



Podcast transcript

Revised Posted Workers Directive and its impact on Global Mobility

Podcast with Daida Hadzic, Director, KPMG Meijburg in the Netherlands and Head of Quality, EMA Region for Global Mobility Services*.

Musical intro

Announcer:

Hello, and welcome to the 'Future of mobility', the KPMG podcast series for global mobility leaders. In this series we offer short insightful episodes you can listen to on your way to work or wherever you enjoy your podcasts. This series will look at some of the most pressing issues and opportunities facing global mobility departments in the modern business world through interviews with leaders in global mobility, human resources, tax and other areas of business from KPMG and beyond.

In today's episode, we talk to Daida Hadzic, Director, KPMG Meijburg in the Netherlands and Head of Quality, EMA Region for Global Mobility Services.

Welcome Daida!

Daida:

Thank you, it's great to be here.

Announcer:

So, today we're going to be talking about a topic that is important, but a little bit daunting to a lot of employers sending workers to work in an EU country which, in light of the current COVID-19 environment I suspect is more difficult now – the EU Posted Workers Directive. Perhaps you could start by describing exactly what that encompasses.

Daida:

Of course. In the EU's single market, companies are free to provide services across the EU borders. Indeed you are correct, this is now made more difficult due to COVID-19, but we are seeing that the activity in the market is being resumed and that is why companies should observe the EU Posted Worker Directive.

Every EU country has their own rules for social protection of workers and the levels of salaries are different from country to country. This can then lead to a situation that posted workers are paid less than local workers and that posted workers can have disadvantageous terms and conditions for their employment compared to the local workers in the same position. So in order to protect the posted workers and ensure fair competition, the EU countries have adopted a Directive to protect the terms and conditions for employment of posted workers during their work abroad.

Announcer:

So, in that context, who are posted workers?

Daida:

Well, for the purposes of this Directive, posted workers are those individuals who are employed in one EU Member State and sent or "posted" – by their employer to another EU Member State, to provide services for a limited period of time.

Announcer:

So, we probably need another definition. What does "provision of services" mean in this context?

Daida:

As I already mentioned, freedom to offer and provide cross-border services in the European Union is one of the pivotal elements of the EU single market. For example, if I am sent by my employer to another EU country to, let's say, manage a project, do work in construction, operate machines, etc., then there would be no doubt that I am providing services within the scope of this Directive.

However in some situations the scope of the term "provision of services" can be complex.

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Announcer:

Daida, are business travelers in the scope of posted workers?

Daida:

As a general rule of thumb, business travelers who exclusively attend meetings, conferences, trade fairs, and so forth, are not in the scope of these rules. On the other hand, if a business traveler, for example, goes to work on specific projects, then this would likely be a posted worker. I would point out here that each Member State implements the rules for posting of workers according to their own national legislation. So it's important to understand the scope of posted workers through each country's legislation, as there are some countries that might extend the rules for posted workers to some who might be considered business travelers today.

Announcer:

OK, so that's who's affected. Now, what's the impact of the posted worker directive?

Daida:

Yes, in the current Directive, posted workers must meet certain labor law requirements in the host country. A posted worker's wage must be paid at least minimum wage of the host country, so that he or she isn't underpaid in comparison to local workers. Requirements for maximum working time and minimal resting time apply accordingly to the rules in the host country. The same goes for rules on annual leave, health and safety, and anti-discrimination regulations. But all other labor law requirements during the posting will apply according to the rules of the *home* country.

Announcer:

You mentioned "in the current Directive". Are there changes in the works?

Daida:

Yes, a revised directive has been set forth, and must be adopted into each EU member country's national laws by 30th of July 2020. The current requirements will continue to apply in the new and revised Directive on posting of workers, but with some significant changes.

- First of all, under the revised directive, postings will be limited to 12 months, though it will be possible to extend the posting by an additional 6 months. Under the current directive, a posting has no time limit.
- Also, under the revised Directive, a posted worker must be remunerated according to the rules in the host state, whereas, as I mentioned before, under the current Directive posted workers must simply be paid the minimum wage of the host country. An example of the effect of this change would be, let's say a Christmas bonus is guaranteed to workers in the host country, then that bonus should be paid to posted workers as well.

- And finally under the revised directive, the rules of the host country will apply for accommodations, and to allowances or reimbursement of expenses during the posting.

Announcer:

How has the current environment of COVID-19 impacted this?

Daida:

The countries are going ahead with transposing of this directive in their respective national legislation, so if you are thinking about delays in the implementation there don't seem to be any nor are delays necessary when we talk about the protection of posted workers. Companies have to take the requirements for employment law into consideration anyways so you can say this is an update of already existing rules. COVID-19 has brought about restrictions as to how we protect health and safety in a work place which will lead to more inspections and likely more scrutiny when people enter the labor market from abroad.

Announcer:

So you mentioned that the directive applies to a posted worker for 12 or possibly 18 months. What happens after that? Do they have to go home?

Daida:

Oh no, but longer postings will fall *entirely* under the labor law of the host country.

Announcer:

Many businesses may be concerned about the obligation to register posted workers. Where does that fit in?

Daida:

Well, all 27 EU Member States have registration system for employers to notify the local authorities about the posted workers. This registration requirement will continue with the implementation of the revised Posted Workers Directive. The concern you're sensing probably comes from the fact that a lack of compliance with the labor law requirements and/or registration obligation can result in significant financial fines, as well as reputational damage because this legislation is linked to "social dumping" of posted workers. Although there is no unified definition for it, the term "social dumping" is most frequently used to describe practices where employers prefer cheaper labor force from abroad rather than employing local workers. And of course the new time limit on postings introduces a new urgency to tracking assignments, so that workers on longer assignments don't fall afoul of local labor regulations.

Announcer:

So what is the risk associated with non-compliance?

Daida:

As each EU Member State is responsible for the enforcement of these rules themselves, how much the authorities focus on inspections and other initiatives that govern compliance varies from country to country. However, this may change because now there is a European Labor Authority that will support local enforcement of the law. Countries may also conduct joint inspections and reviews of compliance and this may result in broadening the focus from compliance with the Directive, to quality of information – that is, how does the paperwork correspond to actual circumstances. I will also mention that now due to the general COVID-19 related restrictions that impact how we work with each other, some countries have already announced that more inspections or working places will be conducted to ensure health and safety, so all in all more inspections are to be expected across to board.

Announcer:

If we stay on the path of COVID-19 for a moment, how should companies act if they have registered posted workers before COVID-19 hit and were afterwards forced to send them back to their home country or change their place of work, for example working from an accommodation of some kind in the host country?

Daida:

On a general note, countries have shown leniency to measures implemented by companies in order to protect health and safety of their workers during COVID-19. If the workers who have left the host country and went home come back to the host country, I would recommend to check the original registration and make a new one if necessary. The workers who have stayed in the host country on the other hand, but work temporarily from another location, companies should consider if a change of the registration is necessary, depending on the outlook of the workers returning to the originally intended working location. So in conclusion, check your registrations and make corrections or submit entirely new registration when you are ready to resume work.

Announcer:

So Daida, there's 27 countries, 27 sets of rules, and 27 different registration systems – how should non-EU companies approach compliance?

Daida:

Well this is both easy and difficult to reply. The EU Directive does not put requirements on non-EU employers. So, contrary to employers in the EU, non-EU employers cannot post workers to an EU country without work and residence permits. In this process, there is a set of requirements that needs to be met, for example in respect to salary. However, the majority of the EU countries seem to believe that the registration obligation also applies to non-EU employers. So, these employers should make themselves familiar if the registration obligation applies to them.

Announcer:

OK Daida, but if a non-EU company is also an EU employer via its affiliates, what should they do?

Daida:

EU employers should review their contracts and revise their policies for posted workers in order to make sure that the terms and conditions for employment in the host country are met. They should also pay attention to the registration obligation, because the registration obligation is often required before posted worker arrives in the host country. So in conclusion, they must act as any other EU employer.

Announcer:

Daida, there's a line of thinking that says that the revised directive may result in an increase in pay for posted workers. What would you say to this statement?

Daida:

Well in my personal opinion there will be a change for those posted workers who are paid minimum wage in the host country, because the revised directive gives them access to all other parts of remuneration that are guaranteed to local workers. However, when we're dealing with let's say executives and professionals, posted workers are generally paid more than a minimum wage, so the revised directive is unlikely to have any significant effect for them, though in principle an employer could lower a person's base wage to balance out any extra compensation items required under the revised directive. In any event, the new remuneration requirements may add to the complexity of everyday management of posted workers, because of differences in remuneration requirements in each country for specific groups of employees, specific industries, and so forth. But I question whether the overall effect of the revised directive would be an increase in pay for posted workers.

Announcer:

Daida, there's a lot to consider here. Any closing thoughts?

Daida:

Posting of workers is a sensitive topic in Europe, and regardless of what economic effects may result from it, it is extremely important to comply with these rules. A primary objective of the directive is to protect posted workers and create more fairness in the EU single market. That's why non-compliance leads to both financial sanctions and significant reputational damage. It's clear by now that managing the Posted Workers Directive is a complex task and the revised Directive is not simplifying anything in this context. It varies from country to country from how the scope is identified, to what requirements are presented for the registration of posted workers. In KPMG, we are working with technology-driven solutions that support assessment and compliance with the Directive. We use different technological solutions tailored to the businesses — whether it be for the employment law requirements or registration obligation or both.

Announcer:

Thanks, Daida. Now we know who to reach out to when a posted worker question comes up.

Daida:

Yes, anyone can connect with me via LinkedIn if they have questions or feel free to reach out any KPMG global mobility professional in the EU home or host country for the worker.

Announcer:

Thanks, Daida. That's great and thanks for your time today.

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Thanks for listening.

Musical exit

