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## Posted workers requirements employers

- To which terms of employment are posted workers entitled in the Netherlands?
- Administrative obligations in the Netherlands in case of a 'posted worker'
- Duty to notify temporary posting of workers to the Netherlands
- Advice to companies
- Where can CROP assist companies?

## Background

When a company has employees working across borders, a complex set of international legislation comes into place. This can relate to immigration, labour law, personal and corporate taxation and social security. Recently, additional regulations have been implemented in this field.

Based on the EU Posted Workers Directive, companies can be faced with additional requirements when they send an employee to another EU country to carry out a temporary service.

The EU directive defines a set of mandatory rules to be applied to posted workers in order to:

- Guarantee that these rights and working conditions are protected throughout the EU; and
- Avoid 'social dumping'.

The requirements for the home employer can relate to:

- working conditions:
  - minimum working conditions of host country
  - equal pay requirements
- additional administrative conditions:
  - Registration of the posting with the authorities in the host country **prior to start** of the activities;
  - Appointment of a contact person for the host authorities in the host country
  - Detailed record keeping as of day 1.

The Directive had to be implemented into national laws by all EU countries by 30 July 2020.

This set up makes the execution for employers very difficult since all EU countries have their own specific rules implemented. The rules can differ per country with respect to which employees fall under the obligations, what requirements are applicable, how does a notification needs to take place and what penalties will be applied in case the rules are not followed by an employer.

In this memo we will provide you with further information on the rules, how they have been implemented in the Netherlands, what your company should take into consideration and how CROP can help you further.

### **What is a posted worker? - general**

A posted worker is an employee who is sent by his/her employer to carry out a service in another EU member state on a temporary basis. In general, this applies to the following types of mobility from one to another EU member state:

1. **Service delivery:** employees are sent to another EU member state to deliver temporary services under the direction of their home employer. An example can be installing a machine in another EU country
2. **Intra- group transfer:** an employee temporary assigned to a group entity in another member state. An example is the assignment of a German employee to the Dutch entity
3. **Posting by a foreign employment agency:** posting agency posts an employee to perform duties under the direction of the hiring company.

Every EU countries has determined in their national legislation which employees fall under 'a posted worker'. This means that per country this can depend on the duration of the stay in the host country (i.e. applicable as of day 1 or exemptions?), to the activities performed (i.e. applicable already in case of attending only business meetings?) and to the sector an employer is performing activities in.

### **What is a posted worker? – Dutch definition**

In the Netherlands, the Directive has been implemented in the “WagWEU”.

The Dutch definition of a posted worker is an employee who performs **temporary work** in the Netherlands as part of a **transnational** provision of service, based on a **contract of employment**, and who does **not usually** perform work in or based in the Netherlands.

All of the above mentioned types of mobility fall under the Dutch definition.

In the Netherlands the scope is extended to self-employed individuals in high- risk branches like meat industry, construction, agriculture etc.

## To which terms of employment are posted workers entitled in the Netherlands?

For the first 12 months of their posting, workers are entitled to the 'hard core' of the terms and conditions of employment of Dutch labour legislation and of universally binding collective labour agreement conditions.

The hard core of terms of employment of Dutch labour legislation consist of:

- Minimum wage;
- Rules for working hours and sufficient rest hours;
- Safe working conditions;
- Equal treatment of men and women; and
- A minimum number of days off.

After 12 months, posted workers are entitled to additional Dutch terms and conditions of employment: the 'expanded hard core'. This period can be extended to 18 months. We can advise you further on this requirements where desired.

## Administrative obligations in the Netherlands in case of a 'posted worker'

Employers from countries in the EEA and Switzerland with personnel temporarily posted in the Netherlands must comply with a number of administrative obligations:

1. The obligation to have certain **documents available** (or directly available in a digital version) in the Dutch workplace of the posted worker. These are employment contracts, payslips, summaries of working hours, A1 forms, and proof of payment. Documents need to be readily available and kept for 5 years after end of posting.
2. **Information obligation**: the obligation, upon request, to hand over to the inspector all information necessary for enforcement of the WagwEU.
3. The obligation to **appoint a contact person** in the Netherlands who can be approached by the inspector and who functions as the point of contact; this can also be a posted worker.
4. **Duty to notify**: as of March 1, 2020, employers abroad are obliged to notify their work in the Netherlands prior to the start of the activities.

## Duty to notify temporary posting of workers to the Netherlands

In case an employee - who is temporarily working in the Netherlands - meets the 'posted worker' definition, a duty to notify applies. A notification should be made **prior to the posting**. The home employer who posts employees to the Netherlands has the duty to notify the competent authorities via an online portal. The formal duty lies with the home country employer. However, the Dutch entity or client (the service recipient) is **obliged to review** whether the work and the foreign workers have been notified correctly.

In some cases there is no duty to notify if the employee performs certain activities in the Netherlands, like (non exhaustive):

- **Business trips** into the Netherlands, provided the stay in the Netherlands does not exceed 13 weeks within a 52- week time period;
- **Initial assembly** or the first installation of goods, carried out by qualified or specialised workers, provided that this is an integral part of a contract for the supply of goods and is necessary for taking the goods supplied into use. The work performed does not exceed eight days, unless it concerns work in the construction sector.
- **Urgent maintenance or repairs** to tools, machinery or equipment supplied by the employer abroad to the client or company in the Netherlands. Or workers who install or modify the **software** provided by the employer abroad or who provide instructions on the use of that software. Provided that their stay is necessary for these activities and does not exceed 12 consecutive weeks within a 36-week time period.
- **Attending academic conferences**, provided that the stay does not exceed five days per calendar month.

## Penalties in case of non compliance - Netherlands

Different sanctions and fines can be imposed to both the home employer as well as the Dutch entity or client. Some examples are:

- Not complying with the notification requirements: up to EUR 4,500
- Not complying with documentation requirement: EUR 8,000
- Not providing information/documents upon request: EUR 6,000

## Advice to companies

The Posted of Workers requirements causes additional obligations to employers which sometimes need to take place already prior to the start of the activities abroad. This can also be applicable to business travelers.

Companies need to be well aware of the international movement of their employees; both into the Netherlands but also from the Netherlands to other countries. Since rules differ per country, it is important to assess if a certain cross border movement causes any obligations for both the home and host country employer.

We advise to:

- Inform line managers within your company of the requirements indicated in this memo so they are aware of the requirements and risks;
- Check whether pre- approvals can be included in the travel booking system; so before an employee can book a travel, HR is informed. HR can then determine whether any requirements from a tax, labor law, social security, immigration or posted workers perspective exists. CROP can of course be consulted for this.
- Check the top 10 countries into the EU where most of the business trips/international travel takes place. CROP can then further advises on these requirements so further guidelines can be shared upfront within your company.

## Where can CROP assist companies?

International tax, social security, immigration and labor law is very complex and it becomes even more complex due to the Posted Workers Directive. It is important to understand in which events not meeting the requirements could have major consequences, like non compliance and penalties, reputational damage and bad employee satisfaction.

We can assist you further with:

- Assisting with the introduction of the right approach to avoid penalties and to be compliant;
- Assessing the internal processes of travel and advise on how the processes can be improved to mitigate the risks;



- Advising on the specific requirements per country from an integrated tax, social security and labor law perspective;
- The notification requirements.

The tax and labor law specialists of CROP can assist you in assessing the risks and provide further guidance and hands- on assistance. Through the PrimeGlobal network we can provide services in all EU countries together with our PrimeGlobal member firms.

**For more information, please contact Ilse Lurvink, Lucia Veenstra or Suzanne van Hattum**