

A man in a dark suit is seen from behind, walking through a modern, brightly lit building with large glass windows. He is pulling a dark brown rolling suitcase. The floor is highly reflective, showing the man and the suitcase. A yellow text box is overlaid on the right side of the image.

## Important changes: reform of the Posting of Workers Directive and WagwEU

Employees posted temporarily to another EU Member state should receive equal pay for equal work in the same place. These (revised) rules have been approved by the European Parliament on May 29, 2018, and hence, it has adopted the proposed revision of the Posting of Workers Directive. EU Member States shall adopt and publish the laws and regulations necessary to comply with this revised Directive in mid-2020, after a transposition deadline of two years.



## Amendments revised Posting of Workers Directive (POW)

The revision of the Posting of Workers Directive is aimed at guaranteeing respect for the rights of workers and a level playing field for business. Generally, the revised Directive provides for the following adjustments:

Amendments revised POW Directive	Comments
1. Ensuring fair pay	<ul style="list-style-type: none"><li>▶ Equal pay for equal work in the same workplace;</li><li>▶ Employers are obliged to pay to posted workers (the elements of) the remuneration subject to the law and/or by (universally binding) collective labor agreement of the host country, including allowances, such as overtime rates (if applicable);</li><li>▶ Remuneration will cover the following wage elements:<ul style="list-style-type: none"><li>▶ statutory minimum wage or the applicable periodic wage in the pay scale;</li><li>▶ statutory holiday allowance;</li><li>▶ (additional) allowances, including overtime rates;</li><li>▶ increments;</li><li>▶ seniority payments;</li><li>▶ end-of-year bonuses;</li><li>▶ (performance) bonuses.</li></ul></li><li>▶ The EU has imposed on Member States the obligation to publish the constituent elements of remuneration, and the additional set of terms and conditions on a national website as transparency and access to information is essential for legal certainty and law enforcement.</li></ul>
2. Improving workers' conditions	<ul style="list-style-type: none"><li>▶ Allowances or reimbursement of expenditures incurred on the account of the posting such as to cover travel, board and lodging costs of a posted worker should not be considered as part of remuneration but paid out separately. Employers should reimburse posted workers for such expenditure in accordance with national law and/or practice applicable to the employment relationship;</li><li>▶ Temporary agency workers posted to another Member State are entitled to receive the employment conditions as applicable to such workers recruited by the host company and part of permanent staff;</li><li>▶ The conditions of accommodation for posted workers which are provided either directly or indirectly by employers should be in line with the relevant local laws in force in the host Member State.</li></ul>

3. Duration of posting	<ul style="list-style-type: none"> <li>▶ The duration of the posting has been set at a maximum of 12 months, with a possible extension of 6 months. Thereafter, the working conditions of the posted workers will be subject to the employment laws and regulations applicable at the host Member State.</li> </ul>
4. Protection against fraud	<ul style="list-style-type: none"> <li>▶ To ensure compliance with rules combatting fraud and abuse related to the posting of workers, sanctions are imposed by the EU Member States: <ul style="list-style-type: none"> <li>▶ for example specific rules apply to tackle so-called 'letter box companies' in which event coordination is required between the Member States' competent authorities to safeguard the level of protection to posted workers as stipulated in the revised Directive.</li> </ul> </li> </ul>
5. International road transport	<ul style="list-style-type: none"> <li>▶ The revised Directive does not (yet) apply to the transport industry;</li> <li>▶ The new elements of the revised Directive will apply to the transport industry once the sector-specific legislation, included in the Mobility Package, enter into force. Until then, the (old) 1996 version of the Posting of Workers Directive remains applicable.</li> </ul>
6. Transposition deadline after the entry into force of this Directive	<ul style="list-style-type: none"> <li>▶ EU Member States shall adopt and publish by 2 years, after the entry into force of this revision Directive, the laws, regulations and administrative provisions necessary to comply with the Directive, in mid-2020.</li> </ul>

WagwEU (Dutch law POW Directive)	Comments
1. Amendments to implementation of the reporting obligation pursuant to article 8 WagwEU	<ul style="list-style-type: none"> <li>▶ Foreign service providers are required to report in advance about where and when and with which employees work will be performed in the Netherlands. Service recipients in the Netherlands have to check whether the report has been made and performed correctly;</li> <li>▶ The reporting obligation in light of the Enforcement Directive has not yet been implemented in Dutch law due to the fact that the digital reporting system in the Netherlands is not (yet) available to submit any reports at this time;</li> <li>▶ The aim was to finalize the preparations and to have the digital reporting system in place on the first of January of 2019, after an extension period of one year. However, the proposed date turned out not to be feasible. Thus, it is expected that the digital reporting system will be executed on a later date, with April 1, 2019 as the ultimate deadline.</li> </ul>



## Conclusion

- ▶ Employers are obliged to pay posted workers (all elements of) the remuneration as set out by law and/or by (universally binding) collective labor agreement of the host country, including allowances, such as overtime rates (if applicable), statutory minimum wage or period wage in the pay scale and statutory holiday allowance;
- ▶ Employers should reimburse posted workers for expenditures incurred on the account of the posting, such as to cover travel, board and lodging costs. These costs are not considered part of remuneration, but should be paid out separately in accordance with national law and/or practice applicable to the employment relationship;
- ▶ The EU has imposed on Member States the obligation to publish the constituent elements of remuneration, and the additional set of terms and conditions on a national website as transparency and access to information is essential for legal certainty and law enforcement;
- ▶ Employers are exempt from the requirement to pay (additional) pension- and social security contributions as well as wage taxes since these will be withheld in the country of origin;
- ▶ Employers should be aware that every EU Member State will have to take into account that posted workers are not only entitled to the hard core of terms and conditions of work and employment governed by the laws of the host country, but also any employment condition stipulated in (universally binding) collective labor agreements in the host country (if applicable) are required to be applied to posted workers.

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### HVG Law

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