



GMS Flash Alert

Employment Law

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Belgium - Expanded Information Obligation Prior to Posting

Last year, Belgium partially transposed the European Directive 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union.¹ This resulted in the Belgium law of 7 October 2022.² The goal of this legislation is to improve the individual's working conditions by promoting more transparent and predictable employment while helping ensure adaptability in the labour market. This law entered into force on 10 November 2022, and deals, among other things, with minimum information obligations on terms and conditions of employment and posting.

WHY THIS MATTERS

The law expands the scope of information obligations for employers vis-à-vis their employees concerning aspects of their employment relationship in case of posting from Belgium to a foreign country.

Under the rules employers, in many cases, might need to significantly change their employment contracts or annexes to these contracts and provide employees with more detailed information about working conditions. Further, employers must provide workers with certain minimum rights.

If employers fail to provide all that is required within a given deadline, they risk becoming subject to litigation. It is therefore important that HR departments, in particular, be aware of the rules and inform the relevant stakeholders in their organisations. It is recommended that a plan be formulated with minimal delay concerning the implementation of the new requirements.

Implementation of the new rules will require a revision of policies, employment contracts, and assignment letters.

More Details on Rules under Belgian Law

General Individual Information

The general individual information obligation imposes that the employer must provide employees with information in one or more documents on the main aspects of their employment relationship. This information includes, amongst others, the identity of the employer(s) and the employee, the place of work, the function that the employee mainly performs at the employer, and the start date of the employment relationship.³ Furthermore, the law prescribes that certain collective information must be shared through the work regulations which is a mandatory collective document established by the employer. If the employer would be (exceptionally) exempt from the obligation of having work regulations available, this collective information must be added to the individual information document.⁴

The information must be provided to employees in writing and not later than the first day of employment. However, it is not mandatory to do so through the employment contract.

Specific Information Prior to Posting

The new law also refers to information obligations for the employer in case an employee is posted from Belgium to a foreign country.

- **Which information?** – The information document(s) in the first place should include the above-mentioned general individual information.

Specifically for postings abroad from Belgium, the following information must be added to the information document:

- the host country/countries,
 - the expected duration of posting,
 - the currency in which the wages are paid,
 - the benefits in cash or in-kind relating to the posting, and
 - information on whether the employee's return to the home country has been arranged and if so, the manner in which the return has been arranged.
- **To whom?** – This applies to any employee who is posted abroad for more than four consecutive weeks, for postings starting on or after 10 November 2022. For employees already posted from Belgium prior to that date, the employer must provide this information upon the simple request of the employee.
 - **When?** – The information should be communicated before the employee starts the posting.

Specific Information Prior to a Posting from Belgium to an EU Member State

In case the employee is posted to another EU member state, there are some additional information obligations. The following information should be shared with the employee in writing:

- the salary to which the employee is entitled under the applicable law of the host member state or the reference to the host member state's statutory or regulatory provisions or collective agreements governing it;
- any posting allowances (if applicable) and any arrangements for the reimbursement of travel, lodging, and meal expenses;
- the weblink to the (only) official national website containing information on the terms and conditions of employment applicable in that member state there.⁶

KPMG INSIGHTS

Not included in the requirements by law, but highly recommended to include in the assignment agreement, are provisions on immigration, applicable labour law in the host country, as well as applicable social security legislation and individual income tax. With respect to the latter two topics, it is highly recommended to include an obligation for the posted worker to inform the employer of any possible change in his personal or employment situation, as these elements may influence the applicable social security and tax law.

Employers need to verify whether their current assignment letter contains all the necessary information. A lot of this information will likely already be stated in the current agreements. However, it is still important to verify the content of the existing models of assignment letters and employment agreements and to update them where necessary. In case the information is not provided or late or incorrectly provided, different sanctions for the employer can apply amounting up to EUR 8,000.00 per case.

FOOTNOTES:

1 Directive 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. (For related coverage, see [GMS Flash Alert 2019-111](#), 3 July 2019.)

2 Law 7 October 2022 partially transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable employment conditions in the European Union / 7 Octobre 2022. - *Loi transposant partiellement la Directive (UE) 2019/1152 du Parlement européen et du Conseil du 20 juin 2019 relative à des conditions de travail transparentes et prévisibles dans l'Union européenne (1)*, published in *BS*, 31 October 2022.

3 Art. 4, §2 law 7 October 2022 partially transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable employment conditions in the European Union, published in *BS*, 31 October 2022.

4 Collective information contains, for example, provisions about yearly vacation, periods of notice, right on training — these need to be included in the work regulations.

5 These similar information duties were laid down in art. 20 bis law of 3 July 1978 on labour agreements. This article was repealed by the law of 7 October 2022.

6 According to article 5 of the EU Directive 2014/67/EU of 15 May 2014 of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, EU member states must clearly indicate the terms and conditions of employment and/or which part of their national and/or regional law should be applied to workers posted to their territory.

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Contact us

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