

GMS Flash Alert

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European Union – Equality of Treatment between Frontier Workers and Local Residents

On 16 May 2024, the Court of Justice for European Union (EJEU) delivered a ruling¹ in which it found that Luxembourg’s denial of family allowances to a frontier worker because the individual was not a resident of Luxembourg is contrary to EU law.

Frontier workers in this context are workers who reside in one EU member state and who work in another EU member state.

WHY THIS MATTERS

Workers who reside in one EU member state and work in another EU member state are covered by social security in the country where they work.

The principal of coverage under the social security scheme of the country of work means that workers who do not reside in the country responsible for their social security may not be discriminated on the basis of their residence when they are awarded social security allowances/benefits.

It is important that workers who do not reside in the country responsible for their social security coverage know that they must be treated equally to workers who reside in that country when their right to social security allowances/benefits derives from EU rules for social security.²

Context

European rules for social security³ stipulate that regardless of what type of cross-border working situation a worker has, only one EU member state can be responsible for social security at a time. This means that social security contributions are due only in the EU member state that is responsible for social security, and social security benefits come from that country.

If a worker and/or his/her family members do not reside in the country responsible for social security, residence in another EU member state cannot be used as a reason to diminish the rights of a worker and his/her family members to benefits.

More Details

A worker who resided in Belgium and worked in Luxembourg was covered by Luxembourg social security, including family benefits/allowances. A child was placed in the worker's household by a court order and for several years he received family allowances from Luxembourg for the child.

In 2017, the Luxembourg Children's Future Fund withdrew family allowances, claiming that family allowances are only paid to children with a direct parent-child relationship with a frontier worker (legitimate, natural or adopted children). At the same time, children who resided in Luxembourg and who were placed in care under a court order were entitled to receive family allowances that were paid to the person holding custody of the child.

CJEU ruled that differences in treatment between frontier workers and resident workers as described above is contrary to EU law. Residence in this instance cannot justify the disadvantageous outcome for a frontier worker and a child in his care as compared to a worker with a child in care who are residents of Luxembourg.

MEIJBURG & CO. INSIGHTS

There have been several recent cases where national authorities have denied, indexed or reduced social security benefits to workers in cross-border working situations. Sometimes a worker and his/her family reside in another country, and in other instances a worker resides in the country of work while the family resides in another country.

Family benefits are often a right that derive from residence and from work. This means that a worker can have a right to family benefits in both a country of residence and a country of work. That is why coordination of family benefits is regulated by specific rules stipulated in the EU regulation for social security.⁴ However, a worker cannot be left with lesser benefits when a worker is in a cross-border working situation.

This case demonstrates that it is important for workers in a cross-border working situation to act if their benefits are diminished compared to local workers in the same situation. This can be difficult to identify, but may be the case if benefits are denied, reduced, indexed or in any way altered because the worker is in a cross-border working situation, for example because residence is in different country.

FOOTNOTES:

1 Case C-27/23 Hocinx, [FV v Caisse pour l'avenir des enfants](#), 16 May 2024.

2 Regulation (EC) no [883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems](#).

3 See footnote 2.

4 See footnote 2.

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Contact us

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