



EU Posted Workers Directive – Equal pay for equal work

What is the change?

As of July 30, 2020, the principle of “equal pay for equal work” between posted and local workers, as mandated by the revision of the Posted Workers Directive in 2018 (European Union (EU) Directive 957/2018), is due to become law across the EU.

This revision implies that the remuneration of posted workers should be at the same level as that of their local peers. The (revised) Posted Workers Directive does not define the concept of “remuneration” as such. Each country is to determine the different elements of remuneration on its own territory, to go live on 30 July, 2020.

What does the change mean?

— Status of transposition —

Regarding the adoption of the directive into member state law, in most countries the draft legislation has been published (e.g., in France, Belgium, Spain, Portugal, Poland, and Sweden), while no details are available yet in others (e.g., in Germany, Denmark, Ireland, Slovenia, and Spain). **In the Netherlands, the directive has been transposed which has already been published and will come into effect on 30 July 2020.**

Having analyzed the new concept of “remuneration” across the EU, a significant number of countries are stipulating that additional salary components will include overtime pay; allowances for irregular hours, or shift work allowances; and work on Sundays and public holidays, etc. **All of these components are included in Dutch transposition of the directive.**

Changes in NL

The following changes have been implemented in Dutch legislation and should be applicable on the posted employees:

Hard core employment conditions	The hard core employment conditions will be expanded with: 1. Equal conditions for the accommodation of posted workers; 2. Reimbursements of travel-, meal- and accommodation expenses.
Additional terms of employment	<ol style="list-style-type: none"> 1. After a posting of 12 months, posted workers are entitled to all Dutch employment terms and conditions as included in Dutch labor laws and (generally binding) collective agreements. Exceptions are provisions with regard to supplementary pension schemes and provisions regarding the conclusion and termination of an employment contract; 2. The initial posting period of 12 months, during which only the 'hard core' employment conditions must be guaranteed, can be extended by reasoned notification to a maximum of 18 months. This reasoned notification can only be submitted during the last three months of the initial posting period of 12 months; 3. Two consecutive posting periods, whereby a posted worker is replaced by another posted worker who carries out the same work at the same place, are considered as one posting.
Reimbursement of costs	The travel-, meal- and accommodation costs incurred in connection with the posting must be reimbursed by the foreign employer according to the national law / practice of the home country.
Posted temporary agency workers	Posted temporary agency workers are, as of day one of the posting, entitled to the same employment conditions and circumstances which apply to Dutch (local) temporary agency workers. The foreign employment agency remains responsible for ensuring that the correct terms and conditions of employment continue to apply to the posted worker, including in case of transfer to a third party.
Transport sector	These changes do not yet apply to the transport sector. Further legislation will follow for this sector.

Main challenges

The most challenging aspect for employers will be identifying precisely what elements of remuneration must be paid exactly to comply with local labour law and collective bargaining agreements. In most countries, a distinction is made per sector, in addition to which there are further differences according to function, seniority, etc.

Adding to that complexity is the fact that, in most countries, the local remuneration requirements must also, in principle, be considered for short-term business travelers. This will put a huge burden on employers with highly mobile populations.

Lastly, for assignments more than 12 months (extendable to 18 months), all mandatory labour law of the host country will need to be respected, with the exception of local termination and occupational pension rules. This will necessitate an even broader scan of local requirements and for home HR functions to be more aware of compliance issues than ever before.

Deloitte's view

Now, of course, business travel is hugely reduced as a result of the ongoing measures aimed at limiting the spread of Covid-19. Whilst movement may be on hold currently due to these restrictions, our expectation is that this pause will be temporary, and employers should use this time to define and implement processes for when business activities resume. We have outlined below a few activities to consider in relation to the Posted Workers Directive more broadly:

- Carry out a review to understand in which EU/EEA countries you have a presence of inbound business travelers/expats.
- In advance of the new rules coming into force on 30 July 2020, look to implement processes to ensure compliance with the existing legislation on posted workers (e.g., pretravel notifications, appointment of liaison persons, and social documents).
- Review the applicable collective bargaining agreements (CBAs) for your business/industry in the relevant European countries.
- Take time to assess the elements of the CBAs that will influence an employee's remuneration package.
- Review payroll processes and consider what enhancements need to be put in place to enable salary uplifts for posted workers.
- Understand the capabilities and breadth of information stored within your HR systems.
- Monitor for the latest developments regarding the revision of the Posted Workers Directive and its implications in every EU country—but particularly those in which you have a larger population.

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