

## **Fact sheet Terms of Employment Posted Workers in the EU Act**

On 18 June 2016, the Terms of Employment Posted Workers in the European Union Act (WagwEU) became effective. At the same time the Terms of Employment Cross-Border Work Act (Waga) was withdrawn. The WagwEU is the Dutch implementation of the Posting of workers Directive (96/71/EC) and the Enforcement Directive (2014/67/EU). Employers from other EU countries who temporarily come to the Netherlands with personnel to perform a job (posting) are subject to the WagwEU. There are three categories of posting:

1. Posting based on a contract between the service provider and the service recipient, the service provider not being a temporary work agency. This means that a service provider from a different member state comes to the Netherlands to perform a job with personnel under the management and supervision and at the expense of the service provider. For example, a German company which comes to build a bridge on the orders of a Dutch service recipient.
2. Posting within multinational groups. Posting can also take place by seconding an employee of a branch of a group in another member state to a branch of the same group in the Netherlands.
3. Temporary agency work. Making temporary agency workers available in the Netherlands, while the temporary employment agency has its registered office in another member state. The management and supervision with temporary agency work is not the responsibility of the service provider (the temporary employment agency), but of the hirer (the service recipient). However, the temporary employment agency remains responsible for the terms of employment of the temporary agency worker.

### *Hard core of the terms of employment*

Employers are obliged to assign certain minimum terms of employment to the personnel that comes to the Netherlands to work temporarily. The so-called hard core of the terms of employment always consists of the following Dutch labour laws: the Minimum Wage and Minimum Holiday Allowance Act, the Working Hours Act, the Working Conditions Act, the Placement of Personnel by Intermediaries Act (Waadi) and the Equal Treatment Act. Moreover, it is also important that when a foreign employer gets to work in a sector in which a universally binding collective agreement applies, the hard core of the terms of employment from this collective agreement also apply. The posted workers are entitled to the provisions of the universally binding collective agreement which deal with:

- a. maximum working hours and minimum rest hours;
- b. the minimum number of day's holiday, during which the obligation of the employer exists to pay a wage, and extra holiday allowances;
- c. minimum wage, whereby this always includes the following:
  - o the applicable periodic wage on the pay scale;
  - o the applicable reduction in working hours per week/month/ year/period;
  - o surcharges for overtime, shifted hours, irregular hours, including public holiday allowance and shift allowance;
  - o interim pay rise;
  - o expense allowance: travel expenses and travel time allowance, board and lodging costs and other costs that are necessary on account of performing the work;
  - o increments;
  - o end-of-year bonuses;
  - o extra holiday allowances,and whereby the following is not included in this minimum wage: entitlements to additional occupational pension schemes and entitlements to social security exceeding the statutory minimum and fees above the wage for expenses to be incurred by employees in connection with the posting for travelling, housing or food;

- d. conditions for making employees available;
- e. health, security and hygiene at work;
- f. protecting measures with regard to the terms of employment and working conditions of children, youths, pregnant employees or employees who recently gave birth to a child;
- g. equal treatment of men and women, as well as other provisions regarding non-discrimination.

Whether a universally binding collective agreement applies can be checked on:

<http://cao.minszw.nl/>.

When obligations in the labour laws are not observed, the Inspectorate SZW may impose a fine. If the hard core provisions from the universally binding collective agreement are not observed, employees and/or social partners may institute an action against the employer.

### *Enforcement*

The WagwEU includes several measures to ensure that the hard core of the terms of employment can be enforced more adequately. For example, inspection services from the member states can exchange information with each other and imposed fines can be collected across the border. In addition, there are a number of administrative statutory obligations for companies who are going to perform temporary work in the Netherlands.

It involves four aspects:

1. The obligation to provide information, if requested, to the Inspectorate SZW (Social Affairs and Employment)) which is required to enforce the WagwEU;
2. The obligation to have certain documents such as payslips and summaries of working hours available at the workplace (or have them digitally available at once);
3. The duty to report: foreign service providers must report in advance about where and when and with which employees work will be performed in the Netherlands. The service recipient in the Netherlands has to check whether the report has been made and whether it is correct.
4. The obligation to appoint a contact person who functions as a point of contact and who can be contacted by the Inspectorate SZW;

The failure to comply with the first two obligations will be regarded as a violation as from 18 June 2016 and may therefore be punished with an administrative fine. The duty to report will become effective at a later moment when a digital system is ready to submit the report. This means that at this moment no reports have to be submitted by the service provider and verified by the service recipient. A more limited duty to report for self-employed persons will also apply later. In order to tackle bogus self-employment, self-employed persons must also comply with the obligation to provide information and a more limited obligation to have a number of documents available at the workplace (whether or not digital).