

GMS Flash Alert

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Denmark - EU Rules on Posting of Workers Implemented

Last year, Denmark enacted legislation transposing into Danish law¹ EU Directive 2014/67/EU concerning secondments of employees as part of the free exchange of services in the European Union (EU). The Danish Labour Market Fund for Posted Workers (*Arbejdsmarkedets Fond for Udstationerede* or "AFU") is established as a result of the implementation of the Directive.

AFU is an attempt to establish the rights of posted workers to receive correct wages from their employers while working in Denmark.

WHY THIS MATTERS

AFU introduces a new concept in Danish legislation: a Danish enterprise can be held liable if a foreign enterprise does not fulfil its wage obligations. AFU fosters increased supervision of enterprises that do not live up to the terms and conditions stated in the relevant collective agreement. This increased scrutiny could lead to higher costs for enterprises – since, with the introduction of AFU, the business sector is potentially subject to new charges – and unwanted public attention. Higher costs will also result from the imposition of contributions to AFU to be paid by all foreign enterprises registered in the Register of Foreign Service Providers (RUT), as well as Danish-based enterprises.

Background

AFU is a joint fund financed by both Danish and foreign employer contributions. As noted above, all foreign enterprises registered in the Register of Foreign Service Providers (RUT) must pay contributions to AFU. Danish enterprises that are paying the Danish Labour Market Supplementary Pension contribution (ATP) must also pay contributions to the Fund.

The contributions are paid on a quarterly basis and must be paid regardless of the employee's tax and social security status.²

The aim of AFU is to make sure that posted workers receive correct wages if the enterprise fails to meet its wage obligations.

How AFU Will Work

When a posted employee or the employee's trade union notifies AFU about the non-payment of wages, the fund proceeds with a case against the foreign enterprise. This means that AFU is responsible for collecting the unpaid wages from the foreign enterprise. In addition to quarterly instalments, the Danish enterprise will be liable to pay additional contributions to AFU if the foreign enterprise for instance does not meet the wage requirements and is therefore non-compliant.

AFU pays out the wages to the employee if the following conditions for such payments are met:

1. The work performed is covered by a collective agreement;
2. The wage has been determined by the Danish Labour Court;
3. The foreign enterprise is registered in a European Economic Area (EEA) country;
4. The posted employee or a trade union has tried, in vain, to have the wage paid out following the consideration of the case by the Labour Court.

All four conditions must be fulfilled in order for the wage to be paid out by AFU.

AFU will issue a public list with information about enterprises that have been non-compliant to the point that wage payments are actually made by AFU.

KPMG NOTE

AFU establishes heightened supervision of enterprises that do not live up to the terms and conditions stated in the relevant collective agreement. The list could enable Danish enterprises to have more insight when they are choosing a foreign service provider.

FOOTNOTES:

1 See [the text of the legislation \(in Danish\)](#) as published, LOV nr 613 AF 08/06/2016. See [additional pertinent information \(in Danish\)](#).

2 In 2016, the contribution amounts to DKK 11.30 per full-time employee. Foreign employers who are required to pay a contribution are due to receive their first payment order from the AFU at the end of April 2017.

See more information on [AFU \(in English\)](#). See [other pertinent information](#).

Contact us

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