

A photograph of an office environment. In the foreground, a man in a white shirt is seen from the back, looking towards a woman with blonde hair who is smiling and looking at a document he is holding. In the background, other office workers are visible at their desks. A large yellow diagonal overlay covers the bottom left portion of the image, containing the title text.

Posting of Workers in the EU

The rules on posting of workers within the EU have been amended and supplemented over the past few years. In 2016, the implementation of the Enforcement Directive in Dutch legislation resulted in a clarification of the definition of posting and the responsibilities of the authorities to verify compliance with the Posting of Workers Directive.

The Revision of the Posting of Workers Directive, set for implementation in 2020, will develop the rules on posting of workers even further, aiming for a more equal position of posted workers in relation to the workers in the host country.

This alert gives you an update on the registration obligation in the Netherlands under the Enforcement Directive and the amendments to the Revision of the Posting of Workers Directive of 18 June 2018.

Delay registration system

Under the Enforcement Directive, most EU Member States already impose an obligation to register posting of workers prior to providing services in the respective country. The registration obligation has not yet been implemented in the Netherlands due to the fact that the digital registration system in the Netherlands is not yet available. It was expected that the digital registration system would be in place on 1 April 2019, but this expectation has not been met. Currently, the exact date on which the registration system will be available is still unknown, as no official statement has been made on the matter. The system is however expected to be in place mid-2019.

Until the completion of the registration system, employers posting workers to the Netherlands are not yet required to notify Dutch authorities under the Enforcement Directive. The labour inspectorate has indicated to focus its interventions in 2019 on promoting compliance and supporting companies in the process.

Revision of Posting of Workers Directive published

The European Parliament approved the revision of the Posting of Workers Directive on 29 May 2018. Consequently, Directive 2018/957 amending the rules concerning the posting of workers in the framework of the provision of services was published on 9 July 2018. EU Member States have the obligation to implement the provisions of the revised Posting of Workers Directive into national law before 31 July 2020.

Amendments Revision of the Posting of Workers Directive

The Revision of the Posting of Workers Directive aims to establish a balanced framework with regard to the freedom to provide services and the protection of posted workers, which is non-discriminatory, transparent and proportionate while respecting the diversity of national industrial relations.

The provisions of the new directive address unfair practices in the posting of workers and contribute to the application of the principle 'equal pay for equal work'. The revised Directive therefore contains the following main adjustments to employer obligations:

- ▶ Employers are obliged to pay posted workers all elements of the remuneration as set out by law and/or, if applicable, by a universally binding collective labor agreement of the host country. This includes additional allowances, such as overtime rates, statutory minimum wage or period wage in the pay scale and statutory holiday allowance.
- ▶ Employers are obliged to apply the hard core of the terms of employment from applicable universally binding collective agreements, on top of the terms of employment governed by national laws of the host country.
- ▶ Employers are obliged to separately reimburse travel, board and lodging expenditure incurred by posted workers where they are required to travel for professional reasons.
- ▶ For long-term postings (longer than 12 or, after an extension, 18 months), employers are obliged to apply all mandatory provisions of labour law in the host country, except for termination rules and supplementary occupational pension schemes.
- ▶ Employers are obliged to apply the same conditions to posted temporary agency workers as apply to national temporary agency workers of the host country.

EU Member States are obliged to publish the elements of remuneration and the additional set of terms and conditions on a national website.

The preparations for legislation to implement the Revision of the Posting of Workers Directive are expected to start soon.

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