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Conditions of posting of workers and registration of a posted worker

All world markets, including the job market, are constantly changing. An increasing number of employers get the possibility to post their employees abroad to work in other countries, as well as to purchase services from a foreign employers. A legitimate question that may arise in such cases is, are we dealing with posted worker or a worker on a business trip?

When it comes to posting of workers in the framework of the provision of services, the European Parliament and Council Directive 96/71/EC ("**the Directive**"), which has been implemented to the Estonian law as the Working Conditions of Employees Posted to Estonia Act ("**LWCE**") applies.

The latest version of **LWCE** has entered into force on December 17, 2016 and its aim is to ensure **the legal protection of workers posted to** Estonia from the EU Member States, EEA Member States or from the Swiss Confederation ("**foreign country**"), as well as to ensure fair competition between the employers providing services. It has become mandatory for the employers to **register all the workers posted** from the foreign countries with the Estonian Labour Inspectorate, which should ensure a better supervision over the compliance with the legal requirements.

How to distinguish between a posted worker and a worker on a business trip?

According to the Estonian Employment Contracts Act ("**ECA**"), a worker is on a business trip when an employer sends the worker to perform his duties outside the workplace prescribed by the employment contract. The term posted worker is defined in the Directive. Posted worker is a natural person, who usually works in a foreign country on the basis of the employment agreement and whose employer has posted him to Estonia to provide services during a fixed period of time. Neither minimum nor maximum length of this period is established. It is important to ensure that the employee has a valid employment agreement during the whole period of posting.

It is important to distinguish between a posted worker and a worker on a business trip in order to establish which country's labor law shall apply and in which country shall the payroll taxes be paid.

Both in case of the posted worker and a worker on a business trip it is important, whilst paying the payroll taxes to the right country - to take into account the length of posting, the identity of the tax payer, the content and aim of the tax. Either way, it is necessary to analyse all the possible rights and obligations of both the employee and the employer.

LWCE applies to the workers posted to Estonia in the following cases:

- Working at the employer's expense and subject to the employer's management and supervision, on the basis of a contract concluded between the employer and a contracting entity resident in Estonia;
- Working in a branch office of the employer or in the company, that belongs to the same corporate group as the employer;
- If the employer is a legal person or sole proprietor that intermediates temporary workforce.

This means that a posted worker always needs a specific recipient in Estonia - service purchaser, parent company or a subsidiary of a concern, branch office or in case of temporary work, the principal company. For example, a Swedish banking concern sends their controller to temporarily work in the Estonian subsidiary or the Estonian company

orders construction and reparations services to be performed in Narva from the Ukrainian company.

However, in case of a business trip a recipient company is not necessary. For example, if the Estonian audit office's employee flies to attend a meeting with the management of the Danish parent company of the client or if a manufacturer of wooden houses sends their employee to a fair in Germany.

Conditions of the posting of workers. In general local laws shall apply to posted workers in Estonia, including the conditions on work and rest fees, salary, compensation for overtime hours, main holidays, equal treatment, equal opportunities and temporary agency work conditions, except where the provisions of foreign country laws are more **favourable** to the posted worker. For example, in case where the minimum wage in the host country is less than it is in the home country of the employee, the home country's minimum wage shall apply. However, if the laws of a foreign country or a joint contract in some specific field prescribes a higher minimum wage limit, the Estonian employer has to pay the posted worker a salary according to the regulations valid in his country of destination.

If the employer has failed to apply the working conditions that should be applicable in the particular case with regard to the posted worker, then the Estonian Labour Inspectorate has the right to **fine** this employer with up to **EUR 3200**.

The employer of the posted worker and the service purchaser must agree which one of them will be responsible for the compliance with health and safety laws. Without such an agreement, a person responsible shall be the service purchaser.

LWCE also contains an exception with regard to skilled workers, whose posting lasts up to 8 days - in such case the conditions for the payment of salary and compensation for overtime hours, as well as the conditions for the length of the main holiday valid in Estonia shall not apply. Skilled worker is defined as a person whose duty is the initial assembly or first installation of goods necessary for taking the goods ordered into use, if such work is an integral part of a subscription contract.. This exception shall not be applied if the work done by the posted employee is connected with construction work involving the construction, renovation, maintenance, alteration or demolition of buildings, including excavation work, earthmoving work,

actual construction work, or the assembly and demolition, connection and installation, modification, renovation, repair, disassembly, demolition, maintenance, painting, cleaning or repair of prefabricated components.

The registration of posted workers

The employer has to register all workers posted to Estonia with the Estonian Labour Inspectorate. The registration must be filed electronically via e-mail and contain the following information

- The name of the employer of the posted worker, personal identification number or registry code , area of activity, place of residence or location, contact information, name and contact information of a contact person;
- The number of posted workers, their names, personal identification numbers or dates of birth;
- The approximate length of the posting and its planned start and end date;
- The service purchaser and/or person, who the posted worker will be working in Estonia for, name, personal identification number or registry code, area of activity , place of residence or location, contact information, name and contact information of a contact person;
- The field of activity, in which the posted worker will be working in Estonia, as well as the address, where the posted worker will be working.

This information shall be submitted on the **first day of work** at the latest. In case the employer has failed to comply with notification requirements, the Estonian Labour Inspectorate will have the right to issue a precept **or demand a penalty payment**.

In conclusion, every situation needs to be analysed separately to identify whether we are dealing with a posted worker or a worker on a business trip, which country laws are applicable and in which country the labor taxes shall be paid. In addition, we advise that before posting the employees to provide services in foreign countries, the Estonian employers should find out whether or not and on what conditions these employees are required to be registered in these countries.