



EU Posted Workers Directive Quarterly Review

2023-04 Winter



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PWD Registration / Notifications -Top Tips

France

Changes to PWD notification form

The French form has been simplified and several questions have been removed, including those related to travel expenses, start and end times, dangerous material handling, and contract signature date. Employers will therefore no longer need to gather this data prior to making a submission.

Denmark

Contributions to Danish Labour Market Fund for Posted Workers by service providers (employers)

Denmark has established a fund that ensures that posted employees receive wages while working in Denmark. In a case that a posted employee does not receive adequate or any wages during posting, employee can claim coverage of those wages from the fund. Several conditions must be met before wages can be covered by the fund.

All employers in Denmark and foreign service providers who post workers to Denmark must contribute to the fund. Foreign service providers who are not established in Denmark will receive an invoice following their registration of posting(s).

Annual contribution to the fund in 2022 was approx. EUR1 per full time employee and in 2023 contribution was EUR0. Contribution for 2024 is yet to be disclosed. [Read more.](#)

European Union

PWD considerations of remote work under the framework for social security

The EU social security framework agreement for telework from the country of employee's residence, applicable within most of the EU since July 2023, allows more flexible working across EU borders without change to social security contributions and benefits.

The framework agreement for social security has no impact on PWD obligations. The framework agreement concerns a specifically defined situation of teleworking in the country of employee's residence. This means that while teleworking under the framework agreement for social security an employee does not provide services to local service recipient(s) and that is why PWD obligations will not be triggered. There may, however, be tax implications for the employee and employer.



Administration News

European Union

12 Member States participated in inspection in construction sector

November 27, 2023: European Labour Authority (ELA) concerted joint inspection in construction sector in six member states with active participation from authorities in 12 member states. A total of 196 companies were inspected, 400 workers were interviewed, 16 construction sites were inspected, and 113 possible infringements were detected. Inspections focused on issues like subcontracting chains, letterbox companies, fake posting of workers, and undeclared work.

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European Union

Reinforcing legal migration

November 15, 2023: In response to challenges faced by European employers, particularly small- and medium-sized enterprises (SMEs), European Commission (EC) takes three actions to facilitate the attraction of global talent. These actions include making recruitment from outside the European Union (EU) more accessible, expediting the recognition of professional qualifications gained in third countries, and promoting learning mobility for all.

The EC aims to establish 'EU Talent Pool' to simplify hiring process for non-EU jobseekers and has set targets for attracting education graduates, learners with fewer opportunities, and vocational learners by 2030.

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European Union

Lessons learnt from peer reviews of single national websites on the posting of workers: booklet available now!

October 20, 2023: European Labour Authority's (ELA) booklet "Lessons learnt for single national websites on the posting of workers" is out now!

Booklet compiles findings of peer reviews of national websites on the posting of workers and it is intended for national authorities and institutions dealing with legal information.

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European Union

Joint Inspection on a construction site in Germany

October 17, 2023: On October 19, 2023, a joint inspection concerted by European Labour Authority (ELA) was conducted in a construction site near Berlin, Germany.

The German inspection authority *Zoll/Finanzkontrolle Schwarzarbeit* in Potsdam hosted Polish colleagues from inspection authority *Państwowa Inspekcja Pracy* as observers during construction site inspection. Approximately 30 workers were scrutinized, uncovering individuals using counterfeit from the European Union (EU) member state ID cards.

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European Union

#EU4FairConstruction campaign launched

October 17, 2023: On October 17, 2023, European Labour Authority (ELA) launched an awareness campaign in Helsinki, Finland, alongside the inaugural joint inspection between Finland and Estonia.

The campaign focuses on informing workers and employers about their rights and responsibilities, particularly regarding posting.

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European Union

Joint cross-border controls on river cruise ships

October 6, 2023: 270 inspectors in total from Austria, France, Germany, the Netherlands, and Slovakia carried out coordinated inspections of river cruise ships.

The inspection covered 36 ships and 38 companies, revealing offenses such as undeclared work, illegal employment, breaches of minimum wage rules, and labour and nautical violations. Legal proceedings have been initiated, with 65 cases requiring further investigation.

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European Union

Report addressing shortcomings with compliance in construction sector

September 20, 2023: European Labour Authority (ELA) published a report addressing shortcomings in enforcement and awareness activities regarding posting of workers in construction sector.

Conducted between October 2022 to May 2023, the study reveals prevalent violations like letterbox companies, non-compliance with working conditions, and fraudulent practices. The report suggests preventive measures, including social ID cards, subcontracting chain liability schemes, among others.

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European Union

Simplifying procedures for Europe's SMEs, incl. declarations and A1 certificates for social security

September 12, 2023: The European Commission (EC) presented initiatives to support small- and medium-sized enterprises (SMEs) in Europe, facing economic challenges.

The SME Relief Communication proposes short-term relief, long-term competitiveness measures, and fairness in the single market. New proposals include a regulation on late payments and a directive on a Head Office Tax System for SMEs. The SME Relief Communication includes measures to simplify administrative procedures and reporting requirements for SMEs. The commission will be simplifying and digitalizing cumbersome procedures like declarations and certificates for the porting of workers (like A1 document on social security rights).

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Case Law and Legislation

European Union

Court rules on compensation for part-time workers

October 24, 2023: The Court of Justice of the European Union (CJEU) has ruled that it is prohibited to require part-time workers to complete the same number of working hours as full-time workers in order to receive additional remuneration.

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Austria

[Supreme Court rules on termination of temporary agency worker's employment during the probationary period](#)

October 2023: Austrian Supreme Court ruled that termination of contract during probationary period could be an abuse of rights. Here, the court emphasized the need to assess whether unfair motives outweigh fair ones, taking into account the initiation of the previous employment relationship's dissolution.

The case was remanded for further findings on whether the termination aimed to circumvent payment during the company vacation.

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France

[Court of Cassation sets precedent for platform worker reclassification](#)

October 2023: French Court of Cassation addressed the classification of platform workers, specifically focusing on a courier working for "Tok Tok Tok."

The courier in the case sought reclassification from a delivery services contract to an employment contract, citing elements of subordination, such as the company providing assignment orders, necessary equipment, a bank card etc. The Court of Cassation censured the lower courts for not conducting a comprehensive analysis of the delivery driver's working conditions. The ruling underscores the need for lower courts to scrutinize various factors to establish the existence of a relationship of subordination in cases involving platform workers that can lead to a reclassification to employment relationship.

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Ireland

[Supreme court clarifies employment status of pizza delivery drivers](#)

October 2023: Irish Supreme Court affirmed the Commissioner's decision that pizza delivery drivers were employees, not self-employed contractors. The ruling was based on evidence of substantial employer control over the drivers, despite some characteristics of self-employment.

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Italy

[Landmark ruling on remuneration clause in a collective agreement](#)

October 2023: Italian *Corte di Cassazione* addressed the remuneration clause in a collective bargaining agreement concerning leave and overtime work.

The court determined that such a clause is legitimate only if night work or overtime is considered a mere means of service performance, subject to termination at any time, rather than being an inherent and typical feature of the employment relationship.

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Netherlands

Netherlands proposes stricter regulation for temporary work agencies

October 2023: Dutch Minister of Social Affairs and Employment introduced a legislative proposal for a law on the admission of agency work, going beyond the previously discussed compulsory certification system for temporary work agencies (TWAs).

The proposal advocates for a public admission system, effective from 2026, where TWAs can only supply workers if authorized by the Minister. To gain admission, TWAs must demonstrate compliance with regulations, provide a certificate of conduct, and offer financial security. User undertakings are restricted to collaborating only with authorized TWAs.

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Netherlands

Increase in Minimum Wage and Shifts to Uniform Hourly Wage System

October 2023: Effective January 1, 2024, statutory minimum wage in the Netherlands will increase by 3.75%, with employees aged 21 and over receiving EUR13.27 per hour (gross). This adjustment is part of regular indexation occurring every six months in alignment with collective wages.

Concurrently, a new law is introduced to establish a uniform statutory minimum hourly wage, eliminating statutory minimum daily, weekly, and monthly wages. The monthly wage will now be determined by the actual number of hours worked, addressing the current disparity where those working 40 hours have a lower hourly wage than those working 36 hours.

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