



## 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. France transposed this directive on 20th February 2019. Here is a brief overview of the changes that occur from 30th July 2020.

**The ordinance n°2019-116 essentially brings 4 essential measures :**

1. Strengthening the principle of equal treatment of the compensation in a larger sense rather than only meeting the “minimum salary and required salary components”. The posted workers will benefit from the principle of the same level of remuneration as local workers. This means that it will be necessary to compare the total gross pay of the posted worker with local workers in the same position. This especially concerns bonuses and benefits, and reimbursement of professional expenses by the host company.
2. Application of this guideline: beyond 12 months, there is the application of the entire Labour Code to seconded employees
3. New obligations when using temporary agency workers
4. Penalties incurred if these new rules are not respected

# 1

## **Strengthening the principle of equal treatment of the seconded worker in comparison with the local employee, employed in the same branch, ensuring compliance in terms of labour legalisation with regard to :**

- Individual collective rights within the workplace;
- Discrimination and professional equality between women and men;
- Maternity protection, maternity/paternity/childcare leave, leave for family events;
- Conditions of the French labour code and guarantees for employees by companies engaged in temporary work;
- Exercise of the right to strike;
- Hours of work, keep rest, public holidays, paid annual leave, hours of work and night work for young workers;
- Application of holiday and adverse weather funds to seconded workers;
- Remuneration within the meaning of Article L. 3221-3, payment of wages, including overtime bonuses;
- Rules relating to occupational health and safety, age of admission to work, employment of children;
- Illegal work;
- Reimbursements made in respect to professional expenses inherent to the function or employment borne by the seconded employee, during the performance of the mission, in respect of transport, meals and accommodation.

As of 30th July 2020, employers will have to guarantee the seconded employee **the same remuneration as that received by a local employee in an equivalent position and in the same business line**, (whereas today the employer only has to guarantee the seconded employee the legal minimum wage as given by the collective bargaining agreement).

The employer will also have to **reimburse the employee for all expenses incurred during the assignment, such as transport, meals, and accommodation** as professional expenses

# 2

## **Fixing of a maximum period of secondment - above 12 months (or when applicable 18 months) the entire French Labour codes for employees will be applicable for the seconded employee :**

An employer who posts an employee to France for a period exceeding 12 months will be subject, as of the 13th month, to almost all the provisions of the Labour Code. Only the following provisions will not be applicable to employees seconded to France: the training and performance indicated in the employment contract, the modification of the employment contract for economic reasons, voluntary mobility, and transfer and termination of the employment contract/fixed-term contract/site contract.

The new rule also limits the possibility of combining periods of secondment of several employees for the same position. In the event of the replacement of a seconded employee by another employee seconded to the same position, the 12-month secondment period will be reached when the cumulative duration of the secondment of successive employees on the same position is equal to 12 months.

# 3

The purpose of this provision is to avoid systematic recourse to the secondment of employees for jobs that can be held by employees permanently established in the country of secondment.

The foreign employer may also request, an extension of the 12-month secondment period by a maximum of 6 months, i.e. 18 months during which only the previous block of labor rights and obligations of seconded workers will apply.

Therefore, we highly recommend HR teams to verify the start date of the secondment, to ascertain how many months remain as of 30 July 2020 before this new rule applies

## New obligations when using temporary agency workers

The rule introduces a new obligation for the **user company established in France** to provide the information regarding the compensation requirements to the temporary employment agency including the nature of their obligations thus ensuring that the rights of seconded employees are respected.

When the user company is established abroad and carrying on business in France from time to time, the said company is required to provide the information regarding the Labour law rules applicable in France (the list will be fixed in the near future.)

# 4

## Penalties incurred if these new rules are not respected

- **Termination or suspension of the provision of services:** this is the case in the event of serious breaches of the rules on the posting of employees to France, such as failure to comply with the rules on daily and weekly rest periods, maximum working hours and the legal minimum wage.
- **Administrative fines** may also be imposed by the Administration on the employer established abroad or on the principal or project owner in France.
- **New case of administrative penalty:** failure to make a reasoned statement to obtain a 6-month extension of the secondment will be punishable by a fine of €4,000 per breach (€8,000 if repeated within 2 years).

### References:

Directive of 28 June 2019 (CE) 2018/957 revising the initial directive of 16 December 1996 (CE) 96/71 ; (FR) Ordonnance n°2019-116 20th February 2019

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