

REVISION OF THE POSTED WORKERS DIRECTIVE

How Will Your Secondments within the EU Be Affected?

What is a posted worker?

A "posted worker" (or "assignee", "seconded worker") is an employee who is temporarily sent by his employer to another EU Member State to carry out a service on the employer's behalf, in the context of a services contract, an intra-group posting or a hiring out through a temporary agency.

Background

The Posted Workers Directive ("PWD") was adopted in 1996 based on two objectives:

- Protect the employment rights of employees working temporarily in another EU country
- Prevent unfair competition between businesses in lower- and higher-cost EU Member State ("social dumping").



Current rights and rules for posted workers

When assigning employees within the EU, the PWD obliges employers to comply with a “core set” of employment law provisions in the host country during the secondment period.

This set of rights consists of:

- minimum wage;
- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- the conditions of hiring out workers through temporary work agencies;
- health, safety and hygiene at work;
- equal treatment between men and women.

However, the application of more favorable working conditions in accordance with the rules of the sending Member State is not excluded.

Revision of the Posted Workers Directive: The key changes

On 21 June 2018, the EU adopted a new directive revising the Posted Workers Directive of 1996 („Revised PWD”), to strengthen the employment rights guaranteed to posted workers and to ensure a ‘level playing field’ in the host country between the foreign and local employers whilst also maintaining the free movement of services.

Limiting posted worker status to 12 months

The most critical change for employers is likely to be the limitation of the posted worker status. Thus, after 12 months of assignment (extendable to 18 months based on a reasoned notification) not only the core set, but all mandatory terms and conditions of employment of the host country will be applicable to the posted worker, except for the rules regarding the conclusion and termination of the employment contract and the supplementary occupational pension schemes.

Equal pay for equal work

As opposed to the current rules which oblige employers to pay the minimum wage set by the host country, under the Revised PWD the employers have to pay all the constituent elements of remuneration rendered mandatory by national law or by collective agreements which have been declared universally applicable in the host country.

Allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

For business trips in the host country posted workers shall receive the same allowances or reimbursement of expenditure to cover travel, board and lodging expenses as national workers.



Temporary agency workers

The principle of equal treatment as provided for in the Temporary Agency Work Directive shall also apply to posted temporary agency workers, ensuring that these workers are entitled to the same rights as employees in the undertaking to which they are posted.

Does the Revised PWD apply to the road transport sector?

For the road transport sector, the rules of the Revised PWD apply only from the date of application of the sector-specific rules proposed by the Commission, currently under discussion between the European Parliament and the Council. Until then, the rules of the PWD will continue to apply.

How does the Revised PWD impact social security?

The Revised PWD does not have any impact on the EU social security aspects laid down in EU Regulation 883/2004. Thus, based on the A1 form issued by the home country, an employee remains covered by the home social security scheme during a period of maximum five years

Transposition and application of the Revised PWD

The Revised PWD must be transposed into national laws by 30 July 2020 and cannot be applied before that date.

In Romania the law for the transposition of the Revised PWD and the corresponding amendment and completion of Law no. 16/2017 concerning the posting of workers in the framework of the provision of transnational services is currently under the debate and adoption procedure. It shall enter into force on 30 July 2020.

However, periods of home country coverage exceeding two years already require the agreement of both home and host country authorities.

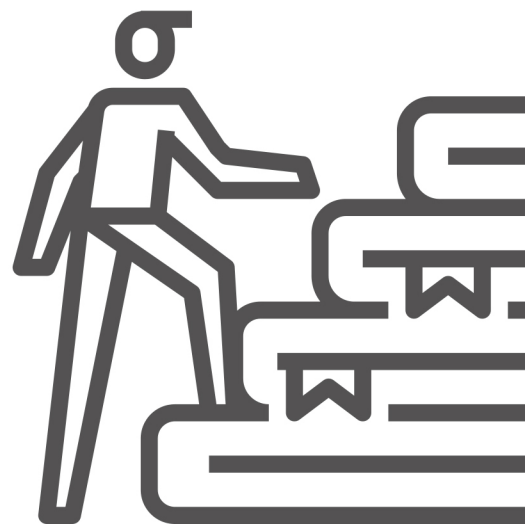
Thus, we expect for certain countries to be more reluctant to approve the extension of home country coverage for longer periods after the transposition of the Revised PWD into their national laws.

Next steps

The Revised PWD will have a significant impact on Romanian employers posting workers to high-wage EU countries.

Thus, we recommend you to take advantage of the remaining period up to the transposition of the Revised PWD into the national laws by:

- Assessing the potential impact of the key changes on your company or group of companies from an employment law and financial point of view;
- Monitoring the national implementation of the Revised PWD in countries where you are posting your employees;
- Defining a strategy and amending your assignment policies.



Why choose us?

Together with carefully selected partners, we provide a full range of services designed to help you reduce costs and control risks concerning the posting of workers, such as:

- ✓ Managing tax and social security matters
- ✓ Optimizing remuneration and benefits package
- ✓ Drafting and revising of assignment agreements
- ✓ Designing policies and processes
- ✓ Obtaining residence and work permits
- ✓ Providing repatriation assistance

Feel free to contact us at any time!



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We make your employment issues our priority.

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