Posted Workers Directive
Time for action

Overview

Employers today are faced with ever greater compliance challenges and financial risks across Europe in respect of their international assignees and business travellers. The legislation mandated by the Posted Workers Directive has led to strict registration requirements being imposed on employers, which creates an obligation to increase their oversight and tracking of overseas trips, and retain a wide variety of employment documents for both business travellers and assignees. These employer obligations are being put under increasing scrutiny and penalties are being imposed for compliance failures. This publication provides context to the Posted Workers Directive requirements, and gives a flavour of the ways in which 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 EEA member state other than the state in which he or she normally works. Posted workers may be sent in the framework of subcontracting, intra-company moves or temporary work. However, due to the varied approach to implementing these rules, registration requirements can be triggered for any “work-related presence”.

The continued growth of short term mobility has created significant compliance challenges at a national level.

Legal Background


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 EEA and to address a number of concerns such as ‘social dumping’ – the undermining of local labour markets by the use of cheaper foreign workers.

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.

A rise in abusive and fraudulent practices, particularly in certain labour intensive sectors led the EC to take action. Questions were raised as to whether or not the PWD provided a sufficiently strong legal framework for ensuring sufficient protection of posted workers in all sectors.
Posted Workers Enforcement Directive (2016)
In 2014, the EU adopted an Enforcement Directive to further strengthen the protection of posted workers and stop circumvention of the rules. This has triggered the introduction of different new compliance requirements for employers across the EEA.

Upcoming revisions to the rules (2020)
Effective mid-2020, a new regulation will take effect which extends the 1996 directive to promote the following:
- Equal pay for equal work
- Host country labour law to apply after 12 months
- Stricter rules for temporary work agencies.

How has the PWD led to more vigorous enforcement, and what are the business challenges?

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.

Cross-border enforcement of financial administrative penalties
The Directive has created a better system for penalties to be notified and recovered across borders within the EEA.

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 visitors (not just EEA postings), meaning individuals previously not captured/monitored will now require attention.

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 EEA states have levied very large fines where there is a breach of new registration requirements.

Enforcement in practice
We are already seeing action taken by various EU authorities. In Germany, companies are being warned that they will lose the right to operate in the country following a failure to make the relevant notification. We are also seeing authorities in Switzerland levying penalties and threatening to ‘name and shame’ and black list. In BENELUX countries, the authorities have agreed a joint initiative to intensify and collaborate on audits.
Registration and representation requirements

Our pan-European 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.

- Tracking and management of the notification and extension requirements, in accordance with local country processes in all 28 EU Member States.
- 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.

Operational Model

Rapid execution from the identification of travel through to the processing of registrations is critical. Our delivery model is technology focused, underpinned by robust technical knowledge of the specific country registration requirements, 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

Fraukje Panis
Senior Manager
Legal & Global Employer Services
+31 6 8262 5938
fpanis@deloitte.nl

Ralf Adam
Senior Manager
Global Employer Services
+ 31 6 2221 8123
raadam@deloitte.nl

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.

© 2019 Deloitte LLP. All rights reserved.