



GMS Flash Alert

Immigration Edition

2020-327 | July 23, 2020

Belgium – Revised European Posting Rules Transposed into Belgian Law

The revised rules on posted workers have been implemented in Belgian legislation and will enter into force on 30 July 2020.

In this *GMS Flash Alert*, we briefly describe the main changes in Belgium’s legislation. It should be noted that the Directive has consequences for labour law only and not for social security matters. These aspects are regulated by Regulation (EC) No 883/2004 on the coordination of social security systems. Also, taxation and enforcement aspects are governed by other national, bilateral, or European legislation.

WHY THIS MATTERS

The 2018 revision of the EU’s Posting of Workers Directive (“PWD”) introduced changes in three main areas: remuneration of posted workers (including in situations of subcontracting), rules on temporary agency workers, and long-term posting. As a result, employers and their posted employees can expect to see more national legislation transposing these new rules in the context of a posting within Europe.

Employers and their employees, as well as the professional service providers that support them, should stay apprised of developments as their processes and policies may need to be adjusted to help ensure compliance with Belgium’s – and each member state’s – PWD-related rules.

Background

The Posting of Workers Directive (96/71/EC)¹ was adopted in 1996 in order to combat unfair competition and to guarantee a minimum level of protection to posted workers. It determines that in case an employee is sent by his employer to carry out a service in another European Union (EU) member state on a temporary basis, the host state’s “hard core” (discussed below) set of labour law provisions applies during the assignment period.

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On 28 June 2018, the EU adopted a new directive (2018/957)² revising the Posted Workers Directive of 1996. The revision introduced changes in three main areas: remuneration of posted workers (including in situations of subcontracting), rules on temporary agency workers, and long-term posting. As a result, more national legislation may apply in the context of a posting within Europe. EU member states are required to amend their posting rules before 30 July 2020.

In Belgium, the revised directive has been implemented by the Act of 12 June 2020, in respect of several positions for workers who are posted³.

New Law Concerning Posting of Workers in Belgium

The revisions introduced under the new law brought changes in three areas:

- Remuneration of posted workers;
- Long-term posting;
- Rules on temporary work agencies.

The provisions will enter into force on 30 July 2020, without retroactive effect. In the transport sector, the current PWD will continue to apply until the sector-specific European legislation that is currently under negotiation comes into force.⁴

Remuneration of Posted Workers: Equal Pay for Equal Work

The Revised PWD introduced the principle "equal pay for equal work," which implies that the remuneration of assigned employees should be at the same level as the salary of local workers, including the additional salary elements such as bonuses or allowances. Considering that Belgium had already implemented the PWD in a very broad sense, the revision has a minimal impact.

It was already stipulated in Belgian legislation that an employer who temporarily posts its workers to Belgium is required to respect a "hard core" of minimum mandatory Belgian rules concerning working conditions, including rules on working hours, salary conditions, public holidays, etc., which implies that almost the entire Belgian labour law code was applicable to posted employees even before 30 July 2020. The revision brings, however, more clarity around the concept of remuneration. As the Revised PWD requires that member states set out in a transparent way the different elements of remuneration in their territory, the new Belgian legislation specifies that the "hard core" provisions will now include rules on the payment of allowances or reimbursement of expenses covering travel, accommodation, and food expenses for workers who are away from home for professional purposes.

Long-Term Posting: Full Application of Mandatory Labour Law Provisions

When the effective duration of the posting exceeds 12 months, an employer that is posting its workers to Belgium will be required to respect all the legal and regulatory working and employment conditions in force in Belgium.

This implies that from the 13th month of posting, compliance with working conditions will no longer be limited to the "hard core" set of rules; rather the rules on a guaranteed salary in the event of illness or accident are also applicable. As an exception, the employer of the posted worker is not obliged to comply with the rules relating to concluding and terminating employment contracts, including non-compete clauses and the rules on complementary pensions.

In case the posting already started before 30 July 2020, and will continue beyond this date, the work already performed prior to this date shall be taken into account to determine whether the 12-months' limit has already been reached and whether the full mandatory Belgian labour law provisions should apply as from 30 July 2020. However, the period before 30 July shall not be retroactively subject to the more extensive package of employment and working conditions in case it already exceeded the 12-months' limit.

It should also be noted that the employer, via a reasoned notification to the authorities, may temporarily derogate from this rule up to and including the 18th month of posting.

Obligation to Provide Information in Case of Temporary Agency Work

The revised legislation introduces new information obligations for companies established in Belgium using posted employees.

When a Belgian company uses a temporary agency worker posted from another state to Belgium, it must inform the foreign temporary employment agency, in writing or by electronic means, of the working and employment conditions applicable in its company such as conditions relating to working hours, overtime, holidays, measures on well-being, and anti-discrimination.

Furthermore, if a Belgian user company intends to send a temporary agency worker to another member state to carry out work, the user company must give prior notice to the temporary employment agency which member state(s) (other than Belgium) the services will be provided in. This obligation also applies in the context of other forms of permitted lending of personnel and employer groups.

Any breach of these information obligations could result in criminal sanctions.

KPMG NOTE:

Action Steps to Consider

As of 30 July 2020, more national legislation may apply in the context of a posting within Europe. The impact of the new Belgian law is relatively limited.

However, the following points are important:

- From 30 July 2020, foreign employers who post workers to Belgium for more than 12 months will have to apply a more extensive array of employment conditions;
- Belgian companies to which workers are posted have to take into account the new information obligations imposed in case of temporary work and permitted posting of personnel (e.g., intra-group posting).

FOOTNOTES:

1 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0071> .

2 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 at: <https://eur-lex.europa.eu/eli/dir/2018/957/oj> . For coverage of the revised directive, see the following issues of *GMS Flash Alert*: [2020-292](#) (23 June 2020), [2018-111](#) (24 August 2018), and [2017-160](#) (6 November 2017).

3 *Loi du 12 juin 2020 portant diverses dispositions concernant le détachement de travailleurs* at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020061205&table_name=loi .

4 For coverage of the reform of the transport/haulage sector, see *GMS Flash Alert 2020-220* (7 May 2020).

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