



Global Mobility Services Alert

KPMG in Poland

August 2020

The Act on the posting of workers published in the Journal of Laws

On 20 August 2020, the Act of 24 July 2020, amending the Act on the posting of workers in the framework of the provision of services and certain other acts incorporating into the Polish law the provisions of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, was published in the Polish Journal of Laws.

The amendments refer primarily to the rules on remuneration of posted workers and the period of posting.

Their goal is to establish a common framework of provisions, measures and control mechanisms for more efficient and uniform action in the field of posting of workers.

Most of the provisions will enter into force 14 days after the Act's publication.

Period of posting

The currently applicable regulations on the period of posting have not imposed any heavy restrictions, especially on posting duration, they only assumed that posting is temporary. Under the amended provisions, the period of posting is limited to 12 months.

After 12 months, posting still will be possible, yet the posted workers must be guaranteed an additional set of terms and conditions of employment that are mandatorily applicable to workers in the Member State where the work is carried out.

It should be kept in mind that this will not apply to procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses as well as supplementary occupational retirement pension schemes.

Under the amendments, the maximum posting period may be extended to 18 months, given that the service provider submits a motivated notification. **The duration of the posting shall also cover the period for which the posted worker is replaced by another posted worker performing the same task at the same place.**

After the end of the posting period the status of posted workers shall be equal to the status of local workers, yet, under the "principle of advantage", the mandatory domestic rules of the host State shall not prevent application of those terms and conditions of employment in force in the posting State which are more favourable to workers.

Equality of treatment

Importantly, the Act brings changes to applicable legal provisions on protection of parenthood and related rights, the right or freedom to strike, rest periods, days off work, paid leaves, hours of work and rest of adolescent workers, as well as pay, including overtime payment, health and safety regulations, child labour and illegal work, along with reimbursement of expenditure to cover travel (including business trips), board and lodging expenses.

Changes in the rules of remuneration of posted workers

The amendments are to ensure equality of treatment in terms of remuneration. In other words, a posted worker shall be remunerated on the same terms as the comparable permanent workers in the host State ("equal pay for equal work").

The requirement of equal pay for equal work is associated with the obligation on the Member States to provide information on remuneration laid down by laws, industry and regional collective agreements, and with the possibility of verifying market benchmarks by employers.

This amendment is of essential importance to remuneration schemes, since up to now posted workers were paid based on minimum rates applicable in host Member States.

The role of the National Labour Inspectorate

With the introduction of the new provisions, the powers of the National Labour Inspectorate have been extended. The authority is responsible for cooperation with competent authorities from other States in terms of providing information on the conditions of employment of workers posted to Poland, reporting irregularities and offenses related to the posting, requesting inspections, carrying out inspections at the request of authorities of other Member States etc. Under the new regulations, National Labour Inspectorate has been equipped with additional powers to pursue the above objectives.

Problematic issues

The new provisions may pose a challenge to Polish companies in terms of implementation of new administration and logistic procedures. Moreover, due to the pandemic some of the EU States are still struggling to complete legislative processes related to the implementation of new provisions.

Given the above, we encourage you to learn more about how we can assist you in the preparation and coordination of the posting process.

If you have any additional questions, do not hesitate to contact us.

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