

GMS Flash Alert

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Poland - Enactment of Legislation on Posting of Workers in EU

The Polish government has enacted new rules that pertain to the remuneration of posted workers in the European Union and the period of posting.¹ The 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.

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 (*Dziennik Ustaw*).²

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

WHY THIS MATTERS

All employers employing posted workers should pay attention to the recent legislative changes.

The list of working and payroll conditions that must be applied to posted workers is now broader than in the past. Furthermore, long-term posted workers (the workers posted for more than 12 months or 18 months) are now entitled to all working conditions prevalent in the host country, except for the legal regulation of the origination, change, and termination of an employment relationship.

The new rules could have the result of increasing the costs related to the posting of workers and, simultaneously, a higher administrative burden for employers.

Period of Posting

Directive 96/71/EC has not stipulated any maximum period of posting. It has been only assumed that posting means carrying out work by an employee for a limited period in the territory of a member state other than the state in which he normally works. Under the amended provisions, the period of posting has been restricted to 12 months.

After 12 months, posting still will be possible, although 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, as long as 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 the 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 over-time pay, health and safety regulations, child labour and illegal work, along with reimbursement of expenditures to cover travel (including business trips), board, and lodging expenses.

Changes in the Rules of Remuneration of Posted Workers

The amendments contain provisions for 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 as laid down by laws, industry, and regional collective agreements, and with the possibility of verifying market benchmarks by employers.

The above information obligations result from provisions of Directive 2014/67/EU which stipulate that member states shall take the appropriate measures to ensure that the information on the terms and conditions of employment is made generally available free of charge in a clear, transparent, comprehensive, and easily accessible way at a distance and by electronic means, in formats and in accordance with web accessibility standards. Usually, such information is published on one official website, which for Poland is the National Labour Inspectorate website. **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 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, the National Labour Inspectorate has been equipped with additional powers to pursue the above objectives.

KPMG NOTE

The new provisions may pose a challenge to Polish companies in terms of the implementation of new administration and logistical procedures. Moreover, due to the pandemic, some of the European Union member states are still struggling to complete legislative processes related to the implementation of the new posted worker provisions.

FOOTNOTES:

1 For prior coverage of Poland and the amended EU directive on the posting of workers, see GMS [Flash Alert 2020-296](#), 25 June 2020. And on the earlier EU directives concerning the posting of workers in the framework of the provision of services, see GMS [Flash Alert 2016-091](#), 11 August 2016.

2 See the full text of the [Directive 2018/957/EU](#) on posting of workers. Also, see the full text (in Polish) of the Act of 24 July 2020, amending the Act on the posting of workers in the framework of the provision of services and certain as published in *Dziennik Ustaw (Warszawa, dnia 20 sierpnia 2020 r., Poz. 1423)*. For related coverage of the directive, see GMS [Flash Alert 2020-329](#) (27 July 2020) and [Flash Alert 2020-292](#) (23 June 2020). For coverage of the revised directive, as well as what other countries are doing to transpose the directive into national law, see the following issues of GMS *Flash Alert*: [2020-371](#) (26 August 2020), [2020-356](#) (14 August 2020), [2020-334](#) (29 July 2020), [2020-329](#) (27 July 2020), [2020-327](#) (23 July 2020), [2020-292](#) (23 June 2020), [2018-111](#) (24 August 2018), and [2017-160](#) (6 November 2017).

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