is clear which elements of a posting allowance are paid as expense reimbursements rather than as additional salary;
- For postings already in effect on 30 July 2020, verify whether it will be necessary to submit a reasoned notification on this date to benefit from the extension to 18 months;

More information on the PWD 2020 is available on this [dedicated channel](#).

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