



## COVID-19 | NL PWD FAQ

Coronavirus disease 2019 (hereafter COVID-19) is a virus identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China. Authorities across the globe are issuing travel health notices related to this outbreak. International Travel is largely halted and postings of workers across the European Union are postponed or delayed.

Deloitte's Dutch PWD team answers frequently asked posted worker related questions. The outline of the FAQ is as follows:

- Extensions of postings
- Modification of a notification
- Working locations – inspections while working from home
- Transport sector
- Healthcare sector
- Deregistrations
- Brexit

We will continue to update this FAQ ensuring it reflects the most recent information. Updates are reflected in yellow.

If you have any further questions, feel free to contact your PWD specialists: Fraukje Panis and Ralf Adam.

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## Working locations

The recent measures against COVID-19 forced many organizations to enforce a working-from-home policy. According to the Dutch transposition of

the Posted Workers Directive certain postings to the Netherlands are required to be notified since March 1, 2020.

The notification requirement is typically linked to the location in the Netherlands where the worker executes the work.

In principle, the posted worker is not authorized to work anywhere else without informing the authorities. The notifying EU/EEA/CH based employer has to take certain steps (as service provider) to ensure the location where the posted worker is performing work is accurate (which needs to be verified by the service recipient in the Netherlands) and that the liaison person is available to attend to inspectors' questions and is able to present the required paperwork.

### **EU/EEA/CH based employers: Posted workers working from 'home' – in the Netherlands**

While strictly speaking a posted worker may not simply work at another location as the location included in the submitted notification, we do not foresee any issues if the posted worker is authorized to work from home (e.g. a hotel, temporary accommodation etc.) in the Netherlands in light of the COVID-19 measures as this is force majeure. However, please take into account that the Inspectorate SZW is in principle also entitled to conduct an inspection at a home location to investigate possible breaches of law.

For information regarding the impact of and what to do when more time is spent in the Netherlands than initially indicated in the notification, please check our Considerations section.

### **Dutch employers: Posted workers working from 'home' – outside the Netherlands**

If your posted workers are working from 'home', and 'home' is not in the Netherlands we strongly advise you to contact your Deloitte PWD specialists as the notification requirement in respect to work location exists in the wider EU/EEA/CH region and differs per state and region.

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## **Considerations**

In the below section, we answer the most commonly asked questions regarding PWD notifications from a Dutch perspective.

- Our posted worker(s) need(s) to **stay longer** in the Netherlands due to the COVID-19 situation. We did not submit a notification as the posting started prior to March 1, 2020. What do we need to do?
  - Staying longer in the Netherlands after March 1, 2020 will be considered as an extension if the posted worker is still working on the same project. In order to be compliant with the existing obligations, we recommend EU/EEA/CH based employers to make a (new) notification in the Dutch system. The notification should subsequently be verified by the service recipient in the Netherlands.

- Our posted worker(s) need(s) **to stay longer** in the Netherlands due to the COVID-19 situation than initially indicated in the notification which we submitted (on or after March 1, 2020). Do we need to do a new notification or modify the initial notification?
  - Every change of a current posting should be shared with the authorities. In order to be compliant with the existing obligations, we recommend EU/EEA/CH based employers to modify the original data in the Dutch system as the end date of the posting has been changed. The modification should subsequently be verified by the service recipient in the Netherlands.
- Our posted worker(s) need(s) to stay longer in the Netherlands due to the COVID-19 situation. Will this have any effect with respect to **Dutch national employment law?**
  - In the Netherlands the revision of the Posted Workers Directive is applicable since 30 July 2020. With this **revision** certain Dutch legislation will be applicable on posted workers in the Netherlands.
    - If a posting will **last longer** than 12 months, the posted worker is entitled to all Dutch employment terms and conditions as included in Dutch labor laws and (generally binding) collective agreements. Excepted are rules on local termination of the employment contract and occupational pension rules;
    - If an initial posting of 12 months is **extended** to a maximum of 18 months, the 'hard core' employment conditions will also be extended for this posted worker. After this period the posted worker is entitled to all Dutch employment terms and conditions as included in Dutch labor laws and (generally binding) collective agreements. Excepted are rules on local termination of the employment contract and occupational pension rules. Extension to 18 months will be possible by means of submitting a motivated request to the Minister of Social Affairs;
    - During the (extended) posting the hard core employment conditions are **expanded** with reimbursement of travel-, meal- and accommodation expenses. Furthermore equal conditions with respect to accommodation are also applicable on the posted worker.
- Our posted worker is staying longer **in another country within the EU/EEA/CH** due to the COVID-19 situation. Will this have any effect with respect to foreign employment law?
  - If a posting will last longer than 12 months, the posted worker is entitled to all employment terms and conditions which are applicable in that country. As a Dutch employer we advise you to please contact your PWD specialist for a tailored advice as the employment terms and conditions differ per EU/EEA/CH country.
  - If an initial posting of 12 months is -permissible- extended to a maximum of 18 months we advise you to please contact your PWD specialist for a tailored advice as the employment terms and conditions differ per EU/EEA/CH country.
- In case we modify an initial notification, will the **original data be retained** or do we need to fill out (certain) information again?

- The original data remains available in the Dutch system. You will be able to copy information from a previously submitted notification. This means that not all data needs to be filled out again.
- Does **the service recipient** need to verify the notification again in case we modify the initial notification?
  - Yes, every modification of the notification in the Dutch system, executed by the EU/EEA/CH based employer as service provider, should be verified by the service recipient in the Netherlands.
- Our posted employees work from home (e.g. a hotel, temporary accommodation etc.) in the Netherlands instead of from the work location provided in the Dutch system. Can we, as EU/EEA/CH based employer, **expect an inspection** from the authorities at home?
  - Yes, employers and employees cannot refuse a visit by the Inspectorate SZW. The inspector has access to all places where employees in the organization perform their work. Therefore, based on the Working Conditions Act, the inspector is allowed to inspect the work location at home of the employee. However, among others, the following criteria apply:
    - The inspector must inform the employee well in advance about the visit. Together they make an appointment about the date and time of the visit;
    - The inspector should not come alone. A second inspector must always be present;
    - The employee may request the presence of at least one female inspector.
- **Transport Sector:** we now have (more) loading and unloading locations in the Netherlands due to the current COVID-19 situation. Do we need to notify?
  - Yes, when loading or unloading on Dutch soil takes place a notification is necessary.
- **Healthcare Sector:** due to the COVID-19 situation, several healthcare related posted workers are being sent to the Netherlands. Do we need to notify them all?
  - Yes, and please be aware that officially the notification needs to be done before commencement of work by the EU/EEA/CH based employer (and verified by the service recipient in the Netherlands). We, however, expect the Inspectorate SZW to be flexible for the time being (during the COVID-19 situation) in particular sectors. In any case it is said by the authorities that no penalties will be imposed until September 1, 2020. Finally, please be aware that (EU/EEA/CH-based) healthcare related posted self-employed should notify themselves as well in the Dutch system (and this notification should be verified by the service recipient in the Netherlands).

- We have retrieved our **Netherlands based** posted workers **back to their home country in the EU/EEA/CH due** to the COVID-19 situation. Do we need to deregister them in the Dutch system?
    - No, there is no need for EU/EEA/ CH employers to do this under Dutch law. However, once the posted workers return to the Netherlands, we recommend to check if the initial notification is still sufficient.
  - We have **retrieved our EU/EEA/CH based** posted workers back to the Netherlands due to the COVID-19 situation. Does this need to be shared with the foreign authorities?
    - In some EU/EEA/CH countries it is – contrary to the Netherlands - required to deregister posted workers in the system when the end date of the posting has been changed. As Dutch employer, please contact your PWD specialist for a tailored advice as this will differ per state and region.
  - **Brexit:** our posted worker is impacted by Brexit (i.e. UK nationals or EU/EEA/CH nationals)
    - Posted Workers Directive: per 1 January 2021, postings from the UK to the Netherlands do not have to be notified to the authorities anymore. Current notifications do not have to be cancelled. PWD rules differ per country, consult a PWD specialist for more information on country specific PWD requirements per 1 January.
    - Immigration: starting 1 January 2021, UK nationals and EU/EEA/CH nationals will be subject to the host country's national immigration legislation requirements. As a consequence, work authorization and residence permits will be required to secure a legal work and residence status.
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## **Deloitte's View**

Additional details are expected as the authorities are publishing COVID-19 policies. Companies should account for affected employees and reschedule travel accordingly. Deloitte is closely following developments and will alert clients and report additional details as they become available.

For more information regarding COVID-19, please visit our website:

<https://www2.deloitte.com/global/en/pages/about-deloitte/topics/combating-covid-19-with-resilience.html>



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