

High penalty risks when violating posting of workers obligations as of 1 September 2020

As of 1 September 2020 the penalty risk for not being compliant with the rules of the Dutch implementation legislation of the EU Posting of Workers Directives (the “WagwEU”) will significantly increase. As of that date penalties can also be imposed for non-compliance with the reporting and verification obligation for posted workers. Consequently, companies may forfeit penalties when violating any obligation under the WagwEU. The penalty amounts are high. The Dutch Labor Inspectorate (the “Inspectorate SZW”) already increased its audit activity to ensure compliance with the posting of workers rules. Actions to become compliant are paramount.

1 The notification and verification obligations

Cross-border service providers have to notify employees when posting them temporarily to another EU Member State. This obligation may even also apply to business travelers. The notification obligation not only applies to posted workers, but also to independent contractors if they work within certain industries in the Netherlands. The notification obligation already existed in almost all other EU Member States, but also exists in the Netherlands as of 1 March 2020. However, until 1 September 2020 the Inspectorate SZW did not impose penalties for violations of the notification obligation.

A unique obligation under the Dutch implementation legislation of the EU Posting of Workers Directives is the verification obligation. This obligation entails that the service recipient is obliged to verify whether the notification has been filed by the service provider and if so whether all information provided is correct. If the service recipient fails to comply with this obligation he may also forfeit a penalty. Hence, it is paramount that the services recipients inform their foreign service providers about the notification obligation and verify whether they have complied with that notification obligation.

2 Ensure compliance with posting of workers rules

Therefore, it is imperative to assess whether the WagwEU applies and if so, what the implications of the applicability of the WagwEU are. In practice, the rules of the WagwEU will in many events apply. Two examples which occur a lot in practice are:

- 1) a business trip of a business traveler of only a couple of days may already trigger the application of the WagwEU;
- 2) if an exemption to the notification obligation exists the employer should still comply with all the other obligations of the WagwEU, including the equal pay for equal work principle which applies as of 30 July 2020. The latter principle has been explained in our alert about the Reform Directive hvglaw.nl/en/2020/07/22/reform-of-the-posting-of-workers-directive-many-new-rules-as-of-30-july-2020/

3 Penalty amounts

Below you will find an overview of the fines imposed for violation of the administrative obligations under the Dutch Posting of Workers rules as it applies as of 1 September 2020.

Obligation	Penalty per violation*
Notification obligation	1 - 9 posted workers: EUR 1,500 10 - 19 posted workers: EUR 3,000 20+ posted workers: EUR 4,500
Verification obligation	EUR 1,500
Appointment contact person	1 - 9 posted workers: EUR 1,500 10 - 19 posted workers: EUR 3,000 20+ posted workers: EUR 4,500
Document keeping	Standard penalty amount of EUR 8,000 in total (no cumulation)
Information obligation	Standard penalty amount of EUR 6,000

* The standard penalty amounts can be increased in the event of intentional or repeated violations. Under circumstances the standard penalty amounts can also be decreased. The maximum penalty amount per violation amounts to EUR 21,750..

3 Penalty amounts (cont'd)

Note that apart from the above mentioned standard penalty amounts for violations of the administrative obligations of the WagwEU an employer may also forfeit penalties in the event of non-compliance with the applicable minimum employment terms and conditions in the Netherlands. The penalty amounts applicable to these obligations have been laid down in the specific legislation, like the Dutch Minimum wage and minimum holiday allowance act, as well as the Dutch employment conditions regulations.

4 Our services

We assist organizations on a daily basis with strategic determination of the risks of not being compliant with the applicable posting of workers legislation. This also enables organizations to be and stay competitive. It is for every organization important to specifically and practically understand in which events non-compliance risks will likely have major consequences, like financial risks, bad employee satisfaction and reputational damage.

would be happy to discuss the consequences of the Posting of Workers rules for your company. We can support your organization with these issues and assist with the introduction of the right approach to avoid fines and claims.

What HVG Law can do for you

International labor law is very complex and it becomes even more complex due to recent European regulations. Due to significant penalty risks and reputational damage it is paramount to be compliant. We can assist you with that.

We would be happy to have a conversation with you to discuss the (re)design of your global mobility practice.

On our web page regarding posted workers you can find more information:
www.hvglaw.nl/pwd/



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About HVG Law

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