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ADVOKATFIRMA I FRANKRIG / LAWYERS OFFICE IN FRANCE

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The posting of workers in France:

A posted worker (« salarié détaché ») is an employee established and carrying out his activities outside of France. He usually works for an employer outside of France and executes his work at the demand of this employer for a limited duration of time in France (Article L.1263-3 of the French labor code “Code du travail”).

Cross-border posting of workers is provided for in the articles L.1261-1 to L.1263-2, R.1261-1 to R.1264-3 of the French labor code (“Code du travail”) that results from the transposition of the EU directive 96/71/CE of the 16 December 1996 as well as the execution directive 2014/67/EU of the 15 May 2014.

These directives guarantee a minimal protection for working conditions of these employees and specify the control modalities.

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I. Preliminary conditions:

All employers settled in another country can undertake service provisions in France and post employees without having to settle on the territory as long as in their home country:

- They are regularly settled as well as constituted and operated in conformity with the legislation of that country. The legal status of the company is indifferent; this applies to any type of company.
- They must justify of an important activity that is stable and continuous. Article L.1262-3 of the French labor code (“Code du travail”) prohibits the creation of an establishment in the only purpose of posting employees.

These rules do not apply to activities that concern exclusively the internal management or administration of the company or if the activity is usually executed on the national territory.

The employee must have been an employee in his home country before his posting.

II. Formalities to accomplish:

1. The obligation to the prerequisite declaration of the posting by the home employer:

The home employer must address a territorial unity declaration of the country in which the service will be provided or of the first location of the activity if it is carried out in other locations. This must be done before the beginning of the service provision or before the availability of the employee (article R. 1263-5 of the French labor code “Code du travail”).

This declaration can be done by any mean as long as is confers a specific date and applies the necessary mentions of article R.1263-4 or R.1263-6 of the French Labor code (“Code du travail”).

However, CERFA forms, online declarations via the SIPSI tele service are not to this day in conformity with the 5 November 2015 decree.

Copies must be enclosed in the staff’s unique registry and must be made accessible to employee representatives either on the premises or on each construction site or place of work that are distinct to the premises where the posted workers are assigned (article D.1221-24-1 of the French labor code “Code du travail”).

If this declaration is not respected, the work inspector can impose an administrative fine from 2000 EUR up to 500.000 EUR by employee (Article L.1264-1, L.1262-2-2, and L.1264-3 of the French labor code).

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2. The obligation to designate a company representative in France by the employer:

The employer must designate a representative in France in charge of ensuring contact with the work inspector, police officers, tax and customs agents during the duration of the provision (L. 1262-2-1 of the French labor code).

This representative will provide the necessary documents requested by the work inspector.

By not designating a representative in France, the employer risks a fine by the regional department of companies, competition, consumption and work (“DIRECCTE”) from 2000 EUR up to 500.000 EUR by employee (article L.1264-1, L.1262-2-1, L.1264-3 and L.1262-5 of the French labor code).

3. Obligation to verify the accomplishment of formalities by the developer (“maître d’ouvrage”) or the principal (“donneur d’ordre”):

The developer (“maître d’ouvrage”) or the principal (“donneur d’ordre”) must ensure that the employer of posted employees has made the posting declaration.

They will ask the subcontractor (“sous-traitant”) or the established supplier in a foreign country a copy of the posting declaration and a copy of the document designating the representative (article L.1262-12 of the French labor code).

If they do not possess copies, they must proceed to a posting declaration in the 48 hours following the beginning of the posting in the territorially united location of the provision (article L.1262-4-1 of the French labor code).

Article R.1263-13 of the French labor code specifies the informations that must be contained in these declarations.

4. Obligation to ensure the payment of wages of posted workers:

If the posted employee has not received the minimum legal pay, the developer (“maître d’ouvrage”) or the principal (“donneur d’ordre”) can be held jointly responsible with the employer for the payment of wages and benefits owed to the employee if the situation is not resolved in a specified time-limit.

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The developer of the principal must inform this by writing to the control agent that noticed this default.

It is mandatory to indicate the information of the posting in the staff registry and the social accounting (“bilan social”).

A copy of the posting declaration needs to be enclosed to the official staff register of the host company. The number of posted employees must be included in the social accounting (“bilan social”).

5. Building and construction employees’ obligation to possess a professional card:

The employer will have to declare to a body (that will be determined in a future decree) each employee that accomplishes building or construction work in order to have a professional card made.

This card will contain informations concerning the employee, his employer, the host company, the home company and the body that delivered this card (Article L.8291-1 of the French labor code).

III. Inspection:

All the documents (translated in French) concerning informations of the regularity of the social situation and wages that allow the work inspector to carry out his inspection must be kept at the place of work of the posted worker or in the event of a material impossibility any other accessible place to his representative.

In the event of serious violation of social rights of posted workers, the work inspector can order by writing and through the established representative in France, the suspension of the situation during 1 to 3 days.

If this situation is not settled by the employer, the suspension of the posting during a maximum of one month can be ordered (articles L.1263-4 and R.1263-11-2 of the French labor code).

IV. The status of the posted worker:

Employer’s that are established in another country must respect the legislation applicable in the host country: France. They must apply the French Labor law concerning the fields provided for in article L1262-4 of the French labor code (individual and collective liberties in work relations, discriminations and professional equality between men and women, maternity protection).

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The rules that are applied to French companies in the same sector must be applied to the posted worker. Article R1261-1 of the French labor code specifies it: a posted worker carrying out an activity in France must benefit from the same protection as a French worker carrying out the same activity.

In the presence of a subnational agreement plan (“dispositif conventionnel infranational”), the location of the service provision is the territorial criteria that allows to determine the referring agreement texts.

The employer will have to inform the employees of the collective agreement that will be applicable to them during their posting in France. The mention of this title must be specified in the wage statement.

1. Earnings:

Posted workers are at least paid the minimum wage (“SMIC”) or the minimum standard wage.

The minimum salary includes benefits for posted workers as for example the expatriation bonus. (Article R1262-7 of the French labor code).

2. Medical monitoring:

The detached worker benefits from the provision of work health services except if the employer established in an EU member State proves that the worker is subject to an equivalent medical monitoring in his home state.

a. Concerning work related accidents (article R.1262-2 of the French labor code):

- If a posted worker is not affiliated to French social security, a declaration is sent to the work inspector of the place of occurrence of an accident in the 48 hours (this does not include Sundays and bank holidays) by registered letter with receipt;
- If the worker is posted in France for his employer without being appointed to a specific company, this declaration is sent by the employer to one of the representatives;
- If the worker is posted in another company, the host company fills this declaration.

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b. Exceptions (article R.1262-5 of the French labor code):

Posted workers do not benefit from:

- Unpaid leave of absence
- Time savings accounts (“compte épargne-temps”) implemented in the host company

The posted worker that is not affiliated to French social security cannot obtain rights for the “compte de prévention de la pénibilité”. The declaration of risks will have to respect specific modalities that will be specified in a future decree.

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