

# Equal Pay for Equal Work in Global Mobility

Reform of the EU Posted Workers Directive and amendment of the Act of 5 March 2002 on working, wage and employment conditions in the case of posting of workers in Belgium, and related compliance

PwC Legal Belgium



## Way forward

The protection of posted workers within the European Union (EU) has long been a concern of the Commission and the EU Member States. That is why, in the spring of 2018, the European Union revised the 1996 Posted Workers Directive and prescribed improved protection for posted workers within the EU. The main content of the directive is about "equal pay for equal work".

In Belgium, the revised directive has been implemented by the Act of 12 June 2020 in respect of several positions for workers who are posted.

We have summarized for you what changes have been made, by this new Act, to the Act of 5 March 2002, that transposed the initial Posted Workers Directive from 1996. In addition, the Act of 12 June 2020 has also made adjustments to the Act of 24 July 1987 on temporary work, temporary agency work and hiring-out of workers as well as to the Social Criminal Code.

As PwC Legal, we can help your company to implement these new regulations in your international assignment policies and support you with strategic advice and assistance in all global mobility related labour law issues.

## Challenges

### Does Equal Pay for Equal Work imply that e.g. eco-vouchers, transportation allowances or shift premiums have to be paid to posted workers?

The revised Posted Workers Directive ("PWD") has introduced the principle of "equal pay for equal work". This means that the remuneration of assigned employees must at least be at the same level as the salary of local workers, including mandatory additional salary elements (e.g. year-end premium, shift premium, overtime payments, eco-vouchers and transportation allowance). It also implies equivalence of labour conditions (number of holidays, working time regulations, health and safety measures, etc.).

The majority of the Belgian labour law provisions already apply to posted workers from day one because of the broad transposition of the initial PWD into Belgian legislation through the Act of 5 March 2002. This Act namely states that, notwithstanding more beneficial provisions in the home state legislation, all labour and salary conditions the non-compliance with which entails criminal sanctions equally apply for posted workers. This means e.g. that collective bargaining agreements on industry level, when declared generally binding, must be complied with.

### Will posted employees also fall within the scope of Belgian dismissal rules?

The revised directive has, however, added another layer by setting a maximum duration for posting under foreign labour law by stating that, from the 13th month, the employer must respect all mandatory labour law provisions of the host state. Termination rules and supplementary occupational retirement pension schemes are the only exception, and the Act of 5 March 2002 has been adapted accordingly. The period of 12 months can be extended to 18 months, if a timely and reasoned notification is submitted to the Belgian authorities.

When the posting duration exceeds 12 (or 18) months, however, all employment and remuneration conditions will become applicable, save for the above-mentioned exceptions. An example of provisions that will still become applicable when the posting duration exceeds 12 (or 18) months are the articles of the Employment Agreements Act of 1978 on periods of suspension of the employment agreement during which employees are entitled to their normal salary (e.g. paid leave in the case of events in the private life, such as marriage and birth of a child, or guaranteed daily salary in the event of force majeure on the part of an employee).

It is thus of the utmost importance, in order to avoid claims from your employees and/or criminal sanctions imposed by the competent authorities, to get a good view on the provisions applicable to your posted workers, and to factor them in when drafting assignment letters and policies or when making cost projections.

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## Challenges

### Companies' information obligation for employees put at their disposal

The revised PWD has also introduced a new information obligation for companies that use temporary agency workers who are posted from another EU Member State. These temporary agency workers must benefit from the same employment and remuneration conditions as the host company's local employees, even those introduced at company level. To that end, the Belgian host company must inform the temporary work agency in writing (on paper or electronically) about these employment and remuneration conditions.

In addition to this obligation, if a Belgian user company intends to send a temporary agency worker to another EU Member State to carry out work, the Belgian user company must give prior notice to the temporary employment agency about the re-posting before it actually takes place. This way, the employer can ensure compliance with the employment and remuneration conditions in the other EU Member State. This provision also applies to Belgian companies in the context of other lawful forms of lending of employees.

### Do not forget about the EU posted workers notification (Limosa notification for postings into Belgium)

The Limosa notification applies to employees sent to work on a temporary or part-time basis in Belgium and who habitually work in a country other than Belgium or have been hired in a country other than Belgium. The Limosa declaration is furthermore also required for any self-employed person working temporarily in that capacity in Belgium, without residing in Belgium on a permanent basis, in the following industries: building, meat and cleaning.

There are exemptions to the general rules. They depend on the reasons for coming to Belgium and the duration of the stay.

## What can PwC Legal do for you

- 1 At PwC Legal, we have years of best practice in labour, social security and immigration law, and are best placed to help you with**
  - Compliance with all labour law aspects and fulfilment of the relevant requirements in accordance with any reporting obligations
  - Compliance with the notification obligation in Belgium (Limosa) or in other EU Member States, while acting as a representative in dealings with the authorities
  - Efficient handling of international employee assignments according to your current and long-term needs
- 2 Legal advice on existing secondment practices**
  - Legal analysis of existing secondment models and their impact on employment contract documents
  - Support in adapting existing internal posting guidelines
  - Ensuring comprehensive compliance for international staff assignments together (if required) with our colleagues from the international PwC network
- 3 Review of the employment contract situation and adjustment**
  - Review of existing employment contract documents and adjustment if changes are required

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