

Posting foreign employees in France

Publication of the Decree implementing the Law of August 2, 2005

Decree n°2007-1739 of December 11, 2007
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The Law of August 2, 2005 transposed EU Directive 96/71 of December 16, 1996 and introduced the concept of transnational posting of employees in Articles L.342-1 to L.342-6 of the French Labor Code.

The Implementing Decree was eagerly awaited **as it was supposed to define the implementing conditions of the Law of August 2, 2005 as well as the conditions in which foreign employers must complete mandatory filing formalities when posting their employees in France.**

You will find hereunder the principal legal provisions with respect to the posting of foreign employees in France as well as the main provisions of the Implementing Decree.

1. Posting of foreign employees in France: four scenarios

Employers based outside France may temporarily post their employee(s) in France insofar as there exists an employment contract between the employer and the posted employee(s) (Article L.342-1 of the French Labor Code).

The posting of employees may take four different forms:

- posting employees under a contract concluded between the employer and the party for whom the services are intended;
- posting employees to an establishment or to an undertaking owned by the group to which the employer belongs;
- posting employees through a temporary employment undertaking or placement agency;
- posting employees in the framework of a transaction or operation conducted in France on employer's own account and under its own direction.

2. The definition of “posted worker”:

“Posted worker” means a worker employed by an entity based and operating its activities outside France who, at the request of the latter, carries out his work within the French territory for a limited period of time (Article L.342-2 of the French Labor Code).

3. Application of French labor provisions:

The following principle applies: foreign employers who post employees in France shall be subject to the provisions laid down by law, regulation and collective bargaining agreements applicable to French companies operating in the same branch of activity.

This principle applies notably to the following issues:

- individual and collective freedoms;
- working time, rest period, bank holidays, annual paid vacation, family events, maternity and paternity leaves;
- minimum rates of pay, including overtime rates;
- health, safety and hygiene in the work place;
- equality of treatment between men and women and other provisions on non-discrimination, the protection of maternity, minimum age for employment, working time and night work for young people, employment of children;
- illegal work.

4. Additional indications set forth in Decree n° 2007-1739:

Said Decree complements the French Labor Code by creating Articles R.342-1 à R.342-14 providing additional information on the following obligations:

- payment by the employer of the travel, accommodation and food expenses;
- medical examination before the effective posting date;
- declaration within 48 hours to the Labor Inspection Authorities of any accident in the work place concerning a posted employee who does not subscribe to the French social security insurance schemes;
- list of documents to be communicated without delay to the Labor Inspection Authorities (such documents must be translated into French and any sums set forth therein converted into Euros);
- contents of the prior declaration to be filed with the Labor Inspection Authorities by any employer based outside France posting an employee in France for the provisions of services under a contract entered into with a party based in France or in the framework of a transaction or operation conducted in France on employer’s own account.

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the above.

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