



New rules for the posting of employees in Luxembourg

The act of 15 December 2020 was enacted to establish stricter rules for the secondment of employees to Luxembourg. This legislation has its origin in the European Directive of 28 June 2018 concerning the posting of workers in the framework of the provision of services.

The objective pursued by the Member States in the European Union has remained the same over the years, namely to strike a fair balance between the need to promote the freedom to provide services and ensure fair conditions of competition between companies on the one hand, and the need to protect the rights of posted workers on the other.

It is precisely in an effort to guarantee better social rights for posted workers that the Act of 15 December 2020 introduces the following main innovations:

I. Extending the mandatory provisions to be complied with

Companies that have their registered office outside Luxembourg and post employees to that country must ensure that these posted employees will benefit from a "hard core" of rights in force in Luxembourg. This is a minimum right guaranteed to posted employees, in particular with regard to maximum working periods, minimum rest periods and minimum paid annual leave.

This hard core is now extended to include the following two points:

- Accommodation conditions when the employer provides accommodation to the employee away from his or her usual place of work. The new Articles L. 291-1 to L. 291-5 of the Labour Code stipulate such accommodation conditions as well as the obligations of the employer, the contracting authority and the principal in this respect.
- Allowances or reimbursement of expenses to cover the travel, accommodation or food costs of employees who are away from their homes for professional reasons.

This covers the costs incurred by employees who are posted when they have to travel to or from their usual place of work in Luxembourg or when they are temporarily sent by their employer from that usual place of work to another place of work.

II. Principle of equal pay for equal work

Whereas posting companies used to be only required to respect minimum wage rates in the past, they must now guarantee employees posted to Luxembourg the same pay as their local employees. In other words, the principle of equality extends to all the components of the salary fixed by a legal, regulatory or administrative provision, or by a collective bargaining agreement declared to be required across the board, or by an agreement on cross-industry social dialogue declared to be required across the board.

III. Posting by a temporary employment agency

The provisions applicable to posting now extend to temporary employment agencies and to companies established abroad who provide employees on temporary loan, which post employees to Luxembourg for the needs of a user company established abroad.

IV. Extension of information and documents to be communicated to the Labour and Mines Inspectorate (ITM)

New information is to be communicated on the ITM electronic platform to obtain the social badge, in addition to that already provided under Article L. 142-2 of the Labour Code, namely:

- the date scheduled for the end of the posting;
- the nature of the services;
- the posted employee's usual place of residence and, where applicable, his or her place of accommodation when the employer provides accommodation for an employee who is far from his or her usual place of work;
- the identification data and address of the contracting authority, the principal, the subcontracting company, their respective co-contractors and their effective representatives who contract with the posting employer.

It should be noted that any subsequent change, in particular of the reference person or the place of accommodation of the posted employee, must be entered on the ITM's electronic platform.

In addition, the posting company must now provide the following additional documents to ITM via the electronic platform, as of the day the posting commences:

- a copy of the contract to provide services concluded with the contracting authority, the principal, the sub-contracting company, their respective co-contractors as well as a copy of the contract of assignment;
- a copy of the register relating to the accommodation of the posted employee;



- a copy of the document setting out the arrangements for the employer's assumption of responsibility for travel, accommodation or food expenses, as well as a copy of the document setting out the amounts of these expenses.

V. Reinforcement of the obligations of the contracting authority and of the principal who contracts with a posting company

Until now, the contracting authority or the principal who contracted with a service provider posting employees to Luxembourg had to make sure that the posting company had declared the posting to ITM correctly as soon as the work began. This requirement is maintained and even reinforced. In fact, if the sending company fails to declare the posting from the outset, the contracting authority or the principal must send ITM a declaration containing the main legal information relating to the posting within 8 days of the start of the posting via the electronic platform.

Furthermore, when he is informed in writing by ITM that the legal conditions for accommodating an employee far from his usual place of work are not met, the contracting authority or the principle is required to:

- enjoin immediately the employer of the employee concerned to put an end to the infringement, by registered letter with acknowledgement of receipt;
- inform ITM at once if no written answer from the offending employer is forthcoming within a maximum period of 15 days.

These obligations of injunction and information are also applicable for any other infringement of the social public order provisions.

Failure to comply with these obligations shall be punishable by an administrative fine of €1,000 to €5,000 euros per posted employee, doubled in the event of a repeat offence and limited to €50,000.

VI. Enhanced protection of workers in the event of long-term posting

In order to enhance the protection of employees on long-term posting, the new legislation now imposes additional conditions to be met by the posting employer if the posting exceeds 12 months.

As of the 13th month, the posted employee shall be subject to all the rules on working and employment conditions in force in Luxembourg, except for those relating to:

- procedures, formalities and conditions governing the conclusion and termination of the employment contract, including non-competition clauses;
- supplementary pension schemes.

The 12-month period may be extended to 18 months upon duly reasoned notification from the posting company, sent before the expiry of the 12-month period to the ITM, via the electronic platform intended for this purpose.



VII. Duty of ITM to provide information

The ITM publishes on its website the information relating to the working and employment conditions and remuneration applicable to employees seconded to Luxembourg in order to guarantee accessibility thereto, so that employees can be better informed on this matter.

In the absence of correct or updated information on the working and employment conditions applicable in the Grand Duchy of Luxembourg on this website, this element is taken into account when determining the amount of the administrative fine.

VIII. Reinforcement of sanctions

The sanction of cessation of work, hitherto reserved for cases of serious breaches of the rules relating to posting, the sanction of cessation of work is now incurred by the posting company which is notified of a fine for breach of its obligations pursuant to Article L. 143-2 (1) to (2bis) of the Labour Code, if said company has not paid the fine within the period set by the management decision.

Finally, in the interests of ever-enhanced protection for posted employees, it is specified that an imposed sanction does not exempt an employer who posts an employee to Luxembourg temporarily from having to guarantee the conditions applicable to work and employment and to remuneration for the latter.

IX. Exception for the road transport sector

The international road transport sector is expressly excluded from the application of the new law due to the highly mobile nature of the work and therefore the complexity of integrating this sector into this Directive. This sector will therefore remain subject to the provisions of the Labour Code on posting as drawn up before December 2020.

A new European directive on the posting of drivers entered into force on 1 August 2020. The EU Member States are required to transpose it (by means of a legislative act) into their national law by February 2022 at the latest. New provisions specific to this sector are therefore expected.

Conclusion

The new provisions of the law entered into force on 22 December 2020. The rights of employees are thereby strengthened, but so is the administrative burden on the posting companies, as are the obligations of the contracting authorities and principals.



It is to be hoped that Bill 7319, introduced in June 2018, can be adopted soon. This bill aims to abolish the reporting obligations in posting for journeys of less than 5 calendar days per month (except in the construction sector) in the following cases:

- In the case of qualified or specialized employees who come to Luxembourg to carry out maintenance, servicing or repair work on machinery;
- for employees who come to Luxembourg to work as trainers, lecturers or speakers or to attend training courses, conferences or work meetings.

The information published in this article is valid only on the date of publication of said article. As social legislation is frequently amended, please contact us concerning any question or intended use based on this article or a previously published article.

Pursuant to Article 2, §2 of the Act of 10 August 1991, as the Legal Department of SECUREX Luxembourg SA is not authorised to practice law, it shall limit its action at all times to disseminating information and documentation.

Such documentation and information thus provided under the legal subscription always constitute typical examples or summaries, are of indicative value, and lay no claim to being exhaustive. The addressee is solely responsible for the use and interpretation of the information or documentation referred to in this article, advice or acts he deduces as well as the results he obtains from them.