



## 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 in Slovenia.

### Important points to remember :

1. Obligations of employers
2. Obligations to supervisory bodies
3. Obligations of posted workers
4. Fines and sanctions

## Obligations of employers

### **Social Security – obtaining the A1 Certificate**

Before posting workers to work abroad, the employer is required to obtain for each individual worker, in the Member State in which it is based, a certificate concerning the social security legislation which applies to the holder (Certificate A1).

### **Regarding payment, with the Minimum wage act and the employment relationship act.**

The minimum wage in the RS is determined once a year and is based on the harmonisation with the rise in consumer prices and after prior consultation with social partners. From 1 January 2015 onwards the minimum monthly wage amounts to 790,73 Euros (gross).

### **Regarding annual leave, working time, special protection of workers and prohibition of discrimination in accordance with the employment relationship act.**

Provisions in the Employment Relationship Act (available in Slovenian) (Official Gazette of the RS no. 21/13) give the worker the right to annual leave in every individual calendar year; this leave may not be shorter than four weeks, regardless of whether the worker works full-time or part-time. The minimum number of days of a worker's annual leave depends on the distribution of working days per week in respect to an individual worker.

A worker has the right to one additional day of annual leave for every child under the age of 15. An older worker, a disabled worker, a worker with at least 60% physical impairment or a worker who takes care of a physically or mentally handicapped child has the right to at least three additional days of annual leave.

The employer is required to pay holiday allowance to the worker who has the right to annual leave, at least at the rate of the minimum wage. If the worker only has the right to partial annual leave or has a contract for shorter than full-time, then the worker only has the right to a partial allowance.

The provisions of the Employment Relationship Act also regulate working time and minimum rest, by stipulating that the working time consists of effective working time (the time in which the worker works and is at the employer's disposal and fulfils his work obligations according to the contract) and a break, to which a worker employed full-time is entitled during daily work in the amount of 30 minutes.

The Act further stipulates that the full-time workload cannot be longer than 40 hours per week. The law or the collective agreement can define full-time work that is less than 40 hours per week, but not shorter than 36 hours, except for the positions where there is an increased risk of injury or damage to health.

In addition to a break during work time, the worker has the right between two consecutive work days to a rest of at least 12 uninterrupted hours within a period of 24 hours and to a weekly rest of at least 24 uninterrupted hours within a period of seven successive days, with the minimum duration of the weekly rest calculated as the average of 14 consecutive days.

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## Obligations to supervisory bodies

A foreign employer is required to ensure that when he posts his workers to the RS, the following documents are kept on the location where the activity is carried out and can be provided for inspection at the request of the supervisory body:

- a copy of the contract between the client and the service provider, or a copy of the act of posting and its translation into Slovenian;
- a certificate of submitted registration of the provision of services;
- copies of employment agreements and their translations into Slovenian;
- copies of payroll lists;
- register of presence;
- proof of wages paid out or copies of equal documents for all posted workers;
- and A1 Forms.

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## Minimum wage, minimum wage claim and pay supplements for overtime work

Foreigners posted to RS by a foreign employer must have, at the time of their posting, regulated residence according to the provisions of the Aliens Act.

### Posted workers - EU Member States

If the worker posted to RS by a foreign employer is a citizen of an EU Member State, he can reside in the territory of RS without registration for 90 days after entering the country. If he wishes to extend his residence in the RS beyond the 90 days, he must, before the expiration of the 90-day permit, register his residence with the administrative unit where he lives, citing employment or work as reasons.

The administrative unit issues a receipt that confirms the EU citizen has submitted a registration of temporary residence, which allows the worker to reside while the application is being resolved. The administrative unit issues a confirmation of the registration of temporary residence if the worker has a valid ID or passport and proof of carrying out work.

### Posted workers – non-EU member states.

If the worker, posted to RS by a foreign employer, is a citizen of a state that is not an EU member, he must obtain a single residence and work permit for the purposes of pursuing cross-border services. The request for permission may be lodged by the foreigner or his employer. The foreigner lodges an application for a first temporary residence permit with a diplomatic or consular representation of the Republic of Slovenia abroad, while the employer may apply also at the administrative unit where the worker will reside or at the administrative unit where the employer's seat is or where the service will be carried out.

The administrative unit issues a single residence and work permit if the foreigner possesses a valid passport and sufficient funds for living and has social security in the country from which he has been posted. A single residence and work permit is issued for the period stipulated in the contract or act of posting, or at most for a year with the possibility of extension.

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## Fines and sanctions

In connection to posting workers of foreign employers to work in the RS, fines may be issued for the following violations:

- **the foreign employer carries out the activity in the RS using workers he does not employ**, or provides service despite the prohibition of employing foreigners: from 10.000 to 75.000 € for the employer and from 500 to 5.000 € for the responsible person of the employer;
- **the foreign employer does not guarantee the rights** related to working time, rest and break, night work, minimum annual leave, pay, occupational health and safety, special protection of workers and ensuring equal treatment for the workers posted to work in the RS, according to the regulations of the RS and the generally applicable industry collective agreements: from 3.000 to 20.000 € for the employer and from 450 to 2.000 € for the responsible person of the employer;
- **the foreign employer does not register the beginning of providing service in the RS**: from 3.000 to 30.000 € for the employer and from 500 to 1.500 € for the responsible person of the employer;
- **the foreign employer does not keep necessary documentation** in the period of posting or does not provide it at the request of the supervisory body: from 3.000 to 30.000 € for the employer and from 500 to 2.500 € for the responsible person of the employer.
- **If the employer has received a fine that was finally imposed for a violation from the first or second incident of the previous paragraph**, he is at the same time banned from providing services in the RS for two years starting from the day the decree of violation goes into effect.
- **In accordance with the Aliens Act, every foreigner wishing to reside in the RS must establish residence**. If the foreigner is in Slovenia illegally or resides in the RS against the purpose for which the residence permit was issued to him, such a foreigner can be punished with a fine between 800 and 1.200 €.

Source : <http://www.napotenidelavci.si/en/>

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