

POSTING WORKERS TO GERMANY AFTER SUMMER 2020: BILL TRANSPOSING DIRECTIVE (EU) 2018/957 (CURRENT DIRECTIVE FOR POSTING WORKERS)

On February 12, 2020 the federal government passed the bill transposing the directive on the posting of workers in the framework of the provision of services. In the future, workers sent to Germany are set to profit more than previously from the work conditions stipulated by German legal and administrative regulations as well as generally binding collective agreements.

1. All components of remuneration to be included

The bill stipulates that the conditions for posted workers will not only include regulations on “minimum wage” but all components of the “remuneration.” Thus in the future employers will need to pay all employees working in Germany for overtime, Christmas and holiday pay, surcharges (e.g. for pollution and dangerous work) and employers’ contributions in kind

However, the bill does not include regulations on employees’ pension insurance. Remuneration can also be differentiated in large part based on activity, qualification and professional practice. The bill also regulates requirements for accommodation that the employer provides or must provide. The accommodation must meet the minimum requirements in the regulation on workplaces, i.e. depending on occupancy it must be equipped with a living and sleeping area (beds, closets, tables, chairs), eating area and sanitary facilities.

The bill clarifies the usability of the directive on posting workers to a specific constellation of employee secondment and introduces certain duties to inform for the host employer, for instance regarding material work conditions that apply to the host employer’s operations for comparable employees of the host employer including remuneration (Article 15a of the bill).

2. Assumption of costs, no set-off of surcharges for posting

Employers in the EU must not require their employees to pay for accommodation, travel costs or per diem, and must not deduct the same from their pay. The employer should always bear the costs associated with the posting based on the rules applicable in the employees’ country of origin. In addition, employees posted to Germany must be reimbursed for travel costs, accommodation and food if not temporarily used at their place of residence in Germany. Employers with their registered office in other countries must take care that the money the posted worker receives to cover their expenditures associated with the posting (accommodation, travel costs, food) is not set off against their wages. Employer contributions for the posting can only be set off against the employee’s wages if it is clear that they are not meant as compensation for the costs for posting workers within the EU in connection with the posting, which is anticipated (Article 2b of the bill).

3. Work conditions must comply with certain collective agreements

If the work conditions are regulated in generally binding collective agreements valid for the entire Federal Republic of Germany, they will now apply to posted workers in all fields, not (as at present) only in construction. Customs and excise offices monitor adherence to the conditions for remuneration stipulated in such collective agreements.

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4. Employees based in other countries are required to adhere to all generally binding collective agreements

In addition, in the future even employees on long-term postings will be subject to all work conditions prescribed in Germany. This involves employees working in Germany for longer than 12 months. In justified exceptional cases employers can request an extension of six months to this time frame. “**Prescribed work conditions**” mean work conditions regulated by law as well as generally binding collective agreements. Employers based in other countries must adhere to all generally binding collective agreements, i.e. including those that apply to Germany as a whole or the entire region (Article 13b of the bill).

5. Exceptions

Exceptions relate to postings for meetings and negotiating agreements as well as visiting trade fairs and professional events. Also excluded are employees posted in order to establish a company in that country and specialists posted for internal training within the concern in Germany. This applies only if the posting lasts no longer than 14 consecutive days and the posted worker does not work in Germany for more than 30 days in 12 months. The planned legislation does not apply to long distance drivers. The road transport sector is also exempt from these changes.

6. The act on transposition is set to take force at the end of July 2020

The act is scheduled to enter into force on July 30, 2020 after the parliamentary proceedings are complete. For Czech and Slovak employers this act will mean additional costs for duties to inform and similar. They will also have to adhere to all work conditions stipulated by law after 12 or 18 months.

7. Is the Czech Republic ready for employees from the EU?

In connection with the transposition of this directive into Czech law, the Czech Ministry of Labour and Social Affairs has prepared a bill amending the Labour Code and Employment Act. The Ministry combined the amendment of this legislation with the long-discussed major amendment to the Labour Code including changes to the rules on annual leave, among other things. The bill is currently in committee at the Chamber of Deputies. The next discussion will be possible at the second reading after April 14, 2020. If the legislative process is completed on time, the amendment to the Labour Code and Employment Act should take effect by the time designated in the directive.

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