

GUIDE

to Minimum Terms of Employment for Posted Workers

INTRODUCTION

We are pleased to present an update to our guide to minimum terms of employment of posted workers across 22 European countries. The first edition of the guide received very positive feedback from clients. We are happy to continue this project with the invaluable involvement of our fellow lawyers from firms across Europe, who shared contributions on their jurisdictions.

The update to this guide follows changes to national legislations resulting from the introduction of EU Directive 2018/957/EU dated 28 June 2018 amending Directive 96/71/EC. These changes aim at enforcing the rule of “equal pay for equal work” in relation to posted workers.

Key changes introduced by Directive 2018/957 were:

- extension of the scope of minimum terms of employment under hosting country legislation that apply to posted workers (particularly in terms of remuneration, accommodation and reimbursement of costs connected with business travel). The new provisions also provide detailed guidelines on determining whether a posted worker is paid minimum remuneration applicable in a given country
- extension of the scope of employment terms and conditions under hosting country legislation that apply to workers during long-term posting, i.e. exceeding 12 months (exceptionally – 18 months). After this period, irrespective of law governing an individual’s employment contract, a posted worker must be ensured all terms and conditions of employment resulting from local laws and collective bargaining agreements (except for rules governing termination of employment, including non-compete restrictions and employee pension schemes).
- application of the above protection and guarantees for posted workers also to temporary (agency) workers posted to another country as part of their work for an employer-user.

The transposition of EU Directive 2018/957 onto local legislation should have been completed by 30 July 2020. However, due to the COVID-19 pandemic, the implementation process in many European countries has been significantly delayed. At the start of 2021, changes to local legislation resulting from the above directive have not yet been finalised in Austria, Norway and Spain. Therefore, these countries are not covered by this revised guide.

While preparing the revised guide, our aim was to provide employers with comprehensive, yet concise advice on key terms and conditions applicable to their posted staff. With this aim in mind and in light of volume constraints, this guide edition does not cover prerequisites of leasing personnel (including temporary workers), work of juvenile employees and settlement of business trip costs.

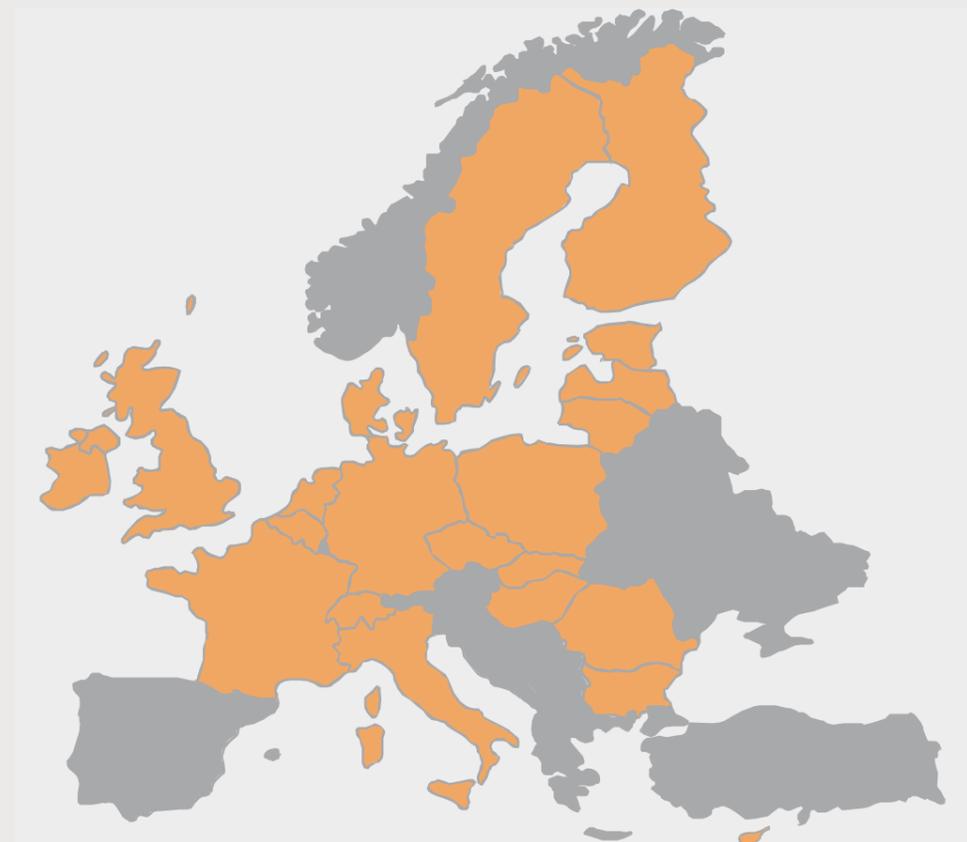
We hope that this updated guide will be a useful resource for employers posting staff to other European countries, particularly once Europe successfully overcomes the pandemic and the cross-border movement of employees regains its former dynamics.

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LEGAL BASIS

The European Directive 2018/957/EU on the posting of workers was implemented in Belgium by the Act of 12 June 2020, which contains various provisions on the posting of workers and amends the 'old' Posting Act of 5 March 2002.

Moreover, a Royal Decree of 15 July 2020 details the formalities to be complied with by a foreign employer to be exempted from the obligation to apply a more extensive package of Belgian salary and employment conditions for a period of 18 months instead of 12 months.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO BELGIUM

As from the first day of a worker's posting to Belgium, the foreign employer must, unless it provides more favourable terms and conditions under its home law, comply with (i) the labour, salary and employment requirements of Belgian statutory provisions non-compliance of which is subject to criminal penalties (i.e. the vast majority of Belgian employment requirements), and with (ii) collective bargaining agreements (CBAs) that have been declared as generally binding by Royal Decree. This principle was already laid down in the 'old' Posting Act of 2002, which went further than the obligations under the 'old' Directive 96/71/EU. Consequently, foreign employers must, among other things, comply with the following Belgian regulations:

1. Observe working time limits and daily and weekly rest periods.

In principle, the maximum working time is 8 hours per day and 38 hours per week. Yet, this maximum may be lower in some sectors of industry on the basis of a CBA.

Under certain conditions, flexible working time schedules with a weekly working time exceeding 38 hours may be introduced. For example, in the case of shift work, it is possi-

ble to work up to 11 hours a day (and 50 hours per week), provided that a quarterly or annual average of 38 hours per week is respected.

A worker cannot work for more than six hours without a break (of at least 15 minutes). A worker is entitled to a break of 11 hours between two working periods. Once per week, a worker is entitled to 35 hours (11+24) of uninterrupted rest.

Working at night, on Sundays and during Public Holidays is only allowed in a few strictly-regulated cases.

2. Provide a minimum of 20 legal holidays a year and pay holiday pay for these days.

Workers posted to Belgium are entitled to four weeks' paid annual leave (20 days for those working five days a week, and 24 days for those working six days a week). This can be extended by CBAs at industry level. White-collar workers receive their normal remuneration together with an extra payment of holiday pay equivalent to 92% of their monthly remuneration (so-called 'double holiday pay'). For blue-collar workers, the holiday pay is paid through an obligatory holiday fund to which the employer contributes. The question whether or not a posted worker is entitled to 'double' holiday pay is debated and depends on the circumstances. On top of the annual holidays, workers in Belgium must be granted 10 Belgian bank holidays.

3. Pay remuneration at least equal to the statutory minimum or sector pay scales.

The guaranteed average minimum monthly pay, fixed by national CBA, amounts to EUR 1,593.81. However, in many sectors of industry, pay scales have been determined by CBA, fixing minimum wages per sector or industry that are (much) higher.

Joint liability schemes are provided for certain sectors and activities (e.g. construction, meat, cleaning, agriculture and horticulture and security).

4. Pay overtime and grant compensatory rest for overtime hours.

In principle, overtime hours can only be performed on the basis of a limited number of specific grounds (with the exception of 120 'voluntary' overtime hours). Working overtime entitles the worker to 50% extra pay for the overtime, while working on Sundays or on public holidays entitles the worker to 100% extra pay for the overtime. Compensatory rest breaks are also provided.

5. Comply with all Belgian wage and employment conditions applying within the Joint Committee, laid down in CBAs that have been declared generally binding.

CBAs are entered into within Joint Committees existing for each sector of industry. These CBAs include the terms governing employment conditions in that particular sector (e.g. the granting of meal vouchers, eco vouchers, premiums, additional holidays, etc.). Most of these CBAs are declared generally binding and must be complied with by foreign employers posting workers to Belgium (with the exception of contributions to be paid to occupational pension plans). The new Posting Act of 12 June 2020, specifies that a foreign employer must comply with Belgian sector level CBAs that have been declared generally binding and provide for reimbursement formulas covering travel, board and lodging expenses, but only for a posted worker's travel within Belgium or to another place of work abroad.

6. Ensure healthy and safe working conditions at the workplace and comply with all statutory obligations regarding well-being at work.

This obligation covers a large number of duties, which include risk assessment, medical examination, training, psychosocial risks at work, etc.

7. Observe the protection of pregnant employees and employees who have recently given birth.

Pregnant employees are entitled to 15 weeks of maternity leave (6 weeks prenatal and 9 weeks postnatal).

8. Prevent any form of discrimination and apply rules of equal treatment.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above terms and conditions do not apply to crews of merchant ships.

Moreover, the terms listed in points 2-4 above (holidays, minimum wages and overtime pay) do not apply (i) to workers performing initial installation works of goods that form an integral part of a contract for the supply of goods, (ii) these activities are necessary for putting the goods supplied into service, (iii) they are carried out by qualified and/or specialised workers, (iv) for periods not exceeding 8 days, (v) and provided that such work is not related to construction work.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO BELGIUM

When posting employees, subcontracting-chains are regularly used in which a Belgian 'user' exercises authority over the workers posted by the foreign employer, or the foreign employer exercises authority over a subcontractor's employees. Foreign employers are often not aware of the involved risk of 'forbidden labour lease', which is a typical Belgian legal rule. This risk of prohibited labour lease can be limited by taking appropriate legal measures.

Moreover, it often comes as a surprise to foreign employers that when posting employees to Belgium, these employees will be entitled to the salary and employment conditions (e.g. extra benefits such as meal vouchers, eco vouchers, additional holidays, etc.) included in CBAs that have been declared as generally binding and that are entered into at sector level (within the competent Joint Committee). This applies to all sectors, and not only to the construction sector.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Bulgaria are implemented by the Labour Code and the Ordinance for Terms and Conditions for Seconding and Posting Workers and Employees Within a Service Provision Framework, adopted by the Order of the Council of Ministers 382 of 29 December 2016, promulgated, SG No. 2/6 January 2017, amended and supplemented, SG No. 6/22 January 2021. These provisions may be affected by branch or sectoral collective agreements that have been extended to all enterprises in the sector.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO BULGARIA

Pursuant to the above acts, employers posting their employees to Bulgaria are, unless they provide more favourable terms and conditions under their home law, obliged to:

1. Observe working time, rest limits, and official holidays.

The normal working time is 8 hours a day, 5 days a week.

The following obligatory rest periods apply in standard cases:

- daily rest (rest between working days) – 12 hours;
- weekly rest (rest between working weeks) – uninterrupted break of at least 48 hours in 2 consecutive days, one of which is Sunday;
- meal break – not less than 30 minutes, not included in the working time;
- recreational/physiological breaks – as determined by the health and safety provider in the host enterprise and included in the working time. Usually there are two such breaks, each of them of 10-15 minutes.

Some variations to the working time duration and rest requirements are available, e.g. in case of open-ended working hours or summarised working time calculation. Even in these cases the working day cannot exceed 12 hours, and

the working week for summarised working time calculation cannot exceed 56 hours.

Furthermore, the Bulgarian Labour Code lists the official holidays in Bulgaria which must be days off for posted employees.

2. Observe the minimal amount of paid annual leave.

The minimum amount of paid annual leave is 20 working days – official holidays are not included. Certain categories of employees are entitled to an extended amount of annual paid leave or to additional amounts of annual paid leave – this is usually related to the specific nature of their work or their working conditions.

3. Pay remuneration not lower than the established amount of the basic salary and any additional labour remuneration.

The employer is obliged to accrue and pay to the posted employee not only the basic but also any additional remuneration in an amount no less than the remuneration owed for the same or a similar position in the country.

The basic salary and the additional remuneration include all the elements of the gross salary laid down in the Labour Code, the Ordinance on Salary Structure and Organisation, considering all allowances paid in accordance with

the national legislation, the generally applicable collective agreements or arbitration decisions of the Member State from which the employee was posted. If they are not defined in the Ordinance on Salary Structure and Organization, the paid travel expenses, subsistence and accommodation money are not taken into consideration.

An employee is entitled to an additional remuneration of at least 0.6% over the basic salary for each year of acquired length of service and relevant professional experience, i.e. for each year during which the employee worked in the same or similar position, the employer must pay additionally 0.6% over the basic salary.

4. Observe the terms and conditions for overtime and night work and the amounts of the compensation for such work.

Overtime is prohibited except in certain limited cases, e.g. for completion of work which started but could not be completed within normal working hours.

Overtime is paid with increased rates:

- +50% for overtime during the working week;
- +75% for overtime during the weekend;
- +100% for overtime during official holidays (however, the 'base' for calculating overtime during official holidays is also 'doubled', so the employee ultimately receives 400% of his rate).

There are also limitations for the amount of overtime. It cannot (per employee) exceed:

- 150 hours per calendar year; through a collective agreement, employers and trade unions may negotiate a longer annual duration of overtime, but no more than 300 hours in a calendar year. This means that the permitted overtime work could double, however, only in the cases when there is a collective labour agreement.
- 30 hours day work/20 hours night work per calendar month;
- 6 hours day work/4 hours night work per calendar week;
- 3 hours day work/2 hours in two consecutive working days.

Night work is work performed between 10:00 p.m. and 6:00 a.m. The working time duration for night work is 7 hours per day, 35 hours per week. Night work is compensated by additional remuneration of no less than BGN 0.25 (circa EUR 0.13).

5. Ensure healthy and safe conditions of work at the workplace at the host location.

This obligation covers a large number of duties, among others, ensuring health and safety training, risk assessment and medical examination determining fitness to work before admitting an employee to work, etc. Each Bulgarian employer (i.e. each Bulgarian host entity) is obliged to have a labour health and safety provider.

6. Observe protection of pregnant employees and nursing employees.

Pregnant employees cannot do night or overtime work. Furthermore, pregnant employees benefit from the opportunity to be released from work for medical examinations.

Both pregnant and nursing employees cannot be assigned and can refuse to carry out work which is incompatible with their condition. Furthermore, nursing employees are entitled to paid time daily for nursing – the amount of time depends on the age of the child.

7. Prevent any form of discrimination and apply rules of equal treatment.

Employees have equal rights for performing the same duties regardless of full or part-time employment, employment for definite or indefinite period, sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or faith, education, political persuasions or affiliations, personal or social status, disability, including physical or mental, age, sexual orientation, family status, material status, skin colour, membership in syndicates or other social organisations or movements, or any other grounds determined in a law or in an international treaty pursuant to which Bulgaria is a party.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

If the conditions established by Bulgarian law are less favourable than the conditions established by the law of the Member State under whose jurisdiction the employer is registered, the terms and conditions which are more favourable to the employee shall be applied.

If it is established that the posting is not valid, all the requirements of Bulgarian legislation shall be applied to the employment relationship if they are more favourable for the employee than those provided for in the legislation of the sending state.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO BULGARIA

According to our experience, the fact that employees get their remuneration paid in 14 instalments causes the greatest difficulties.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Cyprus were implemented by the Posting of Workers in the Framework of the Provision of Services and related matters Law of 2017 (63(I)/2017) (as amended by Amending Law 158(I)/2020 on 27.11.2020) and Regulations 196/2017 issued pursuant to the Law.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO CYPRUS

Posted employees have to be guaranteed, pursuant to the principle of equal treatment, at least the minimum conditions set by Cyprus law, regulation or administrative acts (and/or collective agreement, if any, in certain activities in the construction industry), unless contract or home law is more favourable to an employee, regardless of the law applicable to the employment contract, in relation to:

1. Maximum working hours and minimum hours of rest.

There is a statutory average weekly maximum of 48 hours over a reference period of four months, and a minimum of 24 consecutive hours' rest per week. Whenever daily work exceeds six hours, the employee is entitled to at least fifteen minutes' continuous break. There is also a minimum resting period of 11 continuous hours every 24 hours. However, deviation from the above regulations is allowed for managerial staff, other persons taking decisions autonomously and family staff (and clergypersons), subject to general principles of protection of the wellbeing and health of employees. Deviation is also allowed for certain activities, such as healthcare services, provided that an agreement has been concluded with the employees and equivalent compensatory resting

periods are granted or other appropriate protections.

2. Minimum annual paid leave entitlement.

If an employee works 5 days/week then s/he is entitled to an annual minimum of 20 working days, whereas if s/he works 6 days/week s/he is entitled to 24 working days.

3. Minimum wage levels.

There is no statutory minimum wage in Cyprus, except for certain professions (shop assistants, clerks, nursing aids, assistant child-minders, assistant baby-minders, school assistants, and caretakers, security guards, cleaners, and certain categories of employees working in the tourist industry).

4. Overtime pay.

Overtime work is compensated at least at 1:1 with normal working hours or by equivalent time off. Any work over the abovementioned statutory limit is compensated only by equivalent time off. Managerial staff, other persons taking decisions autonomously and family staff (and clergypersons) exempt from limitations do not have to be compensated for overtime work, unless agreed.

5. Health and safety at work.

This obligation, pursuant to the Safety and Health at Work

Law, covers a large number of duties, including, provision of adequate premises, installations and work equipment, implementation of safe systems and methods of work, provision of information/education, establishment of a special Safety-and-Health Register, written risk assessments, consultation obligations, and establishment of Safety Committees.

6. Protection of pregnant employees.

Pregnant employees may take 18 weeks maternity leave. Upon return to work, they have a paid one-hour breastfeeding break up to nine months from childbirth, and there is statutory protection from dismissal up to five months after the end of the maternity leave (apart from limited exceptions). There is also a right of absence for prenatal examinations. Pregnancy and/or maternity may not have adverse effects on entitlements and/or career development and/or terms and conditions of employment. There are also safety-and-health regulations concerning exposure to certain chemicals, restrictions on night work, and the obligation for risk assessment and protective measures, regarding pregnant employees.

7. Equal treatment between men and women.

Prohibition of discrimination in public and private sectors on the basis of gender, further protection of maternity, protection from harassment, and ensuring active participation/representation.

8. Other provisions on non-discrimination.

Prohibition of direct or indirect discriminatory treatment or conduct, provision, term, criteria or practice in private and public sector activities on number of grounds, including race, community, language, colour, disability, religion, political or other beliefs, national or ethnic origin, or sexual orientation, including in relation to access to and terms of employment and vocational training, social protection/ security and healthcare; there are certain exceptions for residency requirements of third-country nationals and stateless persons or objectively justified discrimination on grounds of religion, age, or disability and affirmative action. There is also protection from discrimination for fixed-term employees vis-à-vis indefinite-term and for full-time vis-à-vis part-time employees. Finally, employment may never be terminated for membership of trade unions or a safety-and-health-at-work committee, activity as employees' representative, recourse to a competent administrative authority, filing of a complaint in good faith, or participation in (legal/judicial) proceedings against an employer.

9. Collective agreements.

Sectoral collective agreements or arbitral awards that apply in the territory of the Republic of Cyprus for undertakings in the same sector and/or national collective agreements concluded between the most representative organisations of the social partners constitute the basis for securing at least

the same level of protection of posted employees' rights, for the purposes of cross-border provision of services, as with the level of protection of rights of the remainder of employees in the relevant sector and/or of other employees in the Republic.

It is provided that more favourable working and employment conditions agreed under a collective agreement concluded between an individual undertaking and its employees shall also apply to posted workers and supersede less protective sectoral or national collective agreements and/or less protective statutory provisions.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above terms and conditions do not apply to merchant shipping undertakings in respect of employees working on seagoing vessels (maritime personnel).

Minimum guarantees concerning annual paid leave and minimum wage do not apply to employees in cases of initial assembly and/or first installation of a good, provided that such works are provided for in the contract for supply of goods, are necessary for the functioning of the supplied goods, are performed by specially qualified workers and/or skilled employees of the undertaking providing the goods and the period of posting does not exceed eight days. This exception does not apply to a number of activities in the building industry.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO CYPRUS

Concerning local health and safety regulations, it may be advisable, in practice, to engage the host entity or a local external services provider to ensure compliance with local law and local working conditions.

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LEGAL BASIS

Posting of employees is governed, in particular, by Act No. 262/2006 Sb., the Labour Code, as amended, and Act No. 435/2004 Sb. on employment, as amended.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO CZECH REPUBLIC

Employers posting their adult employees to the Czech Republic are, unless the employee benefits from more favourable terms and conditions under their home law, obliged to observe the terms and conditions mentioned below (note, employees younger than 18 years old have even more protection):

1. Maximum working hours and minimum rest periods.

The standard weekly working time is 40 hours per week. A shorter special weekly working time applies to certain employees, e.g. for employees working a two-shift work regime or working underground in a coal mine. The maximum length of a shift is 12 hours.

Ordered overtime work may only be done in exceptional cases and may not exceed 8 hours per week and 150 hours per calendar year. Beyond this, the employer and employee shall agree on further overtime work. The total amount of overtime work (whether ordered or carried out with the employee's consent) may not exceed an average of more than 8 hours per week over a period which may not exceed 26 consecutive weeks (this period can be extended to a maximum of 52 consecutive weeks in the collective bargaining agreement).

The employee must have a break from work of at least 30

minutes for food and rest no later than after a maximum of 6 hours of continuous work.

Employees are entitled to a continuous rest period of at least 11 hours within 24 consecutive hours between two shifts and uninterrupted period of rest of at least 35 hours in a week.

2. The minimum period of holiday time in a calendar year or the pro rata part thereof.

Under the Labour Code, employees are entitled to at least 4 weeks of vacation time in a calendar year. The workweek means 7 consecutive days (starting on any day in the calendar week), i.e. this means 20 working days of vacation for employees in an even distribution of working hours (5 working days a week). There are special regulations for certain professions (e.g. for teachers - 8 weeks).

3. Minimum rates of pay; the minimum wage, the relevant lowest guaranteed wage and additional payment for overtime.

The basic minimum wage rate for a standard weekly working time of 40 hours is CZK 15 200 per month and CZK 90.50 per hour in 2021. In addition to that, an employee's remuneration shall not be lower than the so-called 'guaranteed wage'.

The guaranteed wage is set by government regulation and differs according to the complexity, responsibility and

laboriousness of the work carried out. It is divided into 8 levels starting with the minimum wage (1st level) and increasing to CZK 30 400 per month and CZK 181 per hour (8th level), for 2021.

For overtime work, the employee shall receive a wage and additional pay of at least 25 % of average earnings, unless the employee agreed to compensatory leave (in the same scope as the work) instead of additional pay.

4. Occupational health and safety.

The employer is obliged to ensure health and safety protection, to prevent risks, to ensure the provision of first aid, to provide initial and periodic training, etc.

5. The working conditions of pregnant employees, employees who are breastfeeding and employees until the end of the ninth month after childbirth.

It is forbidden to employ employees in jobs that constitute a danger to pregnant women. In the event that an employee carries out work that she is not allowed to do or which, according to a medical opinion, threatens her pregnancy or maternity, the employer is obliged to transfer the employee to other work. The Labour Code explicitly prohibits overtime work for pregnant employees.

Pregnant employees, employees on maternity leave or female or male employees on parental leave are protected against termination by notice to some extent.

6. Non-discrimination and equal treatment.

Any discrimination is prohibited in labour relations. Employers are obliged to ensure equal treatment of all employees with regard to their working conditions and remuneration for work. Czech law determines, in various legal acts, a catalogue of discriminatory criteria (including race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions, citizenship, marital and family status, language, membership in political parties or trade unions and other).

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

Under set conditions the above terms and conditions do not apply e.g. to crews of merchant ships, employees of international transportation companies and officials. The terms listed in points 2-3 above do not apply if the period of posting of an employee to perform work in the Czech Republic does not exceed 30 days (in total) per one calendar year. This exception does not apply to agency workers.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO CZECH REPUBLIC

In practice, identifying terms and conditions of employ-

ment which are more favourable to employees is a bit problematic as it involves knowledge of the legislation of both the posting country and the host country. The entity to whom the employee was posted guarantees, by virtue of law, payment of the wage to the posted employees (if his/her legal employer has failed to do so). We also note that public law regulations (such as social security and health insurance, taxes) should always be reviewed with respect to posted employees.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Denmark are consolidated in the Danish Act on Posting of Workers (the Act), which implements Directive 96/71/EC, parts of Directive 2014/67/EU, and Directive 2018/957/EU.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO DENMARK

Pursuant to the Act, the employment relationship will be governed by mandatory minimum regulations, irrespective of whether the worker is subject to foreign legislation. The core provisions to be observed as mandatory minimum regulations under Danish law include rules concerning working environment, equal treatment of men and women, prohibition against discrimination, working time and testing for COVID-19.

1. Working time.

Under the Danish Act on Working Time, working hours in a period of four months may not exceed an average of 48 hours per week. Thus, the weekly working time may be longer in some weeks if it is compensated by shorter working hours in other weeks. In relation to night workers, normal working hours may not exceed an average of 8 hours in any 24 hour period, calculated over a period of four months. Further, the Danish Offshore Safe Act and Chapter 4A of the Danish Aviation Act must be observed. This lays down rules on safety and work environment offshore and onboard airplanes, respectively.

Employees working more than six hours a day are entitled to a rest break of a length ensuring that the purpose of the break is satisfied. The rest break is scheduled in accordance

with customary rules at the relevant workplace on organising working hours.

The Danish Working Environment Act stipulates that employees must have a rest period of at least 11 consecutive hours within each 24-hour period. The rest period can be reduced to 8 hours in specific situations. Furthermore, employees must have a weekly rest day within each period of 7 days.

2. Annual holiday.

The Danish Holiday Act is also mandatory to the extent that legislation governing employment is less favourable to the employee. With respect to the length of holiday and holiday pay pursuant to the Danish Holiday Act (25 days each year), the employer must ensure that the employee receives compensation for holiday as well as payment for missing holiday to provide the employee with the same holiday rights as provided under the Danish Holiday Act (see comments below for exceptions to this rule).

3. Minimum wage and collective agreements.

There is no minimum salary in Danish legislation due to the Danish labour market model, according to which, employment terms and conditions, including salary level, are essentially negotiated between, and thus determined by, the social partners on the labour market. Furthermore, under Danish law, employers are neither obliged to negotiate

collective agreements nor be members of an employers' association, which negotiates collective agreements on behalf of members. In conclusion, foreign employers that are not subject to a collective agreement and that post workers to Denmark are, therefore, not obliged under Danish law, to pay their workers a legislation-based minimum wage and are free to negotiate the salary with their employees. However, foreign employers that are not subject to a collective agreement may be met with collective action (see comments below). The stationed employee has a right to be compensated for travel costs, board and lodging.

4. Safe and healthy work environment.

The Danish Act on Working Environment lays down rules with a view to creating a safe and healthy working environment in accordance with the technical and social development of society. This includes rules regarding the performance of work, design and fitting out of the worksite, substances and materials, medical examinations, training etc.

5. Protection during pregnancy and maternity leave.

The Danish Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc., provides that men and women may not be unreasonably discriminated.

The Danish Salaried Employees Act obliges the employer to pay female employees who are subject to this act (white-collar workers) half the employees' normal salary during the employee's pregnancy leave and maternity leave, respectively.

6. Equal treatment and equal opportunities.

An employer must also observe various statutory rules and regulations regarding non-discrimination and equal treatment. This includes the Danish Act on Prohibition against Discrimination in respect of Employment, according to which employees may not be discriminated on the basis of race, colour, religion, political opinion, sexual orientation, age, disability, or national, social or ethnic origin. Further, the Danish Act on Equal Pay to Men and Women ensures that the employer must pay men and women equal pay for equal work.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The Act does not apply to merchant navy undertakings as regards their seagoing personnel.

The right to supplementary holidays is conditional on the duration of the posting exceeding eight days. However, this does not apply to the posting of temporary agency workers, unless it concerns the posting of a specialist or qualified worker from a supplying undertaking to carry out the work of initial assembly or installation of goods that form an integral part of a contract for the supply of goods, which is necessary

for the commissioning of the goods supplied.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO DENMARK

As stated above, foreign employers do not have to pay their workers a certain legislated minimum salary. However, Danish trade unions are entitled to establish collective actions, such as sympathy conflicts, blockades etc. for the purpose of concluding a collective agreement with the foreign employer.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Estonia were implemented by the Working Conditions of Employees Posted to Estonia Act (the Act), which entered into force on 1 May 2004 and was last revised on 30 July 2020.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO ESTONIA

Pursuant to the Act, employers posting their employees to Estonia from member states of the European Union, member states of the European Economic Area or the Swiss Confederation are, unless they provide more favourable terms and conditions under their home law, obliged to ensure that the following working conditions established in Estonia are applied to a posted employee:

1. Working time limits.

The maximum regular working time is 40 hours over a period of seven days and 8 hours a day (full-time work). Parties may agree upon shorter regular working time (which is deemed part-time work). In addition to the regular working hours, parties may agree on overtime work on a case-by-case basis. Regular working time together with overtime may generally not exceed on average 48 hours in a period of seven days over a calculation period of up to four months unless a different calculation period has been provided by law. Limited additional overtime work may be agreed upon if this is not detrimental to the employee and the total summarised working time does not exceed on average 52 hours per period of seven days over a calculation period of four months (absolute limit). This working time limit may not be exceeded even if the employee is willing to work more.

2. Daily and weekly rest periods.

Employees are entitled to an uninterrupted break of 11 hours over a period of 24 hours and uninterrupted break of 48 hours over a period of seven days (36 hours in case of summarised working time where working hours are distributed unequally). It is presumed that the weekly rest time is granted on Saturday and Sunday.

3. Annual holiday.

It is presumed that the employee's annual holiday is 28 calendar days (in case of a minor, 35 calendar days), unless the employee and the employer have agreed upon a longer annual holiday or unless otherwise provided by law. As holidays are provided in calendar (rather than working) days, also week-end days are counted towards annual holidays, but not public holidays. Annual holiday is granted for time worked.

4. Remuneration.

The employee must be ensured the minimum wage which is as of 1 January 2020 EUR 3.48 (gross) per hour and for full time work, EUR 584 (gross) per month. The employee must also be ensured payment of other remunerations, including compensation for night work (1.25 times the wages, unless it has been agreed that the wages include remuneration for working at night-time) and work done on public holiday (2 times the wages). The employer and employee

may agree upon compensation for work done at night-time or on a public holiday by granting additional time off.

5. Compensation for overtime work.

The employer has to compensate for overtime work by time off equal to the overtime, unless it has been agreed that overtime is compensated for in money (1.5 times the wages).

6. Health and safety.

In addition, the Occupational Health and Safety Act applies to a posted employee, even when it is less favourable to the posted employee than the provisions of a foreign law. This obligation covers a large number of duties, among others, ensuring health and safety training, risk assessment and medical examination determining employees' fitness to work.

7. Equal treatment and equal opportunities.

Employees have equal rights for performing the same duties regardless of full or part-time employment, employment for a definite or indefinite period, working for a temporary agency work or directly for the employer, nationality, race, colour, sex, age, disability, sexual orientation, religion or other beliefs, family-related duties, social status, representation of interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces etc. (open catalogue of potentially discriminatory factors). Consequently, employees may not be discriminated against upon hiring, establishment of their working conditions, giving instructions, remuneration or termination of employment contracts on any of the above grounds.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above terms and conditions do not apply to a crew-member on a cargo ship belonging to merchant navy undertakings. The regulation regarding the remuneration does not apply to the employee working in the road transport sector. In this case, only the minimum wage must be ensured. Terms listed in points 3 and 7 above do not apply in the case of an up to eight-day posting (or different postings which do not exceed 8 days in total in a year) if the posted employee is a skilled worker whose duty is the initial assembly or first installation of goods necessary for taking the ordered goods into use, if such work is an integral part of a subscription contract. The above exception does not apply if the work is connected with construction work involving the construction, renovation, maintenance, alteration or demolition of buildings, including excavation work, earthmoving work, actual construction work, or the assembly and demolition, connection and installation, modification, renovation, repair, disassembly, demolition, maintenance, painting, cleaning or repair of prefabricated components.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO ESTONIA

We are not aware of any issues that would repeatedly arise in connection with posted employees.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Finland were implemented on 17 June 2016 by the Act on Posting Workers (447/2016) (replacing the Posted Workers Act (1146/1999)). The Directive 2018/957/EU has caused the need for amendments to the Act on Posting Workers.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO FINLAND

Under the Act on Posting Workers, employers posting their employees to Finland are, unless the law applicable to the employment contracts of the posted employees provides for more favorable terms and conditions, required to:

1. Observe working hours.

In general, regular working hours shall not exceed eight hours per day or 40 hours per week. The regular weekly working hours can also be arranged in such a way that the average is 40 hours over a period of no more than 52 weeks. The employer and the employee may also agree to extend the regular daily working hours by up to two hours, as long as the applicable collective bargaining agreement permits this. In that case, regular weekly working hours can be a maximum of 48 hours per week and shall be balanced to 40 hours per week over a period of not more than four months. Working hours must be organised to allow employees at least 35 hours of uninterrupted free time each week, preferably around Sunday. Some exceptions to these rules exist in the Working Hours Act and collective bargaining agreements. In many collective bargaining agreements, the normal working day is 7.5 hours per day and 37.5 per week.

Further, the employee's working hours (including overtime) may not exceed an average of 48 working hours per week over a monitoring period of four months.

2. Provide 2.5 days of holiday (or 2, if by the end of the holiday credit year, the duration of the employment relationship has been an uninterrupted period of less than one year) for each full holiday credit month.

At least 14 working days or if the employee works according to the employment contract less than 14 days per month, 35 working hours per month. Saturdays are included in the holiday calculation and full holiday accrual of 30 days means five weeks of annual holiday.

Further, if the employment relationship has lasted for an uninterrupted period of more than 12 months by the end of the holiday credit year (1 April –31 March) the employee is entitled to 24 days (four weeks) holiday during the summer holiday season (2 May–30 September) following the end of the holiday credit year and six days holiday (one week) after the summer holiday season and before the summer holiday season the following year.

3. Pay at least the remuneration provided by the applicable collective bargaining agreement or 'normal and reasonable remuneration'.

As there are many generally applicable collective bargaining agreements in Finland, many posted employees are covered by generally applicable collective bargaining agreements which typically include provisions on minimum salary or wage. If no collective bargaining agreement applies, the salary must be normal and reasonable for the work performed by the employee, which is to be assessed on a

case-by-case basis. While there are no statutory minimum salaries or wages in Finland, guidance for the absolute minimum normal and reasonable salary level can be taken from the salary amount that is required for an employee to be eligible for unemployment benefits in Finland. In 2021, this amount is EUR 1,252 per month or EUR 7.28 per hour.

4. Pay overtime remuneration not lower than:

- The regular wage + 50% – for the first two hours of overtime;
- The regular wage + 100% – for the additional hours of overtime;
- The regular wage + 50% – for the hours of weekly overtime.

The terms and conditions concerning working hours and overtime do not apply to employees who work independently without fixed working hours, e.g. in a management position. If the employees main duties involve managing and supervising other employees' work or there has been concluded an agreement on flexible working hours arrangement, the compensation for additional, overtime and Sunday work can be agreed to be paid as a fixed monthly compensation. Additionally, some collective bargaining agreements provide for possibilities to agree that compensation for overtime can be paid as a separate fixed monthly compensation. Collective bargaining agreements may include provisions that deviate from the statutory rules on overtime compensation.

5. Take care of the occupational safety and health of employees by taking the necessary measures.

The employer must make an assessment of the risks and hazards at work, give the employees necessary orientation and guidance to the work and give them the appropriate protective equipment.

6. Secure the protection of pregnant employees.

Working is not permitted for the pregnant employee during a period of two weeks before the expected time of birth and during two weeks after giving birth. It is prohibited to terminate an employment relationship due to employee's pregnancy or the use of family leave.

7. Prevent any form of discrimination and treat all employees equally.

Unless deviating from this is justified on the grounds of the position or duties of the employee or is based on legislation and it otherwise has an acceptable objective.

8. Apply the provisions of generally applicable collective bargaining agreement or other collective bargaining agreement binding on the employer in Finland on working hours, annual leave and occupational safety to the employment relationships of posted employees, if applicable.

There are 164 generally applicable collective bargaining agreements and this means that many posted employees

are covered by generally applicable collective bargaining agreements depending on the industry or work performed by the employee.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The Act on Posting Workers does not apply to seagoing personnel of merchant navy undertakings.

Aforementioned provisions on annual leave, overtime pay or application of collective bargaining agreements do not apply to initial assembly or first installation of goods carried out by a skilled or specialist worker where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and if the period of the posting does not exceed 8 calendar days.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO FINLAND

Under Finnish law, even if an employer is not a member of an employer's federation, the employer is required to observe the terms of a collective bargaining agreement that has been declared as generally applicable within the relevant field of business or for the relevant work. This means that the terms of a generally applicable collective bargaining agreement shall be observed as the minimum terms of employment. As there are various different generally applicable collective agreements (currently 164), it is sometimes difficult for the employer to identify, which collective agreement should be applied to the posted employees. With respect to posted employees, the provisions of a generally applicable collective bargaining agreement on working time, annual leave and occupational safety as well as minimum pay will apply as minimum terms of employment.

In Finland, the scope of application of the Working Hours Act is broad. Almost all supervisors and experts are also covered by the Act and are, therefore, entitled to, for example, overtime compensation. Employees (incl. posted employees) can claim compensation for unpaid working time related compensation payable based on the Working Hours Act or the applicable collective agreement. The challenge for the employer is to be aware of and comply with the applicable regulations.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to France were enhanced by an Act of 20 February 2019 on posting workers to provide services. The transposition of the Directive 2018/957/EU was made in France through an executive order dated 20 February 2019 and a decree dated 28 July 2020. These provisions, entered into force on 30 July 2020, increase the obligations incumbent upon employers posting employees to France. The following provisions of the Labour code deal with posted workers: articles L. 1261-1 to L. 1263-2 and R. 1261-1 to R. 1264-3. Specific provisions apply to road haulage firms or water transportation companies (Articles L. 1331-1 et seq. and R. 1331-1 et seq. of the Transport Code).

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO FRANCE

Pursuant to these provisions, for secondment of up to 12 months, employers posting employees to France are, unless they provide more favourable terms and conditions under their home law, required to:

1. Comply with working time limits and daily and weekly rest periods.

In France, the legal working week is 35 hours. This legal working time may be exceeded within a limit of 48 hours per week. In addition, weekly working hours may not exceed 44 hours per week on average over a period of 12 consecutive weeks. Hours worked in addition to the legal working hours are considered as overtime and must be paid as such.

The maximum working time limit is 10 hours per day (unless an exception is granted by the labour inspectorate or by an extended collective bargaining agreement).

Every employee must have a daily rest period of at least 11 consecutive hours between two work periods. The week-

ly rest period is at least 35 consecutive hours, generally on Sunday (unless an exception is granted).

2. Provide paid leaves.

Each posting worker gets 2.5 days off per effective working month as well as public holidays.

3. Pay remuneration equivalent to the remuneration paid to an employee working in France.

Employers posting workers to France must comply with equal treatment principle regarding the posted worker's remuneration compared to remuneration due to an employee working in France in the same industry. This obligation to comply with the equal remuneration principle applies to base salary and any other monetary or in kind benefits paid directly or indirectly by the employer as provided for in the Labour Code, any Decrees and/or any applicable national or local collective bargaining agreement.

4. Pay for overtime.

The collective bargaining agreement determines the rate

of pay for overtime worked.

In the absence of bargaining provisions, the pay for overtime worked shall be increased by:

- 25% for the first 8 hours of overtime worked in the same week (from the 36th to the 43rd hour);
- 50% for the following hours.

Overtime pay may be replaced, in whole or in part, by equivalent compensatory time off.

5. Ensure healthy and safety conditions of work at the workplace at the host location.

The employer must set up medical supervision, i.e. all measures aimed at preventing the deterioration of the employee's state of health and working conditions.

The company must comply with the rules relating to the safety of workers. The general principles of prevention lay down a safety obligation, i.e. risk assessment, preventative measures, information and training, as well as the implementation of an appropriate organisation and means.

The employer must also comply with special rules related to employees who are less than 18 years old.

6. Comply with protection of pregnant employees and employees during maternity leave.

Posted workers are entitled to maternity leave (at least 6 weeks before the expected date of birth and 10 weeks after the birth) and have protection against dismissal.

7. Prevent any form of discrimination and apply rules of equal treatment between women and men.

Posted workers are covered by all the provisions of the Labour Code concerning professional equality between women and men and non-discrimination, e.g.:

- Age;
- Citizenship;
- Disability (physical or mental)/medical condition;
- Marital status;
- National origin/ancestry;
- Pregnancy/childbirth/related medical condition;
- Physical appearance;
- Political/union opinions;
- Religion/creed;
- Sex/gender;
- Sexual orientation.

8. Ensure individual and collective rights.

Posted workers are entitled to individual and collective protection, as well as to the right to strike.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The minimum terms and conditions above do not apply to road haulage firms.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO FRANCE

The implementation of the minimum wage is difficult to apply to the extent that the employer has to determine a relevant collective bargaining agreement and has to be aware of various provisions, such as the conventional minimum wage and annual bonus of 13th month.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Germany were implemented by the Act on the Posting of Workers.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO GERMANY

Pursuant to the above Act, employers posting their employees to Germany are, unless they provide more favourable terms and conditions under their home law, obliged to:

1. Observe working time limits and rest periods.

The working time limit is 8 hours per workday. As a result, the maximum working time per week is 48 hours. The daily working time limit can be extended to 10 hours, but only if, within six months or within 24 weeks, an average of eight hours per workday is not exceeded. The daily break time has to be at least half an hour for a working time of 6 to 9 hours and at least 45 minutes for a longer working time. The employee has to have at least 11 hours of rest between the end of one work shift and the beginning of the next. Some exceptions for the rest requirement are available for hospitals and nursing homes.

2. Provide an annual holiday in each calendar year (apart from any public holidays).

The law provides for a minimum annual holiday of 24 workdays based on a working week of 6 days. If the employee only works five days a week, his holiday entitlement

is reduced to 20 days per year, so that the annual holiday entitlement is at least 4 weeks.

3. Pay remuneration not lower than the minimum statutory remuneration.

The statutory minimum wage is 9.50€/hour since 1 January 2021. One-off payments, which are intended to only compensate the work performance, can be counted as part of the minimum wage.

4. Ensure safety, health and hygiene at the workplace.

This obligation covers a large number of duties, among others, ensuring health and safety training, risk assessment and medical examination determining fitness to work before admitting an employee to work (depending on the labour sector).

5. Observe protection of pregnant employees and women in childbed.

A pregnant employee may not work in the last 6 weeks before giving birth, unless she expressly declares her willingness to do so. After giving birth the employee is not allowed to work for the following 8 weeks. In some cases, the term is extended to twelve weeks. During the pregnancy the employee may not work more than 8.5 hours per day. She

is not allowed to work night shifts. She is also not allowed to work on holidays and Sundays except if she expressly agrees. The employer cannot terminate the employee during the pregnancy, for 4 months after a miscarriage and for 4 months after giving birth.

6. Equal treatment and non-discrimination.

Prevent any form of discrimination and apply rules of equal treatment. Employees have the right to equal treatment irrespective of race, ethnic origin, sex, religion or belief, disability, age or sexual orientation.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

If there is a collective agreement that has been declared to be generally binding or if there is a legal ordinance according to the German Act on the Posting of Workers, those terms apply instead of the ones mentioned above.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO GERMANY

Employers have a problem with evidencing overtime, which is always required, at least to some extent, and calculating sums due for overtime work due to their complexity. In practice ensuring compliance with German law in this area always requires engaging the host entity or local external services provider to take over certain employer duties. The same applies to compliance with health and safety regulations due to the need to know local law and local work conditions.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Hungary are provided by Act I of 2012 on the Labour Code, which has been amended with respect to Directive 2018/957/EU. The changes are effective from 30 July 2020.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO HUNGARY

Pursuant to the Labour Code, employers posting their employees to Hungary to provide services are obliged to apply the following minimum standards to the terms and conditions of employment:

1. Maximum working time and minimum rest periods.

The daily working time in full-time jobs is 8 hours, which can be increased up to a maximum of 12 hours in exceptional cases and upon an agreement with the employee. The scheduled daily working time of an employee, may, generally, not be less than 4 hours, with the exception of part-time work, and may not exceed 12 hours, while the weekly working time cannot exceed 48 hours. Employees are entitled to a rest break of at least 20 minutes (if their daily working time exceeds 6 hours), a daily rest period of at least 11 hours and a weekly rest of 2 days or at least 48 hours. Employees may work on Sundays as part of their normal scheduled working time only in certain types of operations and work.

2. Minimum duration of annual paid leave.

Employees have a basic entitlement to 20 working days of paid annual leave, and are also entitled to additional age-related annual leave, and extra leave if they have children under the age of 16. Young workers and employees who have suffered a degree of health impairment of at least

50% are entitled to 5 extra days of vacation time each year.

3. Remuneration.

Contrary to the regulation preceding the new directive, beyond the base salary, Hungarian law applies in relation to every element of the salary generally paid at the place of employment. This includes wage supplements, absence fee and downtime salary. Minimum monthly gross salary in 2021 is HUF 167 400 (approx. 465 EUR) for unskilled and HUF 219,000 (approx. 608 EUR) for skilled workers. In case of overtime work, the wage supplement is 50 % of the base, compensatory paid time off may be agreed instead. When overtime takes place on weekly rest days or public holidays, the wage supplement is 100% of the base (or 50% when another rest day is allocated).

4. Occupational safety.

This obligation covers a large number of duties, among others, ensuring adequate health and safety training, a risk assessment and a medical examination determining the employee's fitness to work before employing them.

5. Conditions of employment or work by pregnant women or women who have recently given birth.

Pregnant employees are entitled to take 24 weeks of maternity leave. From the time their pregnancy is diagnosed until their child reaches 3 years of age, mothers cannot be employed in an irregular work schedule without their consent,

and their weekly rest days cannot be allocated unevenly. They cannot be ordered to work overtime, on a nightshift or to perform stand-by duty.

6. Principle of equal treatment.

Employees have equal rights in connection with employment relationships. The principle of equal pay for equal work should apply to any and all remuneration provided directly or indirectly in cash or in kind, based on the employment relationship. The equal value of work for the purposes of the principle of equal treatment should be determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, the physical or intellectual efforts expended, experience, responsibilities and labour market conditions. Under the equal treatment principle, the provisions of a collective bargaining agreement with an extended scope as pertaining to the employment relationship in question, shall also be applied.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above statutory terms and conditions do not apply to merchant navy enterprises as regards seagoing personnel.

In the case of initial assembly and/or the first installation of goods where this is an integral part of a contract and carried out by workers posted by the supplier, the minimum paid annual leave and minimum wage rates do not apply if the period of posting for working in Hungary does not exceed 8 days. The exception does not apply to employers engaged in construction work that involves the building, remodelling, maintenance, improvement or demolition of buildings, and the workers employed for these activities shall be subject to collective bargaining agreements extended to the entire industry.

The statutory terms and conditions will also not be applied if the law governing the employment relationship provides more favourable rules for the employees.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO HUNGARY

The Hungarian employer shall bear joint and several liability with the foreign employer if the latter fails to fulfil its obligation to pay taxes and contributions related to the employment.

The most severe issue is that the employment office has the right to determine, based on certain pre-defined criteria, whether an individual posted within the framework of cross border services is to be considered as a posted worker or not. Requalification of the receiving Hungarian entity as a legal employer can lead to several adverse legal consequences.

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LEGAL BASIS

Rather than providing for minimum terms and conditions of employment in respect of posted workers, Irish legislation (section 20 of the Protection of Employees (Part-Time Work) Act 2001) affords in principle the full suite of Irish employment protection legislation to posted workers. Posted workers in Ireland therefore may benefit from the same protections as would apply to an Irish employee permanently based in Ireland, provided they meet the eligibility requirements of the particular protective legislation in question.

The protection of posted workers in Ireland was further enhanced by the European Union (Posted Workers Directive) Regulations 2016 (S.I. No. 412/2016) which implement the Posted Workers Enforcement Directive 2014/67/EU. Most recently the European Union (Posting of Workers) (Amendment) Regulations 2020 which implement the revised Posted Worker Directive 2018/957/EU, were transposed into Irish law effective on 1 October 2020 (S.I. No. 374 of 2020).

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO IRELAND

1. Maximum Work Periods & Minimum Rest Periods.

The Organisation of Working Time Act 1997 (OWTA Act) provides for maximum work and minimum rest periods applicable to all employees in Ireland. Employees are entitled to at least 11 consecutive hours of rest each day, 35 consecutive hours of rest each week and a maximum average working week not exceeding 48 hours. This weekly limit does not include any periods of annual or protective leave taken by the employee. As the weekly average may be balanced out over several months, an employee can work more than 48 hours per week for a limited period of time.

2. Minimum Paid Holidays.

Under the OWTA Act, paid annual leave is earned against time worked and all employees earn entitlements from the

time work is commenced. Full-time employees are entitled to a minimum annual leave entitlement of 4 working weeks.

In addition, there are nine public holidays in Ireland, in respect of which employees are entitled to, at the option of their employer: a paid day off, a paid day off within one month of the public holiday, an additional day of annual leave or an additional day's pay.

3. Minimum Rates of Pay.

Under the National Minimum Wage Acts 2000, employees are entitled to earn the national minimum which since 1 January 2021 is €10.20 per hour.

4. Health, Safety and Hygiene at Work.

The Safety Health and Welfare at Work Act 2005 (as amended) imposes obligations on employers and employees to ensure employees' safety, health and welfare at work as far as is reasonably practicable.

5. Protection of Employees on Maternity Leave.

Under the Maternity Protection Acts 1994 and 2004, employees are entitled to take 26 weeks' maternity leave together with 16 weeks' additional unpaid maternity leave and to return to work following maternity leave to the same job with the same contract of employment or if this is not reasonably practicable, a suitable alternative role. While employers are not obliged to pay employees who are on maternity leave, employees with the requisite PRSI contributions are entitled to claim social welfare benefits during their maternity leave.

6. Equality of Treatment & Non-Discrimination.

The Employment Equality Acts 1998 to 2015 prohibit direct and indirect discrimination based on the following 'Protected Grounds': sex, race, religion, sexual orientation, civil status, family status, disability, age and membership of the Traveller community, in relation to a wide range of employment related areas such as recruitment, terms of employment, working conditions, promotion or dismissal.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

There are no exceptions to the application of the above employment protections in relation to posted workers, as Irish law does not distinguish between posted and permanently resident workers.

Provided the posted worker meets the eligibility requirements of the particular protective legislation in question, they benefit from the same protections as would apply to an employee permanently based in Ireland.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO IRELAND

Employers must comply with the statutory minimum terms and conditions (as outlined above), and ensure the posted worker is lawfully entitled to be posted to Ireland. There are no significant issues faced by employers that are unique to Ireland - issues that may arise will depend on the particular posting arrangement and the jurisdictions involved.

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LEGAL BASIS

Minimum terms and conditions of employment applicable to employees posted to Italy are set forth by *Decreto Legislativo* no. 136/2016 (the Decree) that implemented the 2014/67/EU Directive. In September 2020 the *Decreto Legislativo* no. 122 (the “New Decree”), aimed at implementing the 2018/957 EU Directive was definitively approved; the New Decree will come into force on 30 September 2020.

The New Decree provides for certain changes to the Decree aimed at aligning the national rules to the European ones in the cross-border posting of employees sector and at strengthening the principle of equal treatment between posted and local employees.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO ITALY

Pursuant to the Decree, employers posting employees to Italy must ensure - in relation to certain matters (the ‘Relevant Matters’) – the same terms and conditions of employment set forth by law and collective agreements that apply to local employees carrying out similar tasks. Below is the list of Relevant Matters:

1. Maximum work hours and minimum rest periods.

In principle, according to Italian law, the work time limit is 40 hours per week understood that the collective agreements may stipulate differently.

2. Minimum length of paid holidays, which vary and depend on collective agreements.

3. Minimum wage, including increased rates applicable in case of overtime, both determined by applicable collective agreements.

4. Health and safety at the workplace, which, covers, inter alia, periodical training that must be provided to workers.

5. Safeguards and protections applicable to maternity.

As for maternity, in principle, the prohibition of dismissing a mother employee until a children is one year old and/or parents during parental leaves applies.

6. Equal treatment of men and women, as well as other anti-discrimination provisions.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

Terms and conditions of employment in connection with Relevant Matters no. 2 and no. 3 do not apply in case of initial assembly and/or first installation of goods if part of a supply contract and necessary for taking supplied goods into use and is carried out by skilled and/or specialist workers of the supplying undertaking if the posting period does not exceed eight days and provided that such work is not related to construction activities set out by a specific Annex

of the Decree.

The Decree does not apply to seagoing personnel of merchant navy undertakings.

MAIN CHANGES AND TOPICS OF THE NEW DECREE

The New Decree amends a number of provisions of the Decree, effective from 30 September 2020, including, among others: (i) a different concept of economic treatment to be ensured to posted employees. The reference to the “minimum wage” mentioned in the Decree has been replaced by “wage”; (ii) the change of topic 2 of the Relevant Matters: the reference to the “Minimum length of paid holidays” is replaced by the “minimum length of annual paid leaves”.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO ITALY

In principle, given the complexity of Italian law (including ramifications of collective agreements) in a significant number of matters, knowledge of local law and work conditions (at least in relation to Relevant Matters) is of essence in order to comply with applicable local rules. In connection with the Decree, among the Relevant Matters, the ‘minimum wage’ is the matter that may likely give rise to issues given different regulations governing salary matters in Member States and different sources. Although the New Decree appears to have fixed the issue – by replacing reference to “minimum wage” in the Decree by “wage” – it will be necessary to await guidelines issued by the competent labour authority regarding new rules and changes introduced by the New Decree.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Latvia pursuant to the requirements of Directives 96/71 EC, 2014/67/EU and 2018/957/EU concerning the posting of workers in the framework of the provision of services were implemented by the amendments to the Labour Act of the Republic of Latvia.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO LATVIA

Pursuant to the Labour Act, employers posting their employees to Latvia for up to 12 (or exceptionally 18) months, unless more favourable employment terms and conditions are provided under the law applicable to the employment relationship or the employment contract, shall ensure the working conditions and employment provisions provided for by the laws and regulations of Latvia which govern:

1. Maximum working time limits and minimum rest time limits.

The working time limit in Latvia is defined as standard working hours, which does not exceed 8 hours per day and 40 hours per week. Overtime work may not exceed 8 hours on average within any 7-day period and is calculated for an accounting period that does not exceed 4 months. If aggregate working hours are applied to the employee, the working hours can exceed 8 hours per day or 40 hours per week by balancing the working days and days off within the reference period agreed in the employment contract (1-3 months) or collective bargaining agreement (up to 12 months). In case of aggregate working hours, the employee shall not work more than 24 consecutive hours and 56 hours

per week.

The length of a daily rest within 24 hours shall not be less than 12 consecutive hours. The weekly rest period within a seven-day period shall not be less than 42 consecutive hours unless aggregated working time is agreed.

2. Minimum annual paid leave.

Annual paid leave may not be less than 4 calendar weeks, excluding public holidays. Three additional annual paid leave days are provided to employees, who have three or more children up to 16 years of age or a child with a disability up to 18 years of age. Three additional annual paid leave days are provided to employees, whose work is related to increased risk (e.g. increased psychological or physical load; increased health and safety risks). One additional annual paid leave day is provided to employees, who have less than 3 children up to 14 years of age.

3. Remuneration – minimum salary, additional payments.

The minimum monthly salary in 2021 is EUR 500 (gross), except for railroad, construction, and glass fibre industries' employees, where the minimum monthly salary is established by general agreements. The additional payment for overtime work and work on public holidays may not be less than 100% of the hourly or daily salary rate specified in the

employment contract. The additional payment for night work (more than 2 hours of work between 22.00-06.00) may not be less than 50% of the hourly or daily salary rate specified in the employment contract. Additional payment for work related to increased risk and additional (extra) work is subject to agreement between the employer and the employee.

4. Safety, health protection and hygiene at work.

This obligation covers a large number of duties, among others, ensuring health and safety training, providing labour safety instructions, necessary work equipment and tools, conducting risk assessment and organizing regular and extraordinary medical examinations determining employees' fitness for work.

5. Protection measures for pregnant women and women during the postnatal period.

The protection measures applied for employees in these categories differ. General protection measures mainly concern requirement to have an employee's consent to carry out overtime work; prohibiting night work, obligation to provide part-time work, if requested, other obligations. Terminating employment with pregnant women and women during the postnatal period up to 1 year or if the woman is breastfeeding - up to 2 years is forbidden (except if due to employee's fault).

6. Equal treatment of men and women and prohibition of discrimination in any other form.

Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair remuneration. These rights shall be ensured without any direct or indirect discrimination. An employer has an obligation to provide equal remuneration for men and women for the same kind of work or work of equal value.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above terms and conditions do not apply to a ship's crew of merchant fleet undertakings. If there is a general agreement (generally binding collective agreement) in the particular industry or area, the provisions of such general agreement apply instead of the provisions of the Labour Act. As of 2021 there are three such general agreements in Latvia, which are concluded in railroad, construction and glass fibre industries. The requirements under Directive 2018/957/EU are applied to road transport sector after the mobility package is effectuated.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO LATVIA

All the above-mentioned posting terms and conditions re-

quire specific actions not only on the employer's part, but also on the receiving entity's part.

The employer must ensure that the receiving entity meets the safety, health protection and hygiene at work standards, since the employer can have very little control on the work conditions in the receiving entity. The employers usually request the receiving entity to warrant compliance to these requirements to protect its interests in the event of in-compliance.

Usually, the employers do not encounter material issues related to posting of employees to Latvia.

LITHUANIA

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Lithuania are implemented by the Labour Code of the Republic of Lithuania which entered into force as of 1 July 2017 and was last amended on 1 January 2021.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO LITHUANIA

An employee posted to Lithuania, irrespective of the law applicable to the employment contract or employment relationship, shall be subject to the provisions of the said Labour Code and other local laws, including national (cross-sectoral), territorial and sectoral collective agreements, establishing:

1. Maximum working time and minimum rest periods.

The standard working hours are 40 hours per week.

The working-time arrangements may not violate the following maximum working time requirements:

- Average working time, including overtime but excluding work performed under an agreement on additional work, may not exceed 48 hours over each period of 7 days;
- Working time, including overtime and work performed under an agreement on additional work, may not exceed 12 hours per workday (excluding lunch breaks) and 60 hours over each period of 7 days;
- No more than 6 days can be worked over 7 consecutive days;
- Maximum allowed overtime hours – 8 hours per 7 con-

secutive days and with employee's written agreement – 12 hours per week. The established limit of permitted overtime – 180 hours per year.

The daily uninterrupted rest may not be shorter than 11 consecutive hours, while weekly uninterrupted rest may not be shorter than 35 hours.

2. Duration of minimum paid annual leave.

Minimum annual leave is 20 business days (if working 5 days per week) or 24 business days (if working 6 days per week). If the number of working days per week is smaller or different, the employees are entitled to annual leave of at least 4 weeks.

Some categories of employees are entitled to longer minimum annual leave (e.g. employees under 18 years, employees alone raising a child under 14 years, etc.).

3. Remuneration, including extra pay for overtime, night work, work on days off and holidays.

Starting from 1 January 2021, the minimum hourly salary is equal to EUR 3.93 gross and minimum monthly salary is equal to EUR 642 gross. The minimum salary can only be paid for carrying out unqualified work.

Extra pay must be ensured in the following cases:

- 200% of the employee's remuneration in case of work

on a day off;

- 200% of the employee's remuneration in case of work on a holiday;
- 150% of the employee's remuneration in case of work at night;
- 150% of the employee's remuneration in case of overtime work, 200% of the employee's remuneration in case of overtime work on a day off or for overtime work at night, 250% of the employee's remuneration in case of overtime work on a holiday.

Lithuanian laws provide that equal remuneration shall be paid for the same or equal work.

4. Safety and health at work.

Every employee must be provided with the appropriate, safe and healthy working conditions. As a result, the employer has number of duties towards the employees (e.g. risk assessment, mandatory medical examinations, employee instructions and similar).

5. Safety at work for employees who are pregnant, who recently gave birth, or who are breast feeding.

The laws stipulate a number of duties towards these sensitive categories of employees, such as restrictions to assign overtime work, obligation to provide additional breaks and similar.

6. Prohibition of discrimination at work.

The employer must implement the principles of gender equality and non-discrimination on other grounds which means that any sort of direct or indirect discrimination is prohibited.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above terms and conditions do not apply to crew members of merchant ships.

Where employees are posted to Lithuania on the ground of (a) a contract for provision of services or performance of works concluded by the employer with a customer operating in Lithuania, or (b) work at a branch, representative office, group company or other workplace of the employing legal entity, the terms listed in point 3 above shall not be applicable if the duration of the posting does not exceed 30 days.

The terms listed in points 2 and 3 above do not apply if the initial assembly and/or initial installation of the product is done by qualified employees and/or specialists of the enterprise supplying the product when this is established in the contract for the supply of goods and is necessary to use the product provided, and when the duration of their posting does not exceed eight days. This exception does not apply when the posted worker is carrying out construction work in Lithuania.

National provisions on employee remuneration, accom-

modation and reimbursement of expenses as well as provisions regarding postings longer than twelve (12) months and provision concerning calculation of the effective duration of posting in cases where a posted employee is replaced by another posted employee do not apply to drivers performing international carriage of goods and/or passengers. Drivers of road vehicles transporting goods and/or passengers on international road routes are subject to the provisions of the Labour Code and other legal acts regulating labour relations on setting a minimum wage, including extra pay for overtime, night work, and work on days off and holidays.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO LITHUANIA

Any deviations from regular working time (e.g. overtime, night work, etc.) must be duly recorded in the working time sheets before the end of the working day at the workplace. Additionally, such working time shall be remunerated at increased rates as specified in point 3 above with the exception of the CEO (he/she shall not be remunerated additionally for such work) and management employees (they must be remunerated for such work at regular and not increased rates).

The employers usually encounter issues with regards to application of safety and health at work provisions due to complex local regulations and the great number of duties imposed on employers.

The employers must keep the documents related to the posted worker at the place where the job function of the posted worker is being performed during the entire period of the posting.

The employer posting the worker to work temporarily in Lithuania for a period of more than 30 days or to perform construction work must give advance notice to the local State Labour Inspectorate branch office.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to The Netherlands were adopted by The Dutch Terms of Employment Posted Workers in the European Union Act (WagwEU) implementing the former Posted Workers Directive (96/71/ EU). The revised Posting of Workers Directive (2018/957) was implemented in the WagwEU at the end of July 2020.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO NETHERLANDS

Employers posting workers to The Netherlands falling under the scope of the WagwEU are required to apply the so-called hard-core employment terms and conditions to the employment contracts of the posted workers involved stemming from Dutch law and from mandatory collective labour agreements which apply to the work involved.

The most relevant hard-core employment terms and conditions are the following:

1. Posted workers can, as a starting point, work a maximum of 12 hours per shift and 60 hours per week.

There are further rules for amongst others, breaks, rest periods and night work.

Exceptions: employees who earn three times the minimum wage or more (for the year 2021: EUR 5,054.40 gross) are exempted from the obligations mentioned. Exceptions also apply to, for example, voluntary work, medical workers and dental specialists.

2. Posted workers accrue holidays (at least 20 working days for a full-time job) each year.

An employer is, in principle, obligated to pay 8% statuto-

ry holiday allowance on top of the posted worker's salary. Exception: for employees earning more than three times the minimum wage (for the year 2021: EUR 5,054.40 gross), an employer is not obliged (but of course can still choose) to pay holiday allowance, provided this is agreed in writing.

3. Employers must pay the posted workers at least the statutory minimum wage.

The amount of this minimum wage depends on age, working time and the number of working hours. There is a statutory minimum wage for employees aged 21 and over (as of 1 January 2021 EUR 1,684.80 gross per month for full-time employment). In addition, there is a statutory minimum wage for employees aged between 15 and 20, the level of which varies according to age. This includes only the basic salary and not housing, travel, meal and accommodation expenses. It is important for employers to clarify, for example, in the employment contract and / or wage statement, which salary components are being paid out. If an employer fails to specify this expressly, the component in question will not be taken into account when calculating whether the statutory minimum wage is being paid out.

4. An employer has the obligation to protect the posted worker's health and safety in the workplace as much as possible.

An employer who does not meet this obligation is liable for any resulting damage incurred by the posted worker. An action often taken by employers is to take appropriate health & safety measures on the workfloor, which can vary depending on the sector in which the employer is active.

5. An employer may not discriminate against an employee on the basis of gender, including on the basis of pregnancy.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The WagwEU is not applicable to seafaring personnel of merchant shipping companies.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO NETHERLANDS

In practice, usually the above-mentioned hard-core employment terms and conditions do not form a major issue for an employer intending to post workers to The Netherlands. Issues, if any, usually stem from a mandatory collective labour agreement which applies to the work to be performed where the collective labour agreement dictates that certain mandatory wages or other mandatory arrangements (falling within the hard-core terms and conditions) have to be applied to posted workers. We see that employers in practice try to steer away from the scope of provisions of a mandatory collective labour agreement by implementing obscure constructions, but courts are more and more inclined to protect posted workers in such situations..

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LEGAL BASIS

Employees posted to Northern Ireland have a number of statutory protections such that they will enjoy effectively the same suite of rights available to other workers employed in Northern Ireland.

The Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations (Northern Ireland) 2000 provides for equality of treatment around employment terms and conditions of posted workers and implemented the Posted Workers Directive 96/71/EC (PWD). Further, the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 was enacted to implement the Posted Workers Enforcement Directive (Directive 2014/67/EU)/

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO NORTHERN IRELAND

The entitlements available to 'workers' are not the same as employee rights, however for the purposes of posted 'workers', in a European context, the rights available in Northern Ireland are outlined below:

1. Maximum work periods, minimum rest periods.

The Working Time Regulations (Northern Ireland) 2016 (as amended) applies and stipulates that Employers should take all reasonable steps to ensure that each worker's average working time over a 17 week reference period (including overtime) does not exceed 48 hours per week. However, certain exceptions to this rule apply for workers under 18 or if a worker is carrying out particular types of work such as working in the armed forces. Additionally, please note that some jobs, for example trainee doctors, have a 26 week reference period. Under an individual opt-out agree-

ment the Employer and the worker can agree to disregard the 48 hour limit on average working time. The agreement must be in writing and must be terminable on no more than 3 months' notice.

Employers (in standard cases) should allow workers the following rest periods:

- 11 hours uninterrupted rest per day;
- 24 hours uninterrupted rest per week (or 48 hours uninterrupted rest per fortnight); and
- 20 minutes rest break when working more than 6 hours per day.

2. Minimum paid annual holidays.

Posted workers will be afforded 5.6 weeks' paid holiday each year (inclusive of public holidays) in relation to working days. This entitlement is applied on a pro-rata basis

3. Minimum rates of pay, including overtime rates.

Under the National Minimum Wage Act 1998 the minimum rates of pay are updated in April every year and are

split into 6 categories, as follows (from 1 April 2021):

- Workers aged 23 and over (National Living Wage) - £8.91;
- Workers aged 21-22 - £8.36;
- Workers aged 18-20 - £6.56;
- Workers aged 16-17 - £4.55;
- Apprentices - £4.30.

In addition, in Northern Ireland workers when absent due to ill health may have a right to Statutory Sick Pay (SSP) should they be eligible. Currently SSP is paid at £95.85 (109.09 Euros) per month.

4. The conditions of hiring out agency workers.

Under the Agency Workers Regulations (Northern Ireland) 2011 workers supplied to a company (or to any other entity) by an employment agency will become entitled to receive pay and basic working conditions equivalent to any employees directly employed at the same level after a 12 week qualifying period.

5. Health, safety and hygiene at work.

The Health and Safety at Work (Northern Ireland) Order 1978 places duties on employers to maintain safe places of work. Employers must, inter alia, keep temperatures at a comfortable level, ensure that areas are big enough to allow easy movement (at least 11 cubic metres per person), protect people from falling from heights etc.

6. Protective measures with regard to the terms of employment of pregnant women, women who have recently given birth or children and young people.

In Northern Ireland women are entitled to 52 weeks maternity leave (39 weeks are paid under the statutory maternity pay scheme). However, this right applies only to employees and is not available to those who fall within the statutory definition of 'worker' only. Nevertheless, in Northern Ireland protection will include provisions dealing with risk assessments, alternation of duties and possible suspension from work on maternity grounds.

Additionally, a worker must not be dismissed if the reason for the dismissal is related to her pregnancy, pregnancy related illness or because she is about to go on maternity leave. If such dismissal takes place, the dismissal will be automatically unfair and the worker can also claim sex discrimination.

7. Equality of treatment between men and women and other provisions of non-discrimination.

In Northern Ireland protective characteristics include:

- Age;
- Disability;
- Sexual orientation;
- Gender reassignment;
- Marriage and civil partnership;
- Race;

- Religious belief and/or political opinion; and
- Gender.

It is unlawful for an employee or worker to be discriminated against under any of these protected grounds.

CURRENT UNCERTAINTY

Following the end of the transition period for the United Kingdom to withdraw from the European Union, the employment law above has not altered in relation to rights of workers in the UK. Although the PWD no longer applies to UK or Northern Ireland, it has become retained law, meaning that the domestic law derived from the PWD remains. This means that the rights granted to workers in Northern Ireland remain at the level required by the PWD.

Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 was brought into force by The Posted Workers (Agency Workers) Order (Northern Ireland) 2020 on 13 November 2020, which added regulation 13A to the Agency Workers Regulations (Northern Ireland) 2011. However, following the end of the transition period for withdrawal by the UK from the EU, this regulation no longer applies. That said, a temporary work agency can still continue to pursue a claim, or conciliate one, where a breach of regulation 13A occurred prior to the 31 December 2020.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Poland were implemented by the Act of 10 June 2016 on Posting Workers in relation to the Provision of Services (previously by the Labour Code). The above Act implemented EU Directives 96/71/EC and 2014/67/EU and the amendment of 4 September 2020 also implemented the most recent EU Directive 2018/957/EU into Polish law.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO POLAND

An employer posting an employee to Poland, unless providing more favourable terms and conditions under home law, is obligated to provide a posted employee employment conditions not less favourable than those resulting from Polish law, namely:

1. Observe work time limits as well as daily and weekly rest periods.

Basically, the work time limit is 8 hours per day within an average of 40 hours per 5-day work week (48 hours including overtime). Actual daily and weekly work time can be extended in some work time systems (for example, work is possible for 12 hours per day for up to 10 days in a row), but must be balanced with time off on other days so that the weekly limit is met within the adopted settlement period. Depending on the system, this can vary from 1 to 12 months. The weekly limit is an average value, meaning that in some weeks it will actually be lower due to public holidays or employee absence (sickness, leave) – each reducing the weekly limit by 8 hours. In each case an employer must guarantee an employee at least 11 hours of rest each day and at least 35 hours of rest each week (Mon-Sun), which should

include a Sunday. Some exceptions to rest requirements are available, for example, for shift work and permitted work on Sundays or weekends.

2. Provide an annual holiday in each calendar year (on top of any public holidays).

The law provides for a minimum annual holiday of at least 20 work days (for a length of service of less than 10 years) or 26 work days (for a length of service of 10 or more years). Length of service encompasses all periods of employment and completed periods of education in secondary schools and universities (e.g., university graduation gives 8 years of service).

3. Pay remuneration required by law (both as to its amount and components).

Such remuneration must cover not only base salary under Polish law (PLN 2,800 gross for full time work in 2021), but also all other statutory pay components such as overtime pay, night-time allowance, statutory severance and pay components resulting from collective labour agreements (which, however, only bind within the private sector if a given employer adopts such agreement together with a trade union). This means that the rule “same pay for the same work” currently applies to posted employees.

Polish statutory overtime pay comprises the employee’s normal salary and allowance being:

- 100% remuneration – for daily overtime work at nights, on Sundays and public holidays that are not work days for an employee, in accordance with a work schedule or on a day-off granted in return for work on Sunday or on a public holiday; or
- 50% remuneration – for daily overtime on any other days; or
- 100% remuneration – for overtime exceeding the average weekly limit (after settling the daily overtime) within the applicable settlement period.

The night-time work allowance is 20% of the hourly rate resulting from minimum statutory remuneration.

What is relevant is that an employer is not required to match the amount of each pay component that is applicable, but to ensure that total remuneration paid to a posted employee is not less than the total sum of all applicable components.

4. Ensure healthy and safe conditions of work at the workplace of the host location.

This obligation covers a large number of duties, among others, ensuring health and safety training, risk assessment and medical examination determining fitness to work before admitting an employee to work.

5. Observe protection of pregnant employees and employees on maternity leave.

Maternity leave generally lasts 20 weeks (parents can split use of maternity leave, but mothers have to use at least 14 weeks after delivery). Protection mainly means a prohibition to terminate an employment contract without the employee’s consent (except for disciplinary dismissal, employer bankruptcy or liquidation) and prohibition of overtime and night work.

6. Prevent any form of discrimination and apply rules of equal treatment.

Employees have equal rights (particularly in terms of pay) with regard to performing the same duties (or duties of the same value) regardless of full or part-time employment, employment for a definite or indefinite period, sex, age, religion, etc. (Polish law provides an open list of potentially discriminatory factors). Employees who have fallen victim to unequal treatment can claim compensation of at least the national minimum wage. Harassment and sexual harassment are considered to be forms of discrimination.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

- None of the above terms and conditions apply to:
- crews of merchant ships

- employees of international transportation companies (except for cabotage, which is covered by the terms).
- employees posted to Poland directly by temporary work agencies – special terms and conditions apply here.

Terms related to annual holidays and remuneration for work listed in points 2-3 above do not apply to employees performing initial installation work in line with their qualifications for maximum periods of 8 days during a calendar year from commencing work in a given job position, such work being necessary to use delivered products, provided that such work is not related to construction or maintenance of building structures.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO POLAND

Polish law does not allow the right to compensation (time-off or remuneration and allowance or a lump sum) for overtime work to be waived. Employers find overtime recording, which is always required, at least to some extent, and calculation of sums due for overtime work overly burdensome due to their complexity. In practice, ensuring compliance with Polish law in this area always requires engaging a host entity or local external service provider to take over certain employer duties. The same applies to compliance with health and safety regulations due to the need to know local law and local work conditions.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Romania (from an EU/SEE/Switzerland entity) were implemented by Act no. 16/2017 on the posting of workers for providing transnational services (previously Law no. 344/2006) that was amended by Act no. 172/2020.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO ROMANIA

Regardless of the law applicable to employment relations, employers posting their employees to Romania are obliged to observe the working conditions provided by Romanian legislation, regarding aspects such as:

1. Time limits regarding the working time and daily and weekly rest periods.

The statutory normal working time for full-time employees is 8 hours per day and 40 hours per week (however, the maximum duration of the working week can be 48 hours, including overtime; the maximum duration may be exceeded as long as the average weekly working time does not exceed 48 hours over a reference period of, in principle, 4 months). The daily working time for certain business sectors/units/professions may exceed 8 working hours per day, but note that the legally accepted interpretation indicates a maximum of 12 working hours per day.

Employees are also entitled to a daily rest period of at least 12 consecutive hours, which may be reduced to a minimum of 8 hours, in the case of employees engaged in shift work. However, if an employee works for 12 or more hours a day, he or she must be granted a 24-hour rest period before working again.

Employees are entitled to a weekly rest period of 48 consecutive hours, usually on Saturday and Sunday. However, the rest period may be granted on other days in particular situations, and employees must receive a premium for hours worked on Saturday and/or Sunday. In exceptional cases, employees' weekly rest periods may be accumulated and granted after the employee has worked for up to 14 continuous days, under specific requirements (e.g., as agreed by the public labour authorities).

2. The minimum duration of paid annual leave.

Employees are entitled to a minimum of 20 working days of paid annual leave in each calendar year (granted in proportion to the duration of work for a particular employer during the year). Additional paid rest days are provided by law (e.g. employees working under specifically harmful working conditions, vision impaired employees or other disabled employees and young employees under the age of 18 benefit from additional annual leave of at least 3 working days).

3. Remuneration applicable in Romania.

As of 2021, the statutory national minimum gross wage equals RON 2,300 (approx. €470) and equals RON 2,350 (approx. €480) for employees working in positions that require higher education graduates, having one-year senior-

ity in the given field. Employees working less than full-time hours are entitled to at least the monthly national minimum wage pro-rata to their hours. The term "remuneration" also includes other elements of compensation, as per the law.

4. Compensation or allowance for overtime.

According to the Romanian Labour Code, overtime shall be compensated with corresponding paid time off within the subsequent 60 days following the performed overtime. If this is not possible within this time limit, overtime is paid to the employee corresponding to the duration of the overtime work that shall be determined by the applicable collective bargaining agreement or can be set by the individual employment agreement and cannot be lower than 75% of the gross base salary.

5. Health and safety conditions of work at the workplace at the host location.

Employers are obliged to ensure the health and safety of employees in all aspects related to work, such as ensuring health and safety training, risk assessment, specific protection equipment etc.

6. Protection of pregnant and breastfeeding female employees.

Apart from the above, the following should also be observed: protection measures for pregnant employees and employees who have recently given birth (e.g. protection from dismissal for pregnancy-related reasons; breaks and reduction of working time granted for breastfeeding, without affecting the salary; prohibition regarding obliging pregnant employees to perform night work etc.).

7. Equal treatment.

In Romania, employers need to follow equal treatment between women and men and other provisions for the prevention of any form of discrimination (the main discrimination criteria prescribed by law are: nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category).

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The above provisions do not apply to merchant navy undertakings as regards seagoing personnel.

The provisions listed within points 2-4 above are not applicable to skilled and/or specialist employees performing initial assembly and/or first installation of goods, as part of contracts for the supply of goods (necessary for taking the goods supplied into use), if the duration of the posting is a maximum of 8 days during a calendar year. This exception does not extend to construction activities (building, repairing, maintaining, modifying or demolishing buildings).

The provisions from points 3 do not apply to the transnational posting of drivers working in the transportation sector.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO ROMANIA

Employers that post workers to Romania often do not properly observe the maximum working time limits / daily and weekly rest. They also often fail to provide a complete information letter, which is mandatory by law when posting someone abroad for an international job. Non-compliance with these obligations may trigger consequences such as administrative sanctions (i.e., specific fines).

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LEGAL BASIS

Act No. 311/2001 Coll. Labour Code, as amended (the Labour Code) stipulates that labour-law relations of employees posted from another EU Member State (and/or a state which is a party to the Agreement on the EEA) to work in the Slovak Republic to provide cross-border services must comply with the Slovak legal regulation on particular matters. However, the posted employees can also have favourable working and employment conditions (the Slovak regulation sets just a minimum standard to be observed).

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO SLOVAKIA

1. Length of working time and rest periods.

The maximum working time of an employee is 40 hours per week (38.75 hours in case of two-shifts and 37.5 hours in case of three-shifts or uninterrupted operation). The weekly working time can, however, slightly vary from week to week. The level of flexibility depends on whether the working time is scheduled evenly or unevenly (which requires the consent of the employee or of the employees' representative). The maximum average weekly working time including overtime work is 48 hours.

If an employee works in a shift lasting more than six hours, the employee must have a break for rest and meal at least 30 minutes.

An employee must have a minimum rest time of 12 consecutive hours (14 hours in case of juveniles) between two shifts within any 24-hour period. Only in specific cases (such as urgent repair works), may such rest be reduced to eight hours. As a general rule, the working time in any 24 hours must not exceed 12 hours. In case of overtime, it can be more but even then, the minimum eight hour rest between

two shifts must be complied with.

An employee must also have uninterrupted weekly rest, which, in principle, should consist of two consecutive days of rest, which must fall on Saturday and Sunday or Sunday and Monday. There apply some exceptions from this rule.

2. Length of vacation.

An employee is entitled to four weeks of paid holiday in a calendar year. The paid holiday of an employee who will be at least 33 years old at the end of the relevant calendar year, or of an employee who is permanently taking care of a child, is at least five weeks per calendar year. The 'week' means seven consecutive days; hence, it also includes week-ends, but does not include public holidays falling on a day that the employee would usually work.

3. Minimum wage, minimum wage claims, and allowances for overtime work, night work, work on Saturday, Sunday or holiday, allowance for work in difficult conditions, compensation for vacation, mandatory wage components.

The minimum wage in 2021 applicable to an employee working 40 hours per week is EUR 623 per month (if an employee is remunerated monthly) and EUR 3.580 per hour.

Depending on the difficulty of work, the stated minimum wage is increased based on particular coefficients applicable to particular levels of work difficulty.

In general, for overtime work, an employee is entitled to his/her wage and in addition to a wage surcharge of 25% (35% in case of risk work) of the employee's average earnings. If so agreed with the employee, instead of the wage surcharge the employee is entitled to time-off corresponding to the overtime work. With particular groups of employees (e.g. certain managing employees) it may be agreed that overtime work of not more than 150 hours per calendar year is already included in their base wage (and no wage surcharges shall apply).

For work on holiday an employee is entitled to a surcharge of 100% of the employee's average earnings unless the employee agrees with the employer on time-off (compensated) instead. The employer may agree with a managing employee in an employment contract that the wage already includes and reflects potential work on holiday.

For work on Saturday an employee is entitled to a surcharge of 50% of the statutory minimum wage per each hour of work. In certain cases, the surcharge can be lower but at least 45% of the statutory minimum wage. The employer may agree with a managing employee in an employment contract that the wage already reflects potential work on Saturday.

For work on Sunday an employee is entitled to a surcharge of 100% of the statutory minimum wage per each hour of work. In certain cases, the surcharge can be lower but at least 90% of the statutory minimum wage. The employer may agree with a managing employee in an employment contract that the wage already reflects potential work on Sunday.

For night work an employee is entitled to a surcharge in the amount of 40% (in case of risk night work 50%) of the statutory minimum wage per each hour of work. In certain cases, the surcharge can be lower but at least 35% of the statutory minimum wage. The employer may agree with a managing employee in an employment contract that the wage already reflects also night work.

4. Health and safety.

The Slovak regulation requires the employer to observe several duties to ensure employees' health and safety at work. These include health and safety training, risk assessments, medical examinations of employees, record-keeping in relation to work accidents, etc.

5. Working conditions for pregnant women, mothers up to nine months after childbirth, breastfeeding women, and juveniles.

The Labour Code protects the abovementioned groups of employees. For example, pregnant employees cannot be ordered to do overtime or on-call work without their consent. Several other protection measures apply. Certain categories

of work and workplaces are prohibited for pregnant women, mothers up to nine months after childbirth, and breastfeeding women.

6. Equal treatment of men and women and ban on discrimination.

It is prohibited to discriminate employees in labour-law relationships based on sex, marital and family status, race, skin colour, language, age, adverse health condition or handicap, genetic properties (generic characteristics), belief, religion, political or other views (thinking), trade union activities, national or social origin, national and ethnic group, property (assets), gender or other position, or due to the employee's reporting criminal activity or other anti-social activity (whistleblowing). Specifically, employees (men and women; or other groups of employees) are entitled to the same salary for the 'same work' or the 'work of the same value'.

There are further core employment terms and conditions to be complied with (e.g. pertaining to accommodation and travel expenses, or to temporary assignments).

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The terms listed in points 2 and 3 above do not apply to employees performing initial assembly or installation works, in line with their qualifications, for periods not exceeding 8 days during the last 12 months from the commencement of posting, if these works are necessary to use the supplied product and are the main part of the agreement on supply of the product. This exception shall not, however, apply to works related to construction works or maintenance of building structures (e.g. dredging, renovation works, demolition works, painting and cleaning as part of maintenance, etc.).

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO SLOVAKIA

The Slovak legal regulation on working time is very complex and hence it is difficult for posting employers to get acquainted with it. However, posting employers usually cooperate with Slovak employers in this regard to understand the relevant practicalities.

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LEGAL BASIS

During a posting, a posted worker is entitled to certain rights and protection under Swedish law, irrespective of the foreign rules and regulations that otherwise apply to the employment, so-called 'core rights'. The rules regulating these core rights are stipulated in the Swedish Posting of Workers Act (Sw. lag (1999:678) om utstationering av arbetstagar), based on the Posted Workers Directive (Directive 96/71/EC). As of 30 July 2020, the rules on posting in Sweden has changed due to the amendment directive 2018/957/EU, which, inter alia, implies more stringent requirements on employers that post workers to Sweden.

CHANGES TO THE RULES REGARDING POSTING OF WORKERS IN SWEDEN

The new rules regarding posting, entering into effect on 30 July 2020, will give posted workers stronger protection more like the protection employees have in Sweden. Among other things, the employer shall report a posting and appoint a contact person to the Swedish Work Environment Authority already from the first day of the posting. The employer also needs to provide documentation to the recipient of the service in Sweden that the posting has been reported to the authority. The service recipient has a new responsibility to notify the authority, no later than three days after the work has begun, if the required documentation has not been received.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO SWEDEN

According to the Swedish Posting of Workers Act, during a posting, an employee is, covered by e.g. rules in the following Swedish laws. There is no hindrance to provide more beneficial terms and conditions for the posted worker.

1. The Working Hours Act (Sw. arbetstidslagen (1982:673))

Stipulating rules, inter alia, regarding working hours, overtime and rest periods. In short, the regular working time may not exceed 40 hours per week. Overtime may be worked up to a maximum of 48 hours over a period of four weeks, or 50 hours over a calendar month, with a maximum of 200 hours over a calendar year. Further, all employees are entitled to a minimum rest period of eleven consecutive hours in any twenty-four hour period (daily rest period) and an uninterrupted rest period of thirty-six hours per every seven day period (weekly rest).

2. The Annual Leave Act (Sw. semesterlagen (1977:480))

Stipulating a right to paid leave (up to 25 days per year) calculated on the basis of how long the employee works in Sweden. If the posting does not last more than three months, it may be agreed that no leave shall be scheduled. In such a case, the employee is entitled to holiday pay instead.

Holiday pay shall be calculated according to the same-pay rule or the percentage rule. The same-pay rule implies that the employee receives the normal monthly salary during the leave plus a holiday supplement of 0.43% of the monthly

salary for each holiday. If the employee also has variable pay components, the holiday pay for these components is 12% of the employee's aggregate variable pay that fell due during the vacation year. Holiday pay according to the percentage rule comprises 12% of the employee's pay that fell due during the qualifying year.

3. Remuneration for work

During the posting, according to the Posted Workers Directive, an employee is guaranteed the statutory minimum wage as regulated in the host country. As there is no statutory minimum wage regulated in Sweden, guidance is instead often taken from collective bargaining agreements applicable for the sector the employee will be working in.

4. The Work Environment Act (Sw. arbetsmiljölagen (1977:1160))

Stipulating regulations on the duties of employers to ensure that employees are not affected by ill health or accidents at work. Under the act, an employer must take all necessary measures to prevent an employee from being exposed to illness or accidents. Therefore, a point of departure shall be that anything that can lead to illness or an accident must be changed or replaced so as to eliminate the risk of illness or an accident. The employer must also comply with all relevant work environment provisions concerning different types of work issued by the Swedish Work Environment Authority.

5. The Parental Leave Act (Sw. föräldraledighetslagen (1995:584))

Implying e.g. that a female employee is entitled to full leave in connection with her child's birth during a continuous period of at least seven weeks prior to the estimated time for delivery and seven weeks after the delivery, and if the employee is not on leave for other reasons, two weeks of this maternity leave shall be obligatory during the period prior to or after the delivery. The employee is also protected under the Act against unfavourable treatment for reasons related to such leave.

6. The Discrimination Act (Sw. diskrimineringslagen (2008:567))

Implying that the employee is protected against discrimination at the workplace and by the employer due to gender, gender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation or age. The employee is also protected against harassment, sexual harassment and reprisals.

Further, posted workers are also covered by certain specific rules and laws based on their professions or form of employment; such as rules regulating working hours during road transport work and railway traffic.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The Swedish Posting of Workers Act does not apply to merchant navy employers as regards seagoing personnel.

Further, for work that is performed by a professionally trained or specialised worker, the employer shall only apply the provisions of the Swedish Annual Leave Act if the posting lasts for more than eight days and if the work is performed in conjunction with an initial assembly or installation that is included in a supply contract for a product and is necessary for the product to be taken into use. However, this exception does not apply if the work relates to building activities where buildings are erected, maintained, rebuilt or demolished.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO SWEDEN

The main issues that employers encounter with regard to the application of the above terms differs depending on the foreign employer in question. However, Swedish employment law regulations are often considered as fairly troublesome for a foreign employer to apply. Foreign employers often experience practical difficulties when applying the regulations and difficulties in ensuring that the employees are receiving the correct benefits, especially with regard to what is stipulated under the Annual Leave Act. Whether the new rules will create any additional issues or difficulties remains to be seen.

According to the Swedish Posting of Workers Act, trade unions are entitled to require industrial actions be taken against a foreign employer to regulate the terms for the posted worker by a collective bargaining agreement. However, such industrial actions may only be taken if the terms required comply with the terms and conditions that a) are regulated in a central collective bargaining agreement that is generally applied in the relevant sector throughout Sweden, b) relate to salary, compensation for travel, accommodation and board or accommodation conditions or other minimum terms and conditions within the core rights described above and does not prevent the application of conditions that are more favourable to employees, and c) are more favourable for the employees than the core right described above. Trade unions may also initiate industrial actions against a foreign employer to regulate the terms for long-term posted workers by a collective bargaining agreement.

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LEGAL BASIS

The minimum terms and conditions of employment applicable to employees posted to Switzerland were implemented by the Federal Act of 8 October 1999 on Accompanying Measures for Workers posted to Switzerland and on the Control of Minimum Salaries under Standard Employment Contracts (Posted Workers Act; PWA). As Switzerland is not member of the EU, the Directive 2018/957 of 28 June 2018 has no direct impact on Swiss legislation. Currently, no change in Swiss legislation is envisaged.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO SWITZERLAND

Employers posting their employees to Switzerland must grant them mandatory working conditions and a minimum salary set forth in the relevant federal acts and regulations; in particular in the Swiss Code of Obligations (CO), the Swiss Labour Act (LabA) and the Swiss Gender Equality Act (GEA) and related ordinances (in particular the ordinances to the LabA), in collective employment contracts that have been declared generally binding (CBA) as well as in the standard employment agreement within the meaning of article 360a CO (SEA).

1. Working time and rest period.

Working time is based on an individual agreement, an applicable CBA or SEA, or on business practice and must comply with the protective regulations of the LabA, namely those regulations governing maximum weekly working hours, breaks and days off as well as evening, night and Sunday work. The LabA limits the maximum weekly working hours of industrial employees, office staff, technical and other personnel as well as salespeople in large retail firms to 45 hours. All other employees are limited to 50 working hours per week. In certain exceptional cases, these maxi-

mum working hours may be exceeded within defined limits, i.e. up to 170 hours p.a. where a 45-hour-limit applies or 140 hours p.a. in all other cases.

Furthermore, breaks must be given to the employee about halfway through each shift.

Official authorisation by the competent cantonal authorities is principally required for work at night or on Sundays as well as on national and cantonal holidays. Working time, rest periods and breaks of each employee must be recorded by the employer.

2. Minimum duration of vacation.

Employees are entitled to a minimum of four weeks of vacation per year of service. The entitlement of young employees up to the age of 20 amounts to five weeks. A CBA may foresee an extended holiday entitlement. Vacations are typically calculated in work days, i.e. one week corresponds to 5 work days in a full time position. When posting employees to Switzerland, holidays are rarely granted in kind. However, the minimum holiday entitlement needs to be considered in the minimum salary calculation (additional pay).

3. Minimum remuneration including supplements.

Switzerland does not have a statutory minimum wage that applies to the entire country. During the assignment, the

posted employees are entitled to the minimum remuneration set forth in applicable CBA and/or SEA. In areas where no CBA or SEA applies, the local customary salary applicable in relation to the usual working time and the acquired qualifications must be paid. The average gross monthly salary (median) for the whole country is 6,538.00 Swiss Francs (statistical figure based on 2018); however, the actual customary salary varies widely depending on the geographical region and the sector. The applicable salary to be paid must consider compulsory (applicable to all workers in Switzerland) supplements for overtime, if any, supplements for shift work, night work, Sunday work, work on public holidays and onerous work, the pro-rata holiday remuneration, the pro rata 13th monthly wage, paid holidays and rest days.

4. Occupational safety and health protection at the place of work.

Regulations for occupational health and safety at the place of work are provided by the LabA and the related ordinances as well as in the Swiss Accident Insurance Act (AIA).

5. Protection of pregnant and breastfeeding female employees.

Specific provisions (e.g. prohibition to assign onerous work, additional health protection measures depending on the situation, prohibition of night work 8 weeks prior to confinement etc.) apply for protection of pregnant and nursing women.

6. Non-discrimination, in particular gender equality.

The posting employer falls under the scope of the GEA for the time of the posting. The GEA ensures general equality between women and men in working life and specifies the right to equal remuneration for work of equal value. Furthermore, the GEA is specifically intended to protect employees against sexual harassment.

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

The minimum terms and conditions regarding remuneration and holiday entitlement do not apply in case of minor work, i.e. work of less than fifteen days per calendar year. This number of days is understood as a 'man-day', i.e. the number of days is calculated by multiplying the number of posted employees by the number of days the service is provided in Switzerland. These exemptions do not apply in the construction sector as well as in the hotel and hospitality sector.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO SWITZERLAND

Employers domiciled in an EU member state are obliged to adhere to the notification procedure for cross-border assignments of up to ninety (90) days per calendar year (in aggregate, so all assignments per calendar year count together). Each posted employee must be registered eight (8) days prior to the start of the cross-border assignment at the latest. For cross-border assignments of more than ninety days per calendar year a work permit for each posted employee must be applied for in advance.

Another main issue is the determination of the minimum remuneration. Minimum salaries can be set forth in generally binding CBA or SEA. However, in industries or professions without mandatory minimum wages CBA and/or SEA the customary wage for that location, profession or industry must be paid. So called cantonal tripartite commissions monitor the Swiss labour market in this respect and can control domestic and foreign companies. Serious sanctions can be imposed in case of non-compliance with the above-mentioned minimum requirements, including a prohibition to provide any services into the Swiss market.

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LEGAL BASIS

Employment law in Scotland is reserved to the UK Parliament, in part due to the number of labour issues currently based on European laws. This means many of the applicable laws are the same across the UK. We set out below the UK position, which is applicable in Scotland.

Domestic law in the UK protects all workers (whether posted or not) and covers matters set out in the Posted Workers Directive (the Directive) and the Posted Workers Amendment Directive.

In the UK, the relationship between an employer and worker is governed by a number of different sources. Individual worker rights are usually included in a contract of employment or for services, and certain minimum rights are provided for by legislation and common law. There are also collective employment rights, for example, in relation to collective redundancies and trade union membership.

The Employment Rights Act 1996 (ERA) sets out minimum rights applicable to all worker relationships. Rights under the Directive are available both to 'employees' (who must provide personal service in a relationship where there is mutuality of obligation and control by the employer) and to 'workers' (who have more ability to accept or reject offers of work, and are not entitled to certain statutory rights).

The Posted Workers Amendment Directive (the Amendment Directive) necessitated one amendment to UK law, which is an express obligation on a hirer to inform an agency of the posting of an agency worker. Given the end of the Brexit transition period, this was reversed automatically and no longer applies.

THE MINIMUM TERMS AND CONDITIONS OF EMPLOYMENT APPLICABLE TO EMPLOYEES POSTED TO UK

Under section 1 of ERA, an employer has to provide a written statement setting out the particulars of employment for employees and workers. This should include the:

- Identity of the employer and the employee/worker;
- Start date and confirmation of whether any employment with a previous employer counts towards the continuous

period of employment, and if so when this runs from;

- Job title;
- Place of work;
- Details about salary including how often they will be paid;
- Pension entitlement;
- Hours and days of work;
- Terms and conditions relating to paid leave;
- Details of any other benefits;

- Notice period(s);
- Information about any probationary period;
- Period of employment/engagement (if the role is not permanent);
- Any training entitlement;
- Any applicable collective agreement; and
- The arrangements that will apply if they will be working abroad for more than one month at a time.

Workers in the UK are also entitled to the following, covering rights under the Directive:

1. Working time and rest period.

Maximum working hours and rest breaks under the Working Time Regulations (WTR) including a 48-hour limit on average weekly working time and mandatory rest periods such as a rest break of at least 20 minutes when working for more than six hours, and a weekly rest period of at least 24 uninterrupted hours of rest in each seven day period. Many of the rights under the WTR can be waived or varied, for example, workers can 'opt out' of the 48 hour limit on average working time.

2. Holidays.

Paid holidays (at least 5.6 weeks a year which equates to 28 working days for a full time worker, or the pro rata equivalent for part time workers).

3. Minimum remuneration.

To be paid at least National Minimum Wage (currently £8.72 per hour for those aged 25 or over, rising to £8.91 for anyone aged 23 or over from 1 April 2021).

4. Safety and health protection.

Health and safety protection (employers have a statutory duty to provide a clean working environment, first aid equipment, protective clothing if required, drinking water and washing facilities. Further, workers are protected if they suffer detriment after whistleblowing in relation to health and safety matters).

5. Protection of pregnant workers.

Protection for the employment of pregnant women or those who have recently given birth. The law protects women from dismissal, detriment or discrimination on the grounds of pregnancy or maternity. For example, selection for redundancy on the grounds of pregnancy or maternity, dismissal where the only (or principal) reason is related to pregnancy or maternity, or the refusal of promotion opportunities because of pregnancy or maternity. Employers also have special obligations to protect the health and safety of new or expectant mothers and are required to carry out risk assessments. If this identifies any significant risks, employers should alter the working conditions or hours of work. Where it is not reasonably practicable to do so, they should offer

suitable alternative work on terms that are not substantially less favourable. If there is no suitable alternative work (or the employee reasonably refuses it), they can be suspended on full pay.

6. Non-discrimination

Protection against discrimination based on one of the following protected characteristics (sex, marital or civil partnership status, race (colour, nationality and ethnic or national origin), gender reassignment, religion or belief, sexual orientation, pregnancy and maternity, age, and disability).

EXCEPTIONS TO APPLICATION OF THE ABOVE TERMS AND CONDITIONS

As the Directive and the Amendment Directive were implemented in the UK by existing domestic legislation, there are no exceptions from the minimum terms and conditions applicable to posted workers. Under UK law, there are special provisions applicable to the employment of night workers, young people under the age of 18, those working in sectors that require continuous production, and agriculture. However, these special provisions apply to everyone, and are not particular to posted workers.

MAIN ISSUES THAT EMPLOYERS ENCOUNTER WITH REGARD TO APPLICATION OF THE ABOVE TERMS WHEN POSTING EMPLOYEES TO UK

As a result of the UK's departure from the EU, the Directive and the Amendment Directive no longer apply in the UK. Given that domestic legislation is already compliant with the requirements of the Directive (except for the minor change regarding hiring notification), Brexit has not had any immediate impact on the rights of posted workers who were sent prior to 31 December 2020. The UK government has promised to make no changes to the rights of EU workers already in the UK at 31 December 2020. However, these workers must submit an application under the EU Settled Status Scheme by 30 June 2021 or face being in the UK illegally. Any workers posted to the UK from other EU countries going forward will be subject to immigration control and should take up-to-date legal advice as the position is still being finalised.

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