



EU Posted Worker Directive

A new EU Posted Worker Directive came into effect on **30th July 2020**. All EU countries had until that date to transpose this directive in their national law. Here is a brief overview of the Posted Workers Notification (Limosa Declaration) in Belgium.

Important points to remember :

1. Working conditions to be respected in case of posting to Belgium
2. Important remarks concerning the calculation of the period of posting
3. Mandatory Limosa declaration
4. Legal Representative

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Working conditions to be respected in case of posting to Belgium:

- **General scheme**

Applicable working conditions: principle

Employers who post their workers to Belgium are obliged to respect - for the work performed there - the Belgian working conditions (including pay and employment conditions) which are laid down by legal and regulatory provisions (Royal Decrees) sanctioned under criminal law and by contractual provisions made compulsory by Royal Decree (i.e. collective labour agreements sanctioned under criminal law).

Exceptions to the application of Belgian working conditions

An employer who posts workers to Belgium is exempted from applying :

- Contributions to Belgian supplementary occupational pension schemes.
 - In case of certain initial assembly and/or initial installation work on goods, where the duration of such work does not exceed eight days and does not constitute activities in the field of construction, the pay conditions and the conditions relating to the minimum length of paid annual leave.
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- **Special scheme applicable from 30 July 2020 where posting actually exceeds 12 months**

From 30 July 2020, in case of postings the duration of which actually exceeds 12 months, a **special scheme determines the Belgian working conditions** (including pay and employment conditions) which must be complied with in the case of posting in Belgium in respect of the work performed by those workers after the first 12 months and provided also that those work performances take place from 30 July 2020.

On the other hand, that special scheme does not, therefore, determine the Belgian working conditions applicable in respect of the work performed during the first 12 months of posting, nor the Belgian working conditions applicable to the work performed before 30 July 2020.

With regard to such work, the general scheme (see above : "General scheme") remains fully applicable.

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Important remarks concerning the calculation of the period of posting:

Posting starting before 30 July 2020 but still on-going on or after that date.

Work performed by the posted worker before 30 July 2020 will be taken into account for the purpose of determining whether the duration of the posting actually exceeds twelve months and, consequently, whether or not the special scheme is applicable to work performed from that date of 30 July 2020.

Where the duration of the posting exceeds 12 months, the posted worker's employer **may be exempted**, for an additional six-month period, from the obligation to apply the additional Belgian working conditions which must be complied with in accordance with the special scheme normally applicable in that case. **This additional period always starts on the first day of the 13th month of posting.**

In order to be exempted from applying these additional Belgian working conditions, the employer must send a motivated notification to the social inspectors of the **Directorate-General for Supervision of Social Laws of the Federal Public Service Employment, Labour and Social Dialogue**, i.e. to the Belgian Labour Inspectorate. This notification may also be sent by a representative of the employer.

1.This motivated notification is in no way an obligation but a possibility for a posted worker's employer to benefit from the aforementioned six-month temporary exemption.

Besides, this motivated notification must not be confused with the **Limosa posting declaration**, which is a compulsory formality that must be complied with prior to employing a posted worker in Belgium.

2.This motivated notification must be sent, as appropriate, within the following deadlines :

- before the end of the 12th month of employment of the posted worker, or
- on 30 July 2020, where the posting already exceeds 12 months on 30 July 2020 but does not reach 18 months on that day.

The forementioned deadlines are applied to the letter: any motivated notification submitted after these deadlines shall be considered invalid.

3.Modalities for submitting the motivated notification to the Belgian Labour Inspectorate.

To be valid, the motivated notification must be submitted in accordance with the principles set out below :

- Where the employer has already had to submit a Limosa declaration for the posting to which the motivated notification relates, this employer (or their representative) must submit this notification to the Belgian Labour Inspectorate with the data required in this electronic form (this link will be available from 30 July 2020).
- On the other hand, where the employer was exempted from the obligation to submit a Limosa posting declaration for the posting to which the motivated notification relates, this employer or their representative must submit the notification with the data required by e-mail to the following e-mail address: spoc.labourinspection@employment.belgium.be

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Mandatory Limosa declaration

The mandatory Limosa declaration affects :

- All workers and trainees.
- self-employed or otherwise, who come to work in Belgium, temporarily or part-time.

This declaration must be made electronically (www.limosa.be) before any activities on Belgian territory have actually got under way. For each declaration, the applicant immediately receives proof of receipt (Form L1), which he or she must then print out. This Limosa receipt (Form L1) certifies that the mandatory declaration has been made. The foreign national must keep it in his or her possession throughout his or her stay in Belgium. He or she must present it to his or her Belgian customer or the party commissioning the work before the work begins.

If no Limosa receipt (Form L1) can be presented, the Belgian end user or sponsor must itself submit a declaration indicating that no receipt has been received before the employment starts.

By Belgian end user or sponsor, the regulations mean any person for whom, or by whom, salaried workers, self-employed workers or posted trainees work, directly or as a subcontractor.

Employers who do not comply with these requirements may face a criminal fine between EUR 400 and EUR 4,000 and administrative fines between EUR 200 and EUR 2,000. These fines can be multiplied by 12 for cumulative violations. Employers who do not comply with the new requirements may however benefit from mitigating circumstances.

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Penalties incurred if these new rules are not respected

An employer who is going to post workers in Belgium must communicate to the Belgian Labour Inspectorate the identification and contact details of a liaison person, who can be contacted, if need be, by the Belgian Labour Inspectorate to deliver and receive, on behalf of this employer, any document or notification regarding the employment of posted workers in Belgium.

Source: <https://employment.belgium.be/en>

For more information, please contact us
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