

# Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:  
25 January  
2021

Labour Law amendments in relation to posting of  
workers

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## → Labour Law amendments in relation to posting of workers

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On the 5th January 2021 major amendments in the Labour Law concerning posting of workers entered into force. The amendments were adopted in order to provide more effective protection of the rights of posted workers in compliance with the legal framework in the European Union legislation. The amendments implement the Directives of the European Union aimed at establishing a balanced, transparent and proportionate framework with regard to the freedom to provide services and the protection of posted workers.

The amendments are applicable to both foreign merchants posting their workers to work in Latvia and also Latvian employers who post workers to work in the Member States of the European Union (EU) or the countries of the European Economic Area (EEA).

The amendments mainly govern matters regarding the working conditions, pay, posting duration of posted workers, an employer's obligation to inform workers regarding the posting and also provide a range of obligations for temporary work agencies.

### Working conditions and pay

The amendments were aimed at achieving that equal working conditions and equal pay for equal work is provided to workers irrespective of whether a worker is or is not a resident of the country where the work is performed.

The amendments provide that if an employer from another EU Member State or an EEA country posts a worker to perform work in Latvia, the worker should be provided with the working conditions and employment terms equal to those provided or applied to the worker if he/she was directly employed in Latvia and performed the same work. In addition to that, the amendments draw an employer's attention to the necessity to comply with accommodation conditions if the employer provides this service and the necessity to reimburse the workers' expenditure related to the worker's business trip or work trip in Latvia.

Also Latvian employers have an obligation to provide employment terms and working conditions which conform with the laws and regulations or collective agreements (recognized as generally binding) of the country where a worker has been posted to perform the work to a posted worker when they post a worker to perform work outside Latvia.

According to the amendments, in cases of posting a worker, the concept of the pay and the mandatory elements of the pay should be defined in compliance with the laws and regulations or the practice of the country to which the worker is posted to perform work. For instance, if a worker is posted to Germany, his/ her pay (including the amount of the minimum pay, the extra pay for

overtime, work at night, work on holidays and other supplements, if provided by the legislation) is defined in compliance with the legislation and generally binding collective agreements of Germany.

The amendments introduce major changes of the procedure of reimbursement of expenditure related to business trips. In particular, an employer who posts a worker to perform work in an EU or EEA Member State pays daily allowance of 30 percent of the business trip daily allowance defined by laws and regulations governing reimbursement of expenditure related to business trips to the posted worker. Before the entry into force of the amendments an employer had to pay daily allowance of 100 percent of the amount defined by laws and regulations.

Moreover, the amendments define situations when it is allowed not to pay business trip daily allowance, i.e. an employer is not obliged to pay business trip daily allowance to a posted worker if one of the below conditions is satisfied:

- three meals a day are provided to the worker;
- the pay paid to the worker is equal to the pay of a comparable worker in the country to which the worker is posted to perform the work.

It is important to take into account that the amendments provide that in cases when business trip daily allowance is paid to a worker, it is considered reimbursement of expenditure and not a part of the pay.

### Obligation to notify

The amendments expand employers' obligations regarding informing workers on posting and pro-

vide additional obligations to be complied by the Latvian employers when they accept a posted worker.

A foreign employer who posts a worker to perform work in Latvia should notify the posting to the State Labour Inspectorate (SLI). The amendments accurately define the scope of information to be provided by a foreign employer to the SLI. In particular, the SLI should receive information on the employer, the worker, the posting duration, the venue of performance of the work, the workers' representative, the entity for the benefit of which the work will be performed, information about A1 certificate, as well as the confirmation that a worker who is a national of a third country is legally employed by the employer in the EU or EEA Member State.

The entity in Latvia for the benefit of which the work will be performed should verify that the foreign employer has provided information and submitted data to the SLI regarding posting of the particular worker as provided by the law.

It should be taken into account that a Latvian employer who posts workers to perform work in another EU or EEA Member State has a new obligation to notify the worker in writing regarding his/ her posting. The employer is obliged to provide written information to the worker regarding matters related to his/ her posting every time prior to posting the worker to perform work abroad. For instance, about the country where the worker is posted, the duration of work, the pay, the remuneration related to the worker's posting and the procedure according to which expenditure of travel, meals and accommodation is reimbursed and other matters defined by the law. There is an administrative penalty for a failure to comply with this obligation. Therefore, we would like to encourage to assure that the legal requirements on providing information about posting to a worker are complied with every time prior to posting.

## Workers of temporary work agencies

The Labour Law provides a more detailed legal framework applicable to the workers of temporary

work agencies or labour providers. The principle that the labour provider is responsible for compliance with the terms of posting of workers is stipulated. Additional obligations are provided and applicable to both labour service providers and beneficiaries of labour services.

The amendments provide that the working conditions and employment terms provided to a posted worker should be the same as would be provided and applied to the worker if he/ she was directly employed by the beneficiary of the labour service and performed the same work.

## Long-term posting

The amendments provide for specific terms for long-term posting for performing work in Latvia. If the duration of a worker's posting exceeds 12 months, all the requirements of the Latvian laws and regulations and generally binding collective agreements are applicable to such legal employment relationship (for instance, like it would be if a Latvian employer signed a direct agreement with a worker). An exception is provided for application of the provisions on signing and termination of employment agreements, competition restrictions following termination of employment, as well as contributions to the capital of additional retirement pension if these are made by the employer.

An employer may extend the above referred term of 12 months to 18 months if the foreign employer submits a substantiated notification to the SLI. Thus, if the effective duration of posting exceeds 18 months, an employer will have to provide the employment terms and working conditions envisaged by the Latvian laws and regulations and generally binding collective agreements to a posted worker.

If a posted worker is replaced and another worker performs the same work at the same venue of work performance, the posting duration is calculated at the aggregate duration of individual postings.

## Contact for further information

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