

Posting of Workers

JUDr. Jana Komendová, Ph.D.

Program

- Purpose of regulation, at EU level,
- Primary and secondary law,
- Notion of posting of workers,
- Forms of protection of posted workers,
- Working conditions of posted workers

Purpose of Regulation

- Freedom of movement of services – part of an internal market,
- Transnational provision of services within the EU has been developing rapidly,
- Provision of services in the territory of another Member State without any restriction, in particular without discrimination based on nationality,
- Undertakings post their workers to perform the work temporarily in the territory of another EU Member State,
- Balance between the need to promote the freedom of providing services and the need to protect the rights of posted workers

Primary Law

- Freedom of providing of services – part of the internal market (art. 56 - 62 of the TFEU) Prohibition of restrictions on freedom to provide services within the Union in respect of nationals of Member States who are established in a Member State other than of a person for whom the services are intended,
- Notion of services - services normally provided for remuneration in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons i. a. activities of an industrial character, activities of an commercial character, activities of craftsmen, activities of the professions)
- The person providing a service may in order to do so temporarily pursue his activity in the Member State where the service is provided under the same conditions as are imposed by that State on its own nationals.

Secondary Law

- Directive of the European Parliament and of the Council 96/71/EC of 16 December 1996 concerning posting of workers within the framework of the provision of services,
- Directive 2014/67 of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71 concerning posting of workers within the framework of the provision of services and amending Regulation (EU) no 1024/2012 on administrative cooperation through the Internal Market Information System
- Directive (EU) 2018/957 of the European Parliament of 28 June 2018 amending the Directive 96/71 concerning posting of workers within the framework of the provision of services

Notion of Posted Worker

- Posted worker – a worker who for a limited period, carries out his work in the territory of a Member State other than the state in which he normally works,
- Worker – definition applying in the law of a Member State to whose territory the worker is posted

Forms of Posting of Workers

- Performance of work by an undertaking on its account and under its direction under a contract concluded directly between that undertaking and the party for whom the services are intended,
- Hiring-out of workers for use by an undertaking in the framework of public or private contract

Scope of Application

- Undertakings established in a Member State which, in the framework of the transnational provision of services, post workers,
- Exclusion from the scope of application
merchant navy undertakings as regards seagoing personnel,

Forms of Protection of Posted Workers

- Stated working conditions are governed by law of a Member State where the work is carried out (principle of *lex loci laboris*),
- Non-discrimination based on nationality,
- Obligation of a Member State to publish information on terms and conditions of employment on single official national website,
- Higher level of protection of employees posted for a period exceeding 12 months

Working Conditions of Posted Workers

- The principle of equal treatment of workers who are temporarily posted to the territory of another Member State.
- Posted employees - right to working conditions laid down by a Member State where the work is carried out irrespective of which law applies to an employment relationship,
- Such conditions may be laid down by
 - Law, regulations or administrative provisions
 - Collective agreements or arbitration awards which have been declared universally applicable

Working Conditions of Posted Workers

- Maximum work periods and minimum rest periods,
- Minimum annual paid leave,
- Remuneration including overtime rates,
- Health, safety and hygiene at work,
- Working conditions of pregnant employees, employees who have recently given birth and young employees,
- Equality of treatment between men and women and other provisions on non-discrimination,
- Conditions of accommodation of employees where provided by the employer to workers away from their regular place of work,
- Allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from work for professional reasons

Remuneration

- Directive 96/71 – working conditions included only minimum wage,
- Directive 957/2018 extended the protection – remuneration including overtime rates (exclusion from the scope of application supplementary occupational retirement pension schemes),
- Concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted,
- All the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provisions, or by collective agreements or arbitration awards which, in that Member State which have been declared universally applicable

Workers Posted for a Period Exceeding 12 (where Applicable 18) Months

Period of posting exceeding 12 months, where a service provider submits a motivated notification, the State where a service is provided extends this period up to 18 months.

- The EU legislation takes into consideration possible link between the labour market of the host Member State and workers posted by their employer for such a long period.
- Additional working conditions applicable to such employees,
- Extend level of protection covers workers posted to replace other posted workers performing the same tasks at the same place— objective to prevent abuse.

Workers Posted for a Period Exceeding 12 (where Applicable 18) Months

- Member States shall ensure to posted employees irrespective to the law applying to the employment relationship that undertakings guarantee to posted workers, on the basis of equality of treatment all the applicable terms and conditions of employment which are laid down in the Member State where the work is carried out.
- The exception:
 1. procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses,
 2. supplementary occupational retirement pension schemes