

CLIENT ALERT

Council of the European Union Reaches Agreement Regarding EU Employees Temporarily Posted to Another EU Member State

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Equal Pay for Equal Work Carried Out in the Same Place, and Other Proposed Changes

On October 24, 2017, the EU Council reached agreement on a revised directive concerning posted workers.

Under current EU rules, employees who are posted to another EU Member State can only demand that their company comply with the 'minimal' working and salary conditions or the so-called public law or imperative law provisions. For instance, only the sectoral minimum wages need be paid to a posted worker. Moreover, in the context of such a posting, the employee can remain under his or her home country social security regime for 24 months.

These rules have been criticized on the basis of unfair competition, as they potentially make a posted worker cheaper than his or her equivalent in the host country.

To address this problem, the EU Ministers of Employment and Social Affairs have now reached an agreement on the Council's position regarding the modification of the Posted Workers Directive. One of the main principles is that the salary to be paid to the temporarily posted workers should be equal to the salary of the workers in the host country. In other words, there should be equal pay for equal work that is carried out at the same place. This principle would apply not only to a worker's fixed salary but also to any extra-legal benefits such as bonuses. Note, however, that not all the unfair competition concerns have been fully addressed by the Council: as the social security contributions can still be paid in the worker's home country, the labor cost in Belgium of a temporarily posted worker will, in most cases, still be lower when compared with the labor cost of a Belgian worker.

Another major proposed change relates to the maximum duration of the posting. While the home country social security regime can currently remain applicable for a maximum 24 months, the Council's proposal is to limit the duration of a posting to 12 months (extendable by another six months where there is good reason).

In addition, the Council's proposal provides for the equal treatment of temporary agency workers and local workers. As regards the transport sector, specific rules will apply.

With this proposal, the Council is showing its desire to combat social dumping. While scheduling and budgeting employee postings in the EU, companies should take into account these tighter rules and bear in mind that postings under beneficial social security regimes might become shorter and include a higher salary cost in the future. Companies wishing to avoid damage claims and criminal sanctions will need to observe a strict compliance with the requirements of the revised Posted Workers Directive in the future.

The next step is for the Council to start negotiations with the European Parliament. National implementation of the new Directive (if adopted) is foreseen over a maximum period of four years (transposition period).

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