



Alert HR

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Posting of employees to Poland as part of the provision of services - experiences from inspections carried out by the National Labor Inspectorate

One of the powers of the National Labor Inspectorate (Państwowa Inspekcja Pracy, „PIP”) is to control foreign employers posting employees to Poland as part of the provision of services. Results of the inspection show that in many cases foreign employers do not know at all about the special obligations imposed on them by Polish law.

The Act of 10 June 2016 on the posting of employees as part of the provision of services (Journal of Laws of 2016, Item 868, as amended; the “Act”) requires the posting employer to complete a number of formalities. Some of them, such as the need to appoint a person to interact with PIP or to retain employee records, are explicitly mentioned in the Act. Other, however, PIP derives from the general obligation to provide posted workers with employment conditions no less favorable than those resulting from the provisions of the Labor Code and other regulations.

The “*Report of the National Labor Inspectorate on its activities in 2018*” shows that in 65% of 137 inspections carried out involving employees posted to Poland, the most frequent irregularities related, inter alia, to working time and health and safety issues. The experience of our clients from recent months confirms this finding.

Foreign employers must remember that pursuant to Art. 25 Sec. 1 point 2) of the Act, an employer posting an employee to Poland is obliged during the period of posting to keep on the territory of Poland **documentation regarding the working time of the posted employee regarding the commencement and termination of work and the number of hours worked on a given day or a copy thereof**. Based on this documentation, PIP verifies, among others, whether adequate daily and weekly rest periods were provided for employees. It is not uncommon for employers to never record their employee's working time even before posting and the implementation of this task apart from being a big surprise for them, poses also a big practical problem.

The second problem area is the issue of health and safety training and medical examinations before being admitted to work. Lack of training and tests results most often from the ignorance of the posting employer. The Act does not explicitly provide for such obligations, and PIP derives them from the succinctly formulated obligation to provide employment conditions no less favorable than those provided for in Polish law.

Therefore, during the inspection PIP verifies whether **an employee admitted to work has a current medical certificate confirming that there are no contraindications to work in a given position**. Even if employees have valid examinations carried out abroad prior to posting, according to PIP, the employer is required to demonstrate that these examinations meet Polish requirements, and the position taken abroad corresponds to the position in Poland. The issue of health and safety training looks similar. Inspectors examine whether a foreign employer **has provided employee training in occupational health and safety before being admitted to work**. Particularly the on-the-job training turns out to be problematic, which due to its nature must be conducted in Poland.

PIP's practice raises doubts, as pointed out by the Ministry of Family, Labor and Social Policy. Art. 9 of the Directive 2014/67/EU does not include the obligation to carry out medical examinations or OHS training in Poland among administrative requirements and control measures that may be applied by Member States. However, according to PIP, the need to provide posted workers with conditions no less favorable than those in force in Poland obliges inspectors to verify whether these requirements have been met.

Violation of the above obligations may constitute an offense subject to a fine of PLN 1,000 to 30,000.

In connection with numerous inspections carried out by the PIP, it is worth verifying whether the employer posting employees to Poland has fulfilled all the tasks arising from Polish regulations in order to take necessary corrective measures, if any.