POST-MEET
PROJECT

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POLAND

GUIDE ON POSTING IN COSTRUCTION SECTOR

Introduction

Important notice and aims of the guide

This guide provides detailed information on the terms and conditions of employment and procedures applicable in the construction sector, including those related to postings.

Produced within the framework of the EU-funded Post-meet project (No. 101140103), it was published as part of a set of publications addressing Bulgaria, Italy, Poland, Slovenia, and Spain.

The Post-meet project aims to enhance the availability of information on posting targeting workers and employers, in this way supporting compliance with legislation. It also supports partner organisations in improving their communication channels. You can find more information on the project on the website of the organisations hosting this guide.

This guide does not provide legally binding information, nor is it intended as an exhaustive source of information on posting. Its structure was elaborated bearing in mind information already available in public portals, most notably the Your Europe web-page on posting, the practical guide on posting of the European Commission, and the leaflet "Posted workers in the construction sector" elaborated by the European Labour Authority, all available in the 'Useful contacts and sources' section at the end of this document. The idea was to complement existing official sources of information on this subject and to focus on country-level provisions related to posting in the construction sector.

The guide is thought to suit the standard situation whereby posted workers remain affiliated for social security purposes in the home country and are subject to the legislation of the host country for selected matters. As explained below, there are exceptions to this standard, for instance, in case the posting has a long duration or if the worker is sent to replace another person. It is also important to stress that the host country legislation applies only to the extent that it is more favourable for the worker. Otherwise, the worker shall remain subject to the provisions of their home country.

While recommending seeking customised advice in case of need, we recall that the provisions indicated in this guide may be subject to developments following amendments in the relevant legal sources, as well as in national and European case law, which can especially affect the boundaries of national provisions applicable in cases of posting.

Presentation of the author of the guide

The **BUDOWLANI trade union** is the largest trade organisation for workers in the construction sector, as well as for workers in the building products, wood, and furniture industries, and forestry in Poland. It also represents the interests of posted workers in Poland and, through cooperation with other unions affiliated to the EFBWW, supports Polish workers posted to other EU countries. For many years, it has been

implementing European projects in the area of economic migration of workers and vocational education. It has been a partner of the CNCE and Fondazione Brodolini in successive projects addressing the issues of posted workers.

What is the applicable minimum wage in Poland?

In Poland, the minimum wage can be agreed by trade unions, employers' organisations and the government within the social dialogue council. If no agreement is reached, according to the act of October 10, 2022, of the Council of Ministers (Journal of Laws of 2020, item 2207), the amount should be established by the Council of Ministers. The minimum wage and minimum hourly rate set by the Council of Ministers may not be lower than the amount proposed to the Council of Social Dialogue for negotiation. The minimum wage is fixed for the next calendar year, although it can be adjusted annually if there is a significant change in the inflation rate.

Regarding the construction sector in Poland, there is no sectoral collective bargaining agreement. Thus, it is bound by the minimum wage set for the entire economy (as described above). Minimum wages for specific jobs may be higher in tariffs than those set in company-level agreements. However, such agreements are concluded in a few construction companies.

The minimum wage is a gross amount and applies to monthly wages for working hours following a full-time position (8 hours per day, 40 hours per week) or a minimum gross amount per hour of work under certain civil law contracts (orders). The minimum wage for both types of contract is set out in the annual regulation on minimum wage described above. The nature of the employment contract is defined in the Labour Code. Civil law contracts are subject to the Civil Code.

In 2024, the minimum wage was raised in two stages. As of January 1, the lowest gross salary was PLN 4242, and as of July 1, it was PLN 4300. In 2024, the minimum hourly rate for civil law contracts also increased. From January 1, it was PLN 27.70, and from July 1, it was PLN 28.10. In 2025, the minimum gross wage will be PLN 4666 and the minimum hourly rate will be PLN 30.50 gross. The increase in the hourly wage in civil contracts is directly linked to and derived from the rise in the minimum wage in an employment contract. Legal basis: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240001362

Posted workers are entitled to the broader concept of ‘remuneration,’ as further detailed in the following questions.

What other elements of remuneration apply to posted workers?

The basic principle in Poland is that all the regulations of the host country (Poland) applicable to local workers also apply to all posted workers from the first working day, following the principle of equal pay for the same work in the same workplace.

A posted worker is entitled to all elements of remuneration established by the law and universally binding collective agreements (not applicable to Poland - there are no such collective agreements in the construction industry in Poland), including such elements as the 13th salary.

Does the salary include other allowances due under special circumstances?

The posted worker is entitled to reimbursement of travel expenses associated with the posting, including accommodation and subsistence costs. The expenses mentioned above should be paid or reimbursed to the posted worker regardless of the salary due.

In the case of business travel within Poland, the posted worker should receive the same benefits as local employees are entitled, following Polish regulations and the rules applied in this regard by the employer-user (board and lodging allowance, travel costs, accommodation costs).

A posted worker in Poland is entitled to receive the additional payment for overtime, night and day work, work on public holidays and for work performed in special conditions. Allowances for hazardous work are a non-compulsory element of remuneration (except for some, such as allowances for teachers), but if applied to the entire group of employees working under the same conditions, they also include posted workers. **As of January 1, 2024, these allowances will no longer be included in the calculation of the minimum wage.**

Public holidays in Poland in 2025:

1 January (Wednesday): New Year's Day

6 January (Monday): Epiphany

20 April (Sunday): Easter

21 April (Monday): Easter Monday

1 May (Thursday): Labour Day

3 May (Saturday): Constitution Day

8 June (Sunday): Pentecost

19 June (Thursday): Corpus Christi

15 August (Friday): Assumption of the Blessed Virgin Mary

1 November (Saturday): All Saints

11 November (Tuesday): Independence Day

25 December (Thursday): Christmas Day

26 December (Friday): Second Christmas Day

A worker employed in Poland is entitled to a 100% wage supplement for night work, work on Sundays and public holidays (which are not working days for the employee, according to the employee's working schedule). Workers are entitled to a compensatory rest day for work performed on a Sunday or during a public holiday, as specified in their working schedule. S/He may also receive an additional day's rest, if the

overtime falls at night. In this case, the worker is entitled to an extra 20% of the minimum wage for each hour of work.

An employee is entitled to 50% of the salary for overtime work falling on any day other than those listed above.

An employee may not refuse to work overtime hours designated by the employer, as required by law. The number of overtime hours an employee may work in a calendar year may not exceed 150 hours.

Are there any sectoral funds in place that intermediate holiday pay or other elements of remuneration?

There are no sectoral holiday pay funds in Poland; the employer pays holiday pay. There are also no other sectoral funds and no legal basis for their creation.

Where can I find the most up-to-date and official information on applicable remuneration?

Information on the current (2024) minimum wage can be obtained from the Polish government's website: https://www.gov.pl/web/premier/min-stawka-godzinowa-2024 (Regulation on the minimum wage and the amount of the minimum hourly rate in 2024) and for 2025: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240001362

There is no sectoral, general collective agreement for the construction industry in Poland. Wages are determined by the employer and agreed upon with the employee in the employment contract. It may also be set in the company's collective agreement or in the tariff or salary regulations. If the number of employees exceeds 50, the employer must provide remuneration regulations. If the number of employees is between 20 and 50, the employer is required to provide regulations at the request of the company's trade union organisation. Pay scales, as outlined in collective bargaining agreements, and remuneration regulations are subject to regular negotiations with trade unions, typically held once a year. Collective bargaining can include, for example, higher pay for overtime or additional/longer paid breaks. To find out whether these arrangements apply to posted workers, you should contact the trade union operating in the company.

A good tool for obtaining information on current (monthly) changes in the net prices of services in the basic groups of construction works (on a national and regional basis) is the portal www.wielkiebudowanie.pl: https://www.wielkiebudowanie.pl/go.live.php/PL-H80/barometr-cen-w-budownictwie.html. However, it should be noted that the portal reports changes in the number of services (not wages), mainly for finishing work.

What are the maximum work periods and minimum rest periods to which employees are entitled?

In each working day (24 consecutive hours from the time an employee begins work according to their work schedule), an employee is entitled to at least 11 hours of uninterrupted rest.

In each week, an employee is entitled to at least 35 hours of uninterrupted rest, which includes at least 11 hours of uninterrupted daily rest.

The maximum working time in Poland is 8 hours per day and an average of 40 hours per week, within a 5-day working week, within a reference period of no more than 4 months. Overtime work is possible but has limitations, e.g. 8 hours per week and 5 hours per day.

The Labour Code provides for situations in which it is possible to shorten the weekly rest (when doing so, a rest of not less than 24 hours must be provided):

- about employees managing the workplace,

- when it is necessary to carry out rescue operations to protect human life or health, to protect property or the environment, or to remove an accident,

- In connection with the transition of an employee to another shift, following the established work schedule.

As with annual leave, an employee may not waive the right to daily and weekly rest.

Information on working time norms and mandatory rest periods is available on the website of the State Labour Inspectorate at https://www.pip.gov.pl/dla-pracownikow/porady-prawne/czas-pracy.

How long is the minimum annual paid leave?

According to the provisions of labour law in Poland (Labour Code, Dz. U. 1974 No. 24, item 141), every employee is entitled to paid holidays.

Article 154 § 1 of the Labour Code states that:

The duration of annual holidays is:

1. 20 days - if the employee has been employed for less than 10 years;

2. 26 days - if the employee has been employed for at least 10 years.

The calculation applies to the entire period of the employee's professional activity, as outlined in employment contracts, and also to the specified period of education (basic vocational school - 3 years, secondary vocational school - 5 years, bachelor's degree - 8 years).

The employer has the right to grant employees additional paid leave days.

Paid leave during the year is calculated in proportion to the period of employment during the year.

In terms of occupational safety and health, which are the involved actors and which are the related responsibilities?

According to Article 226 of the Labour Code, the employer must assess and document the risks associated with the work performed, inform employees of the assessment results, and consult with trade unions or other employee representatives on the implementation of these obligations. Additionally, paragraph 39 of the Ordinance on General Regulations for Occupational Safety and Health requires employers to assess and

document the occupational risks associated with specific work and to take the necessary preventive measures to mitigate these risks. This provision also imposes the employer's obligation to ensure that work and workplaces are organised in such a way as to protect employees from accident hazards and the effects of harmful to health and arduous factors. The employer is obliged to carry out a systematic occupational risk assessment, especially if there have been any technical and organisational changes.

Assessment of occupational risks at workplaces is subject to rigorous control by the State Labor Inspectorate.

The responsibility for occupational safety and health conditions in a company lies with the employer. The employer (in larger companies) acts through the company's labour safety services (occupational safety and health inspectors). In companies with trade unions, social labour inspectors may be appointed to represent the workers' side. In the case of larger construction projects, the general contractor's occupational safety and health services also supervise the work of subcontractors. In such cases, the general contractor appoints an OSH coordinator. The relevant obligations and OSH requirements for subcontractors are included in subcontracts. Posted workers are supervised by the user employer's OSH services, and on larger construction sites also by the general contractor (if it is not the user employer).

Workers posted to Poland should be trained in health and safety by the posting employee's employer, but are also covered by occupational health and safety training conducted by the user employer's health and safety services. Such training should be conducted in the language of the posted workers or with the participation of an interpreter. Personal and collective protective equipment is provided to posted workers by the user employer, following applicable regulations in Poland. Inspection in the field of occupational safety and health (including the use of protective equipment) of employees posted to Poland is carried out by both the user employer's occupational safety and health services and inspectors of the State Labour Inspectorate to the same extent as for local employees.

Although the employer is responsible for occupational safety at the enterprise, on the construction site the construction manager is responsible for supervising occupational safety. Posted workers are also required to follow health and safety instructions provided by their immediate supervisors on the job site (site managers, foremen) and the employer's designated health and safety service (health and safety inspectors, health and safety coordinators).

Posted workers can seek assistance, information and intervention from social labour inspectors and trade union representatives at the workplace.

Are there specific requirements under OSH legislation concerning subcontracting? How do they affect subcontracting to a foreign company?

Subcontracting is the usual type of service provision under which posting between undertakings not belonging to the same group is permitted. For public contracts, the rules governing subcontracting are outlined in the Public Procurement Law. In the case of construction work that requires supervision (most construction work), employment under an employment contract (following the Labour Code) is required (Art. 95 of the Procurement Law). In the case of private procurement, it is still possible to employ staff, including those seconded under other (civil) contracts. These employees are subject to the same health and safety

regulations and training requirements as provided for their respective jobs - just like employees with employment contracts.

There is currently no mandatory or voluntary certification or registration system for construction companies in Poland. There is also as yet no system of individual cards for employees in the construction industry.

What are the requirements applicable according to OSH legislation in [name of the country] regarding training and medical surveillance?

Health and safety training is mandatory for all new employees, including apprentices, trainees, and young workers. According to the Labor Code, an employee cannot perform her/his duties if s/he has not undergone initial training (general instruction), which can still be expanded to include on-site instruction. Initial OSH training (general instruction) lasts a minimum of 3 classroom hours. The on-site instruction lasts 8 lesson hours.

Initial training must be taken by every new employee before being allowed to work.

Employees are also required to receive periodic OSH training. The Regulation of the Minister of Economy and Labour on training in the field of occupational safety and health of July 27, 2004 (https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240001327) specifies who is obliged to undergo training and its frequency. Thus, employees in blue-collar jobs undergo it at least once every three years, and if they work in hazardous and harmful conditions, the period is reduced to one year. The first periodic training must be conducted within six months of commencing work.

Other procedures apply to employers, managers, foremen, engineering and technical employees, health and safety employees or administrative and office workers, for whom the validity period of periodic health and safety training is 5 years, and the period within which they must take it from the moment of employment is 12 months.

According to the Labour Code, all training should take place during working hours. Otherwise, it is considered overtime.

Health and safety training is also mandatory for employees posted to Poland (initial, job-related and, in justified cases, periodic). An employee posted to Poland may receive initial training abroad. However, in such a case, the employer posting an employee to Poland must demonstrate that the program of initial training that the employee has received in another country complies with the requirements of Polish law.

Initial training (general instruction) is conducted by an employee of the occupational safety and health service, a person performing the tasks of this service for the employer, or an employer who performs such tasks himself or an external company. On-site instruction in occupational safety and health is conducted by a person designated by the employer to manage employees, or by an employer who has the appropriate professional qualifications and training in the methods of conducting on-site instruction.

Periodic training in occupational safety and health may be conducted by persons with the appropriate knowledge and experience. It is recommended that such training be performed by a person with a

documented postgraduate degree or a degree in occupational safety and health technician or a master's degree in law, a course in qualified first aid, a course in fire protection inspector, and current periodic training in occupational safety and health for employees of the occupational safety and health service.

Medical surveillance

An employer may not allow an employee to work without a current medical certificate stating that there are no contraindications to work in a specific position. An occupational physician issues the certificate. The employer covers the cost of the employee's medical examination. Periodic medical examinations are performed every 2-4 years (depending on the job position and harmful or arduous working conditions occurring at the workplace). Controlled medical examinations are required for all employees who return to work after an illness lasting at least 30 days. Allowing an employee to work without a current medical examination is punishable by law.

To provide posted workers in Poland with medical examinations for work admission, in accordance with Polish law, the aforementioned employees may possess documents certifying that such examinations were conducted in the sending country.

Who are the responsible persons to contact in case of problems in terms of occupational safety and health?

If a threat to occupational safety is detected, it should be reported to the immediate supervisor verbally or in writing. Accidents at work should be reported to the direct supervisor and the company's health and safety services. In an emergency, the worker can refer to the emergency telephone number 112 (for police, fire department, or ambulance). In the absence of a response from the supervisors, an employee, including a posted worker, can report OSH problems directly to the State Labour Inspectorate (to the territorially competent District Labour Inspectorate). The procedure for filing a complaint is described on the Inspectorate's website: https://www.pip.gov.pl/en/for-employees/how-to-file-a-complaint (also in Ukrainian).

The State Labour Inspectorate is responsible for inspections and sanctions https://www.pip.gov.pl/

Officers of the State Sanitary Inspectorate authorities (especially in the case of sanitary hazards) are also authorized to do so https://www.gov.pl/web/gis/glowny-inspektorat-sanitarny. The employee may also notify the social labour inspector of the enterprise where he/she performs work of the dangers and ask for intervention.

A posted worker, as a rule, is covered by social insurance in the sending country. A posted worker in the case of posting from an EU/EEA country can use the European Health Insurance Card for medical services.

Which provisions shall be observed concerning the terms and conditions of employment of pregnant women, women who have recently given birth, children or young people?

Article 176 of the Labor Code indicates the work prohibited to pregnant women or women who are breastfeeding a child.

Pregnant women and women who are breastfeeding a child may not perform strenuous, hazardous or harmful work that may adversely affect their health, the course of their pregnancy or the breastfeeding of their child. The government decree specifies a list of the work referred to above, which includes work:

- those involving excessive physical exertion, including manual handling of loads,

- likely to have an adverse effect due to the manner and conditions of their performance, taking into account the types of factors present in the work environment and their level of occurrence

- guided by current knowledge on the impact of working conditions and factors in the working environment on women's health, the course of pregnancy or breastfeeding.

The regulation of the Council of Ministers of April 3, 2017, regulates physical loads working, exposure to harmful substances, climatic conditions, electromagnetic fields, pressure, noise, vibrations and even the risk of psychological damage. The regulation is available at this link https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wykaz-prac-uciazliwych-niebezpiecznych-lub-szkodliwych-dla-zdrowia-18593281.

In Poland, the employment of children under the age of 15 (with a few exceptions for artistic, cultural and advertising activities) is prohibited and punishable.

It is possible to employ juvenile workers in Poland. According to the definition in Article 190 § 1 of the Labour Code, a juvenile is a person who has reached the age of 15 and is under the age of 18. Juveniles under the age of 16 may work a maximum of 6 hours a day, while those over 16 may not work more than 8 hours a day. These norms are absolute, which means that working hours cannot be extended beyond them, for example, under the equivalent working time system, where the norm can be extended to 12 hours. An adolescent worker is entitled to a 30-minute break if his daily working time, which includes study time, is 4.5 hours or more. Young workers are prohibited from being employed overtime and at night. Juvenile workers must be given 14 hours of daily rest and 45 hours of uninterrupted weekly rest.

Conditions of employment of juveniles are available at this link: https://poradnikprzedsiebiorcy.pl/-czas-pracy-pracownikow-mlodocianych-najwazniejsze-informacje

What is meant by non-discrimination in [name of the country], and where can I find more information?

Discrimination in Polish law means treating people who, due to gender, race, ethnic origin, nationality, religion, denomination, worldview, disability, age or sexual orientation, are in a less favourable position than other people in a comparable situation. According to Article 18.3a of the Labour Code, any discrimination in employment, direct or indirect, in particular due to gender, age, disability, race, religion, nationality, political

beliefs, union membership, ethnic origin, denomination, sexual orientation, employment for a fixed or indefinite period, full-time or part-time employment - is inadmissible. If discrimination is found, the employee is entitled to compensation in an amount not lower than the minimum wage. The State Labour Inspectorate may impose a fine of up to PLN 5,000 on the employer. In addition, malicious or persistent violation of employee rights is punishable by a fine, restriction of liberty, or imprisonment for up to 2 years, as per the provisions of the Penal Code. Information on equal treatment in employment: https://www.gov.pl/web/family/discrimination-in-employment.

Are posted temporary workers subject to different conditions than other posted workers?

Temporary workers posted to Poland must be guaranteed – in addition to the terms of employment resulting from generally applicable Polish provisions relating to temporary work – also the terms of employment resulting from, among others, the provisions of collective labour agreements and other collective agreements based on the Act (as well as regulations and statutes specifying the rights and obligations of the parties to the employment relationship) that are not generally applicable on the same terms as those guaranteed to domestic temporary workers. This also applies to accommodation if provided to workers who are located far from their usual place of work. Source: Act of 9 July 2003 on employment of temporary workers, Journal of Laws 2003 No. 166 item 1608.

The same principle applies to a temporary employment agency that assigns a temporary worker to a user employer in the territory of the same or another Member State, which then temporarily assigns the worker to work in Poland.

The user employer using temporary work is obliged to provide the foreign temporary employment agency (i.e. the posting employer) with: written information on the website containing information on the principles and conditions of performing temporary work in Poland and written information on the terms of employment resulting from the provisions of collective labour agreements and other collective agreements, regulations and statutes specifying the rights and obligations of the parties to the employment relationship, which are binding on the given user employer, including the conditions of accommodation. The principles of posting temporary workers are described on the website: https://www.biznes.gov.pl/pl/portal/00195.

Other administrative and legal aspects

Which declarations duties are entailed in the case of posting?

The A1 certificate is issued at the request of the interested party (employee, self-employed person) or employer.

A1 certificate confirms the social security status of workers posted to Poland.

The A1 certificate issued by the institution of one Member State is binding on the institutions and employment services of Poland as long as it is not withdrawn or declared invalid.

A person who holds an A1 certificate issued by another Member State cannot be covered by the legislation without the certificate being withdrawn from legal circulation or cancelled.

An enterprise posting an employee to Poland should have a valid A1 document issued for that employee, who will be performing work in Poland based on the posting under EU Regulation 883/2004. Such a document should be presented in the event of an inspection by the Polish social insurance institution, ZUS, conducted in Poland, at the place where work is performed by an employee delegated to Poland.

As a result of the application of the provisions of Regulation No. 883/2004 on posting, a person is subject to the social security legislation only of the country from which he or she is posted. Such a person is wholly excluded from the application of the social security provisions of the receiving country.

The legal consequence of the above is that:

- The EU Member State to whose legislation the employee is still subject during posting to another EU Member State is obliged to provide short-term social security benefits, in particular in respect of the risk of illness, maternity, accident at work, or family benefits (also benefits derivatives, e.g. one-off compensation for an accident at work, also in the event of the death of a posted worker as a result of an accident at work during the posting);
- The catalogue of short-term sickness benefits available to an employee posted from the country from which s/he was posted includes primarily sickness benefits. In the event of illness occurring during the posting period and actual stay in the host country, as per Regulation No. 883/2004, the employee may submit a medical certificate issued by an authorised doctor of the host country. The employee should then submit such a certificate to the employer or to the competent social security institution of the country from which s/he was posted, responsible for granting sickness benefits. Suppose primary care physicians do not issue such medical certificates in the host country, in that case, the sick employee may report to the social security institution responsible for the risk of illness in the legal system of the host country, which is obliged to indicate her/him a medical entity and finance the issuance of such a certificate for sickness benefit.
- during the posting period, the worker pays social security contributions to the system of the country whose legislation s/he is subject to, also for risks such as long-term incapacity for work (disability), retirement pension and death of the breadwinner - as a consequence, these contributions will give entitlement to benefits such as a pension in the future, disability pension or survivor's pension in the event of the death of a posted worker;

- based on the A1 certificate, at the request of the posted worker, the administration responsible for health benefits in kind in that country issues an S1 certificate to the posted worker, confirming the right to treatment (Regulation No. 883/2004), in the hosting country (if needed), at the expense of the country from which the person is posted.

Regarding social security benefits resulting from an occupational disease, they are determined, according to Regulation No. 883/2004, by the social security institution of the last country in which work was performed that exposed the risk of an occupational disease.

If the substantive conditions are not met under the law of that EU Member State, in particular because the disease has not been recognized as an occupational disease, the determination of entitlement to benefits in respect of an occupational disease shall be made by the institution of the previous State in which such exposure to an occupational disease was subject to the legislation of that State.

The medical diagnosis of the disease in the receiving country (if the disease was diagnosed there) must be taken into account, along with the medical documentation from that country, when determining the occupational disease and issuing decisions (e.g., by a sanitary inspection) in the EU Member State that determines the right to benefits .

ZUS inspections carried out in Polish enterprises include, among others: correct implementation of tasks in the area of social insurance, including such circumstances as: the fact of registering an employee performing employment in Poland with social security in Poland, the point of paying social security contributions for such an employee (retirement, disability, sickness and accident) and other contributions such as health insurance or labor fund contributions.

If the employee is sent to work in Poland by a foreign enterprise, in order to exclude these obligations, the entity is required to present an A1 certificate upon request by ZUS. ZUS assesses the validity of the foreign A1 certificate. In case of doubt, he may send an inquiry to the appropriate foreign social security institution that issued such a certificate, asking for additional clarification. If ZUS determines that the conditions for posting an employee to Poland are not met in a given case, ZUS may refer the matter for clarification under the so-called procedures for dialogue with a foreign institution, as outlined in Decision No. A1 of the Administrative Commission (DECISION No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council, OJ 24.4.2010 No C 106/1).

The result of the explanatory proceedings under this procedure results in either the upholding of the foreign A1 certificate, if it is found that it was issued substantively and in accordance with Regulations No. 883/2004 and No. 987/2009, or the withdrawal of such a certificate by the foreign social security institution (who previously issued it). In the latter case, withdrawal of the A1 certificate necessitates re-registering the employee from the foreign social security system to the Polish system and the obligation to pay the appropriate social security contributions under Polish legislation to the Polish social security system (ZUS).

1. A1 certificate for employees posted to perform work in another member state

A posted worker can obtain an A1 certificate if the following conditions are met:

1. Work abroad must be performed on behalf of the "posting" enterprise, which means that:
    - there is a direct relationship between the worker and the employer (the worker is still under the authority of the “posting” enterprise) – what matters is who hires the worker; who pays the wages (regardless of any agreements between the employer in the sending country and the enterprise in the country of employment regarding the remuneration of workers); who is responsible for the recruitment;
    - The “posting” enterprise must retain the right to determine the “nature” of the work performed by the posted worker,
    - work must be performed for the “posting” enterprise,
    - the employee may not be placed by the enterprise to which he is seconded at the disposal of another enterprise in the Member State where he/she is located.

2. The “posting” enterprise must “normally” operate in the sending Member State, in this regard, the following criteria are examined:

    - the number of employees performing work in the sending Member State and abroad (if the posting enterprise employs only administrative staff, the application of the posting regulations is not possible),
    - the number of contracts executed by the posting enterprise in the sending Member State and abroad,

- the value of the turnover obtained by the posting enterprise (turnover that is about 25% of the total turnover in the posting country may be a sufficient indicator, but cases where turnover is less than 25% require deeper analysis),
- the place where posted workers are recruited; the place where most of the contracts with customers are concluded; the place where the enterprise has its registered office.

1) The period of posting may not exceed 24 months,
2) an employee cannot be sent to replace another posted worker.
3) In the case of persons employed for posting, the employee must be subject to the sending Member State's legislation for at least one month before the start of the posting.

Either the posting employer or the posted worker himself/herself is authorised to apply for an A1 certificate.

Which sanctions apply in case of non-compliance with declaration duties or failure to comply with legislation on posting?

According to Article 27(1)(2) of the Act on the Posting of Workers in the Provision of Services, failure to submit to the National Labour Inspectorate a declaration on the posting of a worker on the territory of Poland, at the latest on the day the posted worker starts work in Poland, is punishable by a fine of between PLN 1,000 and PLN 30,000.

According to Article 120 of the Act on Promotion of Employment, the work performed by a person illegally residing in Poland (without an appropriate residence card) is punishable by:

a) a fine of between PLN 1,000 and PLN 30,000 for the person acting on behalf of an employer,

b) a fine of not less than PLN 1,000 for a foreigner staying illegally in the country.

According to Article 14 of the Posting of Workers Act, to determine whether the posting of a worker to Poland is not fictitious, the following elements are examined:

a) Whether the employer posting the worker in the territory of Poland carries out substantial activities in the territory of another Member State, other than management or administrative activities of a purely internal nature. In this area, the following information is obtained:

- the place where the entrepreneur has his/her business, provides administrative services, uses office premises, is subject to business tax and social security obligations and, if needed, where, in accordance with the law of the Member State of establishment of the entrepreneur, he/she holds an appropriate document authorising the pursuit of the activity in question or is registered with chambers of commerce or professional organisations;
- the place where posted workers are recruited and from which they are posted;
- the law applicable to the contracts concluded by the employer posting the worker in Poland and the law applicable to the contracts concluded with the employer's customers;
- the place where the entrepreneur carries out substantial business activity and where he employs administrative staff;
- the number of contracts performed or the volume of turnover obtained in the Member State of establishment of the entrepreneur, taking into account the specific situation of entrepreneurs, including small and medium-sized entrepreneurs

b) whether the posted worker in the territory of Poland performs work in that territory only temporarily. In this area, the following information is obtained:

- the performance of work for a limited period in the territory of Poland;
- the date of commencement of the posting;
- the posting of the employee to a Member State other than the one in or from which that employee habitually carries out his or her work, by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ EU L 177, 04.07.2008, p. 6) or the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ EU C 169, 08.07.2005, p. 10);
- the return of the worker to the Member State from which he/she was posted, or the expectation that he/she will resume work in that State after the work or services he/she was posted to perform have been completed;
- the nature of the work;

- the provision of transport, accommodation and meals to the worker or the reimbursement of expenses and, if provided or reimbursed, how this is provided or the method used for reimbursement;
- the performance of work in previous periods in the relevant position by the same or a different employee.

If the National Labour Inspectorate finds out that a worker cannot be regarded as a posted worker and, in particular, that the appearance of posting has been created unlawfully:

a) The employer posting that employee, or the person acting on their behalf, may be fined from PLN 1,000 to PLN 30,000.

b) The law in force in the country in which the employee is employed shall apply. However, this shall not lead to the employee being subject to terms and conditions of employment less favourable than those applicable to employees posted in the territory of Poland.

What are the specific rules and procedures concerning the posting of third-country nationals?

An enterprise posting an employee to Poland should possess a valid A1 document issued for that employee working in Poland under EU Regulation 883/2004. This document must be presented in the event of an inspection by the Polish social insurance institution ZUS, carried out in Poland at the location where the employee is performing their duties. Employees who are third-country nationals delegated to work in Poland from another EU Member State are subject to the same rules as European Union citizens. It is assumed that there are no grounds to question the A1 certificate issued for such a foreign employee, because it is binding. The competent institution within the meaning of Regulation 883/2004 that issued such a certificate is responsible for checking whether such an employee meets the requirements for an A1 certificate to be issued for him by another country under Regulations: 883/2004, 987/2009.

This institution is also responsible for the correct assessment of the case of a given employee who is a third-country national in the light of the conditions arising from Regulation No. 1231/2010

In particular, this concerns the condition of legal residence in the territory of a Member State, including in the light of the advocacy of the Court of Justice of the EU (judgments such as Balandin Lukashenko C-477/17).

The Polish institution cannot question such A1 documents and is bound by them. If there are any doubts regarding the validity of issuing such a document, the Polish ZUS institution may request explanations from the foreign institution or raise objections, in particular under the dialogue procedure resulting from the aforementioned decision of the Administrative Commission No. A1

Are there joint liability clauses that affect contractors in the event of failure to pay posted workers?

There is a principle of joint liability of contractors in case of non-payment of wages to posted workers, especially in the construction sector. This applies when workers posted to Poland for construction work are not paid. In the case of workers posted to Poland for construction work, the principle of joint and several liability applies. The liability for non-payment of wages lies with both the employer who posts the employee to Poland and the contractor who entrusts the work. This applies to works such as excavation, earthworks, assembling and dismantling of prefabricated elements, equipping or installing, renovation, dismantling, demolition, maintenance, painting and cleaning works. The contractor entrusting the performance of such work shall be jointly and severally liable with the posting employer towards the employee posted in the territory of Poland for any obligations incurred during the performance of such work, including non-payment of remuneration up to the minimum wage, for each month, salary, and overtime allowance.

Which information shall the employer give to posted workers before posting?

According to Article 25c of the Posting of Workers Act, an employer who posts an employee from the territory of Poland for a period exceeding 4 consecutive weeks should, before the posting, inform the employee about:

the salary for work to which s/he is entitled under the law of the Member State in the territory of which the worker is posted;

the posting allowance or provisions concerning the reimbursement of travel, board and lodging expenses, where such benefits are provided for by the provisions of the labour law, regulations, statutes, collective agreements or other collective agreements, or the entitlements to be paid in respect of costs connected with the business trip;

a link to the official website maintained by the Member State in whose territory the worker is posted, which contains information on the terms and conditions of employment which must be applied to posted workers.

To implement Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, the following amendments have been made to the Labour Code:

According to Article 29 § 3 point 2 of the Labour Code, the employer shall inform the posted worker of the name of the social security institution to which social security contributions are paid and provide information on the social security-related protection provided by the employer (within 30 days of the employee's admission to work).

In addition, according to Article 291 of the Labour Code, the employer shall provide the posted worker with information on:

- the country or countries in which the out-of-country work or assignment is to be performed;
- the expected duration of the work or business task outside the country;
- the currency in which the employee's salary will be paid during the work or assignment abroad;
- the benefits in cash or kind related to the performance of the work or the official task outside the country, if such benefits are provided for in the labour legislation or arise from the employment contract;
- the provision or lack of provision for the return of the employee to the country;
- the conditions for the return of the employee to the country - if such return is ensured.

Glossary

1. **Concepts in the coordination of social security systems**

   1) **posted worker** – a worker who is employed in one member state (the "posting state") and sent by his/her employer temporarily to perform work on his/her behalf in another member state;

   2) **state of employment** – the country to which a person goes to perform waged work (or self-employment) there;

   3) **waged work** – any work or equivalent situation treated as such to apply the social security legislation of the Member State in which such work or equivalent situation takes place;

   4) **self-employment** – any work or equivalent situation, treated as such for the social security legislation of the Member State in which such work or equivalent situation takes place;

   5) **insured person** – any person who meets the conditions required under the legislation of the Member State competent under Title II of Regulation 883/2004 to have the right to benefits, considering the provisions of Regulation 883/2004;

   6) **residence** – the place where a person usually resides;

   7) **legislation** – for each Member State, laws, regulations and other provisions and applicable implementing measures relating to the branches of the social security system covered by Article 3 (1) of Regulation 883/2004;

   8) **A1 certificate** – a document issued at the request of the person concerned or the employer, by the competent institution of the Member State whose legislation is applicable following the provisions of Title II of Regulation 883/2004, which certifies that this legislation is applicable and, where appropriate, indicates for how long and under what conditions it is applicable,

2. **Concepts of delegation in the provision of services**

   1) **Regulation 1408/71** – Council Regulation (EEC) No. 1408/71 of 14th June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal of the EU.L 1971 No. 149, p. 2)

2) **Directive 2019/1152** – Directive 2019/1152 of the European Parliament and of the Council (EU) of 20th June 2019 on transparent and predictable working conditions in the European Union (Official Journal of the EU.L 2019 No. 186, p. 105),

3) Law on Posting of Workers in the Provision of Services – Law of 10th June 2016 on posting of workers in the framework of the provision of services (Journal of Laws 2024, item 73)

4) **employer posting a worker in the territory of the Republic of Poland** – an employer with a registered office and substantial business activity in another member state:

   a) From whose territory he/she temporarily directs an employee to work in the territory of the Republic of Poland:

      - In connection with the performance of a contract entered into by that employer with an entity operating in the territory of the Republic of Poland

      - in a branch or enterprise belonging to the group of enterprises to which this employer belongs, operating in the territory of the Republic of Poland

      - as an entity that is either a temporary employment agency or a staffing agency that has referred to a user employer a person who remains an employee of that entity for the entire period of the referral

   b) which is an entity that, as a temporary work agency or staffing agency, has referred to a user employer a person who remains an employee of that entity for the entire period of the referral, where the user employer in the territory of the same or another Member State then temporarily directs that employee to work in the territory of the Republic of Poland;

5) **employer posting an employee from the territory of the Republic of Poland** – an employer having a registered office, and in the case of a natural person conducting business activity – a permanent place of performance of such activity, in the territory of the Republic of Poland:

   a) Temporarily directing a worker, within the meaning of the legislation of the Member State to which he/she is posted, to work in the territory of that country:

      - in connection with the performance of a contract concluded by that employer with an entity operating in the territory of another member state,

- in a branch or enterprise belonging to the group of enterprises to which this employer belongs, which operates in the territory of this member state,
- as a temporary employment agency,

b) being a temporary employment agency, where such agency directs an employee to a user employer in the territory of the Republic of Poland or another Member State, which then temporarily directs that employee to work in the territory of another Member State;

6) **posted worker in the territory of the Republic of Poland –** an employee employed in another member state, temporarily directed to work in the territory of the Republic of Poland by the employer posting the employee in the territory of the Republic of Poland;

7) **employee posted from the territory of the Republic of Poland –** an employee within the meaning of the legislation of the Member State to which he/she is posted, performing work in the territory of the Republic of Poland, temporarily directed to work in the territory of this country by the employer posting the employee from the territory of the Republic of Poland.

Useful sources and contacts

Your Europe webpage on posting

https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm

Practical guide on posting of the European Commission:

https://op.europa.eu/en/publication-detail/-/publication/8ac7320a-170f-11ea-8c1f-01aa75ed71a1/language-en

Leaflet "Posted workers in the construction sector" by the European Labour Authority:

https://op.europa.eu/en/publication-detail/-/publication/b484c5e6-05af-11ee-b12e-01aa75ed71a1

Official website with general information on living and working in the country, targeting foreigners

Information for companies and employees delegated from Ukraine to Poland in Ukrainian: https://www.pip.gov.pl/ua/yak-delehuvaty-pratsivnyka-do-pratsi-v-polshchi

Principles of posting employees to Poland: https://www.biznes.gov.pl/pl/portal/00194

Principles of notification of posting to Poland: https://www.biznes.gov.pl/en/portal/ou101

National Labor Inspectorate: https://www.pip.gov.pl/

Social Insurance Institution – posting employees: https://www.zus.pl/pracujacy/pracujacy-w-ue-eog-szwajcarii/delegowanie/pracownicy-delegowani

Contact

Trade Union BUDOWLANI

Mokotowska St. 4/6; 00-641 Warsaw

Poland

email: sekretariat@zzbudowlani.pl

tel: +48 22 8256061