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Posting of employees in France: A decree dated March 30, 2015 has finally clarified the obligations and liabilities imposed on employers and user companies that became effective on April 1, 2015

Law n° 2014-790 of July 10, 2014 on combating unfair labor competition had supplemented the existing scheme aimed at regulating the conditions in which foreign workers are temporarily posted in France and, in particular, imposed on user companies and clients an obligation of vigilance with respect to housing conditions and labor legislation.

Decree n°2015-364 of March 30, 2015 on combating frauds in connection with the posting of workers and illegal work will henceforth ensure full implementation of the above-mentioned Law.

The provisions of Article **L.1262-1** of the French Labor Code that defines the general framework for the posting by a foreign company of one or several employees in France should preliminary be recalled:

“An employer established outside France may post workers temporarily to the French territory, provided there

is an employment contract between this employer and the employee and their employment relationship continues throughout the duration of the posting.

Posting may take place:

1° either for the account of the employer and under his direction, under a contract concluded between the employer and the user company established or operating in France;

*2° or between establishments belonging to the same company or **companies of the same group**;*

3° or for the account of the employer, without any contract between the employer and the user company.”

The transnational posting of employees within the same group is thus subject to the enacted formalities.

1. Obligations imposed on foreign companies:

A) Prior declaration

An employer established outside France must send a pre-posting declaration to the territorial unit of the *Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi* (Regional Directorate for Companies, Competition, Consumption, Labor and Employment, known under the acronym “DIRECCTE”) of the place where the services will be provided.

Since April 1, 2015, this prior declaration provided for under Article R.1263-3 of the French Labor Code must include further information on the company that posts workers in France (full civil status information, phone number and email address of the corporate officers of the company and of the company representative in France, identification of the body to which social-related contributions shall be paid) and on the conditions in which travel, meal and housing expenses will be covered.

Failure to send a pre-posting declaration is punishable by a fine – imposed by the head of the DIRECCTE – in the amount of 2,000 euros maximum per posted employee (4,000 euros in case of repeated offenses), up to a maximum total of 10,000 euros.

B) Designation of the representative of the company in France (Article R.1263-2-1 of the French Labor Code)

The March 30 Decree merely states that the representative “*fulfills on the behalf of the employer the obligations imposed on the latter*” with respect to the retention and availability of the documents listed below.

C) Documents that must be kept available to control agents

The March 30 Decree supplements previously applicable provisions, and strengthens the administrative authorities' means of control.

In addition to the documents that have been required since 2008 (wage slips, proof of medical check-up, potentially required work authorizations, and proof that the company complies with its obligations under an international social security agreement), employers established outside France must henceforth keep available to the control agents the following documents:

- Any document evidencing the effective payment of the salary,
- A time sheet mentioning the start, end and duration of the daily working time of each posted employee,
- Copy of the letter appointing the company representative,
- The employment contract of the posted worker, or any other document evidencing the place of recruitment,
- Any document attesting to the law that governs the contract between the employer of the posted workers and the user company established in France,
- Any document attesting to the number of contracts performed and amount of turnover achieved by the posting company in its country of establishment and in the French territory.

All of these documents must be translated into French.

2. Obligations imposed on user companies / clients established in France

A) Verification requirement

The company established in France must verify that the foreign posting company has duly complied with its obligations to send a pre-declaration and to appoint a representative in France. As such, the French company must, before the effective date of each posting period, request copy of the corresponding notifications made by the foreign posting company.

Non-compliance with this obligation is punishable by the same fine as that imposed on the foreign company that posts workers in France without taking the required steps.

B) Registration requirement

The French company must annex a copy of the posting declaration and of the work permits of the posted employees to its staff register and make such copies available to the staff representatives.

The number of posted employees is added to the information that must be included in the workforce statistical report that is mandatory in companies with at least 300 employees.

C) Duty of vigilance with respect to the accommodation of posted employees

The company established in France that is informed by a control agent that the housing conditions of the employees of its co-contractors or any of its direct or indirect sub-contractors are not compatible with human dignity must order the latter to remedy the situation. The foreign employer has 24 hours to confirm that the situation has been remedied. The French company must immediately forward the confirmation to the control agent.

If the foreign employer does not remedy the situation, it will be up to the French client or user company to assume responsibility for providing adequate housing to the posted employees.

D) Duty of vigilance with respect to labor legislation

The same rules as above apply: wherever a company established in France is informed by a control agent that the foreign employer is in breach of applicable labor legislation, it must order the latter to remedy the situation. The foreign employer has 15 days to inform the French company that the situation has been remedied. This time-line is reduced to 7 days if the breach concerns the total or partial non-payment of the remuneration.

The company established in France must send the foreign company's response to the control agent. If the foreign company fails to respond within the prescribed time-line, it must inform the control agent thereof.

The company established in France is liable to a 5th class fine (i.e. a fine up to 7,500 euros for a legal entity) if it does not comply with its obligation to instruct the foreign employer to remedy the situation and to inform the control agent. If the breach concerns the non-payment of the minimum wage provided for by law or by the applicable collective bargaining agreement, the company established in France may be held jointly liable with the foreign employer for the payment of accrued remunerations and contributions.

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