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POSTING OF TURKISH AND EU WORKERS IN THE EU

Summary of the EU rules concerned with your social security and employment rights when your employer sends you to an EU country to work for her/him for a short period of time, or you are a self-employed established in an EU country and you would like to provide also services in another EU country for a temporary period of time

Useful Addresses

Find out more !

Turkish Social Security Institution <http://www.sgk.gov.tr>
Turkish Ministry of Labour and Social Security <http://www.csgb.gov.tr>
Turkish Employment Agency <http://www.iskur.gov.tr>
EU Delegation to Turkey <http://www.avrupa.info.tr>
European Commission, DG Employment <http://ec.europa.eu/social>

For more information

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Intro

Workers are sometimes sent abroad by their employers to carry out work for the company for a short period of time. Self-employed also can provide services temporarily in other countries than where they are based.

Pursuing professional activities abroad, poses specific questions on the rights to social security of the persons concerned. *Where do I apply for my sickness insurance benefit and where do I obtain an allowance when I have a work accident?* Countries have concluded bilateral agreements in order to provide answers to the social security questions migrants are confronted with. But also at EU level legislation is in force protecting migrant persons irrespective of their professional status. The EU legislation allows for the migrant employee or self-employed to remain for a while connected under the social security system of the country where (s)he was attached to prior to the move abroad. The basic purpose is naturally to avoid too many complexities that would raise if one has to change from one national social security system to the other for just a short time.

Working abroad as an employed person also raises questions about the labour legislation that needs to be applied at the workplace. *Can my employer require me to work longer hours than my colleagues who have always worked for the company in my new working environment? And how about the minimum salary?* Discrimination at the work place between 'local' employees and employees sent in by the employer from abroad can potentially occur. The EU has initiated special legislation aimed at protecting certain employment rights for employees who are sent abroad for a short period.

Present brochure tries to give answers to some of the questions that occur when people in the EU are *working abroad for a shorter period of time as employees, self-employed or even civil servants*, and this for periods usually not exceeding 2 years. The brochure is essentially focused on this situation of 'posting' of employees and self-employed within the EU.

General context

Posting is a technique which allows a company established in one country to provide services and carry out temporary activities in another country by sending its own employees there. Posting therefore concerns workers who hold an employment contract and who are sent abroad for a short period of time.

Posting however can also apply to self-employed persons who for a short period provide services for their own account in a foreign country.

Posting

Who and where ?

Provided that immigration rules are satisfied, EU posting rules apply to Turkish citizens in the same way as they apply to Union citizens.

Gözde, a Turkish citizen, is employed as a clothing designer by a German company in Dortmund (Germany). She is sent to Torino (Italy) for two months in order to design a collection for a client. She will be subject to EU posting rules.

EU posting rules cover mobility between Member States of the European Union, Iceland, Lichtenstein, Norway and Switzerland.

Ahmet, a Turkish citizen, is employed as a waiter by a restaurant in Trier (Germany). He is sent to Vaduz (Lichtenstein) by his employer to work an entire weekend for a wedding party. During that period of work in Lichtenstein, he is posted.

Which forms of posting?

The concept of posting refers to various types of temporary activities carried out in a Member State other than the habitual State of work:

Posted persons subject to an employment contract:

- An employee can be posted to do some work for another company belonging to the same group of companies and located in another Member State.

A carmaker group which seat is situated in France needs to send an engineer to a subsidiary located in Romania in order to start the production of a new model. The Turkish engineer will stay there for 6 months as a posted worker.

The employee can be successively or simultaneously posted in the same Member State for several companies of the same group. In the example above, the engineer could be posted to a subsidiary in Bucharest and at the same time, or afterwards, to another subsidiary in Timisoara.

- An employee can be posted to do work for an employer's client.

After an IT company established in Brussels won a tender launched by the municipality of Berlin (Germany), Mrs. Tuba, a Turkish software engineer employed by the IT company, is sent to Berlin for one month to work with the municipality. She will work under the status of posted worker.

- An employee can be posted to provide a service in another Member State for the account of the employer.

Osman, a Turkish lumberjack employed by a firm in the suburb of Amsterdam (The Netherlands), is sent to Finland to cut trees in a forest, which belongs to the employer. He is posted.

- A worker employed by a temporary employment agency located in a Member State is sent to do some work for a client of the agency located in another Member State.

A temporary employment agency whose seat is in Stuttgart (Germany) is asked by an Austrian company to provide six plumbers for two weeks. The six Turkish employees sent to Vienna are posted.

Posting of self-employed workers:

When a self-employed person habitually carries out her/his activity in one Member State and provides a temporary service in another Member State, (s)he is considered to be posted. It is required that the temporary activity is similar to the activity carried out in the habitual State of work.

Özlem, a Turkish self-employed nurse, has her habitual practice in Innsbruck (Austria). From time to time, she visits patients in Munich (Germany): during her visits, she is posted.

When to be considered a posted worker?

It is important to highlight the fact that one person may be considered to be posted for social security rules, but not for employment, or vice versa. Indeed, definitions of posting are not exactly identical for social security and employment.

In any case, posting must adhere to strict rules. Only when specific legal conditions are met can a person, whether employed or self-employed, be considered to be posted.

There must be *an employment relationship between the company making the posting and the worker during the period of posting*. This implies that during the period of work abroad, the worker remains under the authority of the posting employer who retains the power to give orders, to undertake disciplinary action or to terminate the employment contract. The employer must bear the cost of the salary. any abroad for which they will work temporarily. In this case, there is no posting.

However, when the worker is posted to another company (a client or a subsidiary), the power to organise the daily work of the posted worker can be transferred by the employer to the latter company. For practical matters, it may pay the salary directly to the employee as long as the final cost is borne by the employer.

There must not be any employment contract between the posted worker and the company for which or at which premises (s)he carries out a temporary activity. If there is such a contract, the employee is considered to be working on behalf of this employer. Posting rules are therefore not relevant.

Sometimes, employees who have an employment contract with a company for which they usually work conclude an additional or a second employment contract with another company abroad for which they will work temporarily. In this case, there is no posting.

The activity carried out by the posted worker must be *limited in time*. For social security, a maximum period is set: the anticipated duration must not exceed 24 months, unless an ad hoc agreement between social security authorities of the two countries involved allow for an extension. For employment conditions, there is no set maximum period: posting can last for months or even years, provided that the employer's intent is that the employee return to work in the habitual State of work when the mission is over.

Periods of suspension of the activity during the posting (annual leave, periods of training...) do not interrupt the calculation of the posting period.

If the period of temporary work exceeds the time limit of posting, the person is considered to be a permanent worker in the Member State where (s)he was originally posted. Depending on the context, the entire period of work abroad will be either fully or partly excluded from the posting rules.

Which status for the posted worker?

In terms of Social Security:

The posted worker, whether employed or self-employed, remains subject to the rules applicable in the State of habitual work. Social security contributions will be paid in this country. Therefore, no contributions can be required in the State of temporary activity. Double contributions are strictly forbidden.

Merve, a Turkish citizen, works on her own as a consultant. She has a permanent office in Austria. She has to go to London for 2 months in order to help reorganize the HR office of an insurance company. Before leaving Austria, she claimed an "A1 form" at her Gebietskrankenkasse in Vienna. This form, which cannot be contested by the institutions of the State of temporary stay, proves that she pays her social security contributions in Austria.

The posted worker is covered by the social security scheme of the State of habitual work. This is where social security benefits are provided, like for instance retirement pensions, family benefits or accident at work allowances. However, EU rules allow the posted worker to be considered as a local insured person in some circumstances.

Süleyman, a Turkish citizen, normally works in Ghent (Belgium). He is posted to Dublin by his employer (a temporary employment agency) in order to work for three months as a cleaner in a bank. If he falls sick during his stay in Ireland, he will be treated as if he were insured by the Irish healthcare system, even if his contributions are paid in Belgium. In order to be treated as such, he must claim an "S1 form" issued by the healthcare institution of the habitual workplace in Ghent and present it to the Irish healthcare institution.

In terms of Employment:

The employment rules applicable are those of the State chosen by the employer and the employee in the employment contract. However, the posted employee is also partly subject to the rules applicable in the Member State where the temporary activity is carried out. Therefore, the status of an employee depends on the application of two legislations simultaneously. The rules of the labour code of the country where one is posted apply for the following aspects:

- Maximum work periods and minimum rest periods;
- Minimum paid annual holidays;
- Minimum rates of pay, including overtime rates;
- Conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings, health, safety and hygiene at work;
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- Equality of treatment between men and women and other provisions on non-discrimination.

Seda, a Turkish national, works as a painter for a company located in Marseille (France). The employment contract provides that the French employment legislation is applicable. She is sent for two months to Milano in order to work on a construction site for the employer's client. During her stay, she will be covered by French rules as regards the condition of recruitment, the nature of the employment contract and the conditions of termination of the contract; at the same time, she will be subject to Italian rules (including those deriving from collective agreements), if they are more favorable than the French ones, for, for instance, the minimum rates of pay and the minimum paid annual holidays. She may therefore get more annual holidays or a higher salary than colleagues who worked in France during the same period.

In practice, the distribution of rules applicable to posted employees is difficult to implement. There are indeed exceptions to the application of the posting rules: they are related to very short periods of posting, and concern some sectors of activity or situations when the amount of work to be done is not significant. It is therefore recommended to seek further information from the employment inspectors of the States of habitual and temporary work in order to clarify which rules of which legislation must be applied.

Combat against fraud:

Posting rules may be (mis-)used as a way to lower the cost of labour and, consequently, may affect the working conditions of the workers concerned. There is a constant battle against fraud for both economic and social purposes. In particular, *the company proceeding to the posting must carry out substantial activities in the State where it is established.*

'Parede S.A.' is Portuguese construction company with its seat in Lisbon. The company has only a small office in Lisbon where the mail is collected and some administrative work is taken care of. Some of the employees are Turkish citizens. They never worked in Portugal. The Turkish employees usually work in France or in Germany where the employer's clients are located. They cannot be considered as posted from Portugal.

In principle, once a worker has ended a period of posting, *no renewal of the period of posting* for the same worker, the same undertakings and the same Member State is allowed. A worker can furthermore not be posted to replace another posted person.

However, it is not fraudulent to recruit a new worker with a view to posting that worker in another Member State.

Other examples of situations, which are not covered by posting rules:

- *A worker is recruited in Italy by a company situated in Bulgaria in order to work in Italy.*
- *A company to which a worker is posted is located in England but places him/her at the disposal of a company situated in the Netherlands.*

Legal sources:

- Directive 96/71/EC of the European parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- Regulation (EC) no 883/2004 of the European parliament and of the council of 29 April 2004 on the coordination of social security systems.
- Regulation (EC) no 987/2009 of the European parliament and of the council of 16 September 2009 laying down the procedure for implementing regulation (EC) no 883/2004 on the coordination of social security systems.
- “Practical guide – the legislation that applies to workers in the EU, the EEA and in Switzerland”, European Commission, 2010