

Posting of workers: another update

As of 1 March 2020, employers posting employees to the Netherlands within the context of transnational provision of services, have an obligation to notify the authorities of the posting in advance. Recently, new official regulations have been published amending several of the other obligations. In this alert, we will give you an update of the amendments to the Dutch implementation of the various Posting of Workers Directives.

1 Notification

Prior to the commencement of the work of the employee, the service provider has to make a notification of the posting in the digital portal of the Social Security Bank (in Dutch: Sociale Verzekeringsbank, or 'SVB'). The service provider needs to, amongst others, provide information on the project, the workplace, and the identity of the employees concerned.

The notification is registered in the system as soon as the service provider completes the notification. The service provider has at this point fulfilled his obligation. The service recipient then has the statutory obligation to verify the (correctness of the) notification within 5 days after the start of the work.

Various exemptions apply to the notification obligation. For some exemptions, discussions may arise in practice as to whether there is transnational provision of service, e.g. for business meetings. In order to provide clarity that in those situations it is in any case not required to make a notification, those situations are included as exceptions. This is not intended to make statements about the scope of the Posting of Workers Directive, but rather to limit the effects of the broad definitions in the posting of workers regulation.

The local authorities have unofficially indicated to be planning to amend the word 'consecutive' in some of the exemptions, to make it possible for employees to travel to the Netherlands for this purpose multiple times within the given period. No official publication has yet been issued on the matter, meaning it is not yet clear which exemptions will be amended.

2 Documents

The service provider must see to it that the following documents are kept available in the workplace of the employee:

- employment contract
- payslips
- evidence of payment of wages
- information on hours worked
- documents relation to social security coverage
- proof of identity of service provider, posted worker and party responsible for paying the wages

All documents must be available in Dutch. An English translation is accepted, if Dutch version is not available. German and French translations will be accepted, if Dutch nor English translations are available.

The service provider must ensure that the documents can be provided to the local authorities for a period of five years after the posting. The documents must be provided within four weeks. In special circumstances, this period can be extended to twelve weeks (up to decision of the local authorities).

3 Enforcement

The authorities have indicated to give service providers and service recipients a relief period until 1 September 2020 with regard to administrative sanctions. This relief period does however not apply to enforcement through audits and other means.

Below you will find an overview of the fines imposed for violation of the various obligations.

Violation	Penalty
Failure to notify	<p>1 – 9 posted workers: EUR 1,500 10 – 19 posted workers: EUR 3,000 20 + posted workers: EUR 4,500</p> <p>Reduction of 50% for incomplete registration, in case of missing information that is not essential for identification of service provider, service recipient, posted workers, the person responsible for salary payment, the contact person and the location of the workplace. In principle no penalty for non-culpable inaccuracies.</p> <p>Reduction of 75% if the service provider has made a fully accurate report on its own initiative within two working days after the start of the work and after the inspection of the authorities has started.</p>
Failure to verify notification	<p>EUR 1,500</p> <p>Reduction of 50% if the service recipient has not reported inaccuracies in information that is not essential for identification of service provider, service recipient, posted workers, the person responsible for salary payment, the contact person and the location of the workplace.</p>
Failure to appoint liaison person	<p>1-9 posted workers: EUR 1,500 10 – 19 posted workers: EUR 3,000 20 + posted workers: EUR 4,500</p> <p>Reduction of 50% if a person other than the appointed liaison person is available.</p>
Documents	<p>Standard total penalty amount of EUR 8,000</p> <p>Reduction of 50% if the service provider provides the missing documents, or, in case of a violation of the language requirement, an official Dutch translation of the documents, within two weeks.</p>
Information	<p>Failure to comply with the obligation to provide the labour inspectorate with requested information: standard penalty amount of EUR 6,000.</p>

Standard penalty amount may be increased in case of intent or repeated violations. The maximum penalty amount per violation is EUR 21,750.

4 Our services

If you want to know whether the postings of your employees fall under the scope of the Dutch Posting of Workers regulations, and hence which (cumbersome) obligations apply to you, or if you have any other questions on the above, please get in touch. We are happy to be of service.



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