



**In this issue:**

Sweden: Stricter rules proposed regarding posting of workers under EU Posted Workers Directive (PWD) ..... 1

---

**Sweden:  
Stricter rules proposed regarding posting of workers under EU Posted Workers Directive (PWD)**

**What is the change?**

On February 21, 2020, the government of Sweden referred a proposal for new legislation implementing the revised posted workers directive<sup>1</sup> (PWD) to the Council of Legislation. By July 30, 2020, PWD should be implemented in Swedish legislation.

The government’s proposal will create stricter requirements for employers who post workers in Sweden, and the companies that receive the cross-border services will also be assigned new responsibilities.

Posted workers will receive more comprehensive protection through a wider application of Swedish labor laws. Swedish labor unions currently have a legal right to impose industrial action against foreign employers in order to regulate

---

<sup>1</sup> Directive (EU) 2018/957 of The European Parliament and The Council of June 28, 2018, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

terms and conditions within the hard core in the posted workers directive.<sup>2</sup> However, this right is restricted under current rules as only terms and conditions at the minimum level can be demanded. Under the proposed legislation, the terms and conditions that may be enforced through industrial action are no longer limited to minimum levels. In addition, several new terms and conditions in accordance with the expanded hard core in the PWD can be enforced through industrial action.

The main features of the proposal include:

- Wage-related collective agreement terms demanded by industrial action are no longer limited to minimum wage.
- Collective agreement terms for reimbursement of expenses for travel, board and lodging as well as conditions for accommodation can be demanded through industrial action.
- Reimbursement of costs related to the posting should not be considered when assessing whether a posted worker has received the correct wage. A presumption rule is further proposed stating that all remuneration received by the posted employee should be regarded as reimbursement of costs if it cannot be shown that the remuneration constitutes wages.
- For long-term postings (12 or 18 months), additional working and employment conditions that apply to locally employed workers in corresponding situations should also apply to posted workers. A posting can be extended to a total of 18 months without constituting a long-term posting if a notification of this extension is submitted to the Swedish Work Environment Authority (SWEA).
- When assessing whether a posting is long term, several postings should be counted as one if a posted worker replaces another posted worker. When assessing whether one posted worker is replacing another, consideration should be given as to whether the worker performs the same work at the same place as the original posted worker.
- An employer must inform a posted worker who replaces another posted worker about the total duration of posting in order for the posted worker to be able to exercise his or her right to additional working and employment conditions. Failure to provide such information may result in the employer having to pay damages to the posted worker.
- The possibility of reporting a posting to SWEA's posting register only on the sixth day of the posting is abolished; instead, the reporting obligation begins on the first day.
- Both the foreign employer and the Swedish company that receives the services of the posted worker ("recipient of the services") are required to provide information to SWEA, and both entities are subject to an administrative fine if this obligation is not fulfilled. The employer must report the posting to SWEA and submit documentation to the service recipient showing the report has been made. The recipient of the services shall in turn notify SWEA if such documentation has not been provided within three days.
- SWEA is granted increased authority regarding requests for information, admission to supervision, and decisions on injunctions combined with a fine.
- The proposed legislation provides increased protection for hired-out posted workers.
- Regional safety representatives shall have access to the workplaces that have or usually have collective agreements.

## Background

On December 16, 1996, the first posted workers directive was adopted. The purpose was to coordinate the Member States' legislation in order to establish a core of mandatory minimum protection rules for employers to follow when posting workers in the territory of another EU Member State. More than 20 years after the adoption of the original directive, there was a need to review whether the directive still created the right balance between the need to promote freedom to provide services and ensure equal conditions of competition on the one hand and the need to protect posted workers' rights on the other hand.

On June 28, 2018, the PWD was adopted. The PWD is primarily aimed at achieving equal treatment for posted workers and local workers by expanding the hard core of conditions that must be guaranteed to posted workers and applying the same conditions that local workers receive to long-term posted workers.

---

<sup>2</sup> Directive 96/71/EC of the European Parliament and the Council of December 16, 1996, concerning the posting of workers in the framework of the provision of services.

## What happens next?

The provisions of the PWD must be implemented into Swedish legislation no later than July 30, 2020. The Council of Legislation will review the government's proposal to ensure it does not contravene any laws, after which the government will process the proposal and submit it as a bill to Parliament. The government's bill is expected to be published in March and will contain the final proposal on how the PWD should be implemented into Swedish legislation. After that, the Parliamentary Committee will process the bill before it can finally be adopted by the Swedish Parliament.

## Deloitte's view

The government's proposal is aimed at providing posted workers with generally the same rights and working conditions as local workers in corresponding situations. Sweden has been a driving force behind the EU's work on PWD. The focus has been on protecting the rights and safety of posted workers. Passage of the proposal will likely entail increased activity of the labor unions to enter into collective agreements with employers posting workers in Sweden as well as actively follow up the application of collective agreements terms and conditions. Industrial action to enforce terms and conditions is expected.

Furthermore, the proposal entails several complicated assessments that need to be made, for example to determine if one posted worker should be considered to replace another by performing the same work at the same place. According to the proposal, since this information is to be provided to a posted employee who replaces another, the posting employer will need to make this assessment on an ongoing basis.

The assessment of whether a posting is considered long term can be complicated even without the need to consider whether two or more posting periods should be seen as one. Questions are likely to arise on how the timeframe for the posting should be calculated and what consideration to give to, for example, temporary breaks in the posting.

The assessment of the wage that may be demanded by a labor union by means of industrial action is also likely to cause questions, considering the wage structure is different across industries. A wage consists of several different components, and many different factors must be considered when determining a wage. The additional working and employment conditions to be applied to long-term postings are another area that can be difficult to assess for foreign employers.

The proposed amendment also includes an obligation to report a posting to SWEA starting on the first day of the posting. This will increase the administrative burden on employers, as postings of five days or less will no longer be exempted from the obligation to report. The fact that service-receiving companies will also be required to inform SWEA of cases in which they have not received documentation that the notification has been made adds to their administration burden and implies new requirements on communication and coordination between posting and receiving companies. Furthermore, the requirements for the content of the notification will probably change. A new extension application requirement will also be introduced for a posting of 12 months to be extended to 18 months without triggering additional labor law requirements for the posting employer.

In the proposal, it is noted that in many workplaces, due to for example increased mobility, there are periods in which no local safety representatives are present. Therefore, for the purpose of ensuring a functioning work environment and promoting safety at work, an extension of the rules on regional safety representatives is proposed. This will ensure that regional safety representatives will have access to the workplaces that have, or usually have, collective agreements.

Deloitte continues to follow the work on PWD implementation.

— Johan Mikaelsson (Malmö)  
Director  
Deloitte Sweden  
jmikaelsson@deloitte.se

Martina Ljunge (Stockholm)  
Senior Manager  
Deloitte Sweden  
mljunge@deloitte.se

Torbjörn Hagenius (Goteborg)  
Partner  
Deloitte Sweden  
thagenius@deloitte.se

Sharon Lion (Stockholm)  
Senior Manager  
Deloitte Sweden  
shlion@deloitte.se

## About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organization") serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2020. For information, contact Deloitte Touche Tohmatsu Limited.