



GMS Flash Alert

Immigration Edition

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Poland - New Rules for Posted Workers under Consideration in Parliament

New legislation has been proposed that would set Poland's national framework governing posted workers.

On 15 June 2020, Poland's parliament, the Sejm, published on its website a bill amending the Act on the posting of workers in the framework of the provision of services and certain other acts transposing 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.¹

The bill's measures are expected to enter into force on 30 July 2020.

WHY THIS MATTERS

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.

This legislation should help employers and their posted workers make more sense of the rules and thereby foster compliance.

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. However, under the amended provisions, the period of posting was limited to 12 months.

After 12 months, posting will still be possible, but 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, or the conditions of the conclusion and termination of an employment contract – that includes non-competition clauses as well as supplementary occupational retirement pension schemes.

Under the amendments, the maximum posting period may be extended to 18 months, as long as the service provider submits a “motivated” notification. In other words, there will be a need to prepare a notification for the Polish Labour Agency with the indication that a period of assignment is being prolonged from 12 to 18 months. 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 worker” shall be equivalent to the status of “local worker.” Moreover, under the “principle of advantage,” the mandatory domestic rules of the host state shall not prevent application of the terms and conditions of employment in force in the posting state that are more favourable to workers.

Equality of Treatment

Other amendments introduced by the bill include changes to applicable legal provisions on protections for parents and related rights, the right or freedom to strike, rest periods, days off work, paid leave, hours of work and rest periods for adolescent workers, as well as pay – including overtime pay – health and safety regulations, child labour, and illegal work, as well as reimbursement of expenditures to cover travel (including business trips), and board and lodging expenses.

Changes in Rules Regarding Remuneration of Posted Workers

The amendments introduced by the bill intend also 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 worker is 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.

Role of the National Labour Inspectorate

With the introduction of the new provisions, the powers of the National Labour Inspectorate have been beefed up. Under the new regulations, the authority shall assume the function of a liaison body responsible for cooperation with competent authorities from other member 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, and carrying out controls at the request of authorities of other member states, etc.

KPMG NOTE

The new provisions may pose a challenge to Polish companies in terms of implementation of new administration and logistical procedures. Moreover, due to the coronavirus pandemic some of the EU states are still struggling to complete legislative processes related to implementation of the new provisions. Another difficulty is the fact that the changes take place in the middle of the year.

FOOTNOTE:

1 For text of the legislation and related documentation (in Polish), see:

<http://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=20DF10820D1E4601C125858C0037D733> .

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GMS Flash Alert is on “summer holiday” Monday, 29 June through Friday, 3 July. There will be no *Flash Alerts* published during this time. Usual publication will resume on Monday, 6 July. Thank you for your continued support of *GMS Flash Alert*!

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The information contained in this newsletter was submitted by the KPMG International member firm in Poland.

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