

Client Alert
PROFESSIONAL IMMIGRATION NEWS
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Summary: This client alert recalls the EU Directive of 28 June 2018 on the posting of foreign workers, the law of 5 September 2018 "for the freedom to choose one's professional future", and the law of September 10, 2018, "for a controlled immigration, an effective right of asylum and a successful integration", and concentrates on the measures impacting professional immigration.

Posted Workers: the Directive of 28 June 2018 amends the 1996 directive on the posting of foreign workers

The new directive, which entered into force on 29 July 2018, makes substantial changes to the 1996 Directive, in particular by enshrining the principle of equal remuneration between posted workers and local workers. However, its impact on French law is limited, as the so-called hard core provisions¹ of French labor law or mandatory provisions already applying to foreign employees seconded to France.

The 4 points to remember from the new directive:

- Equal pay between posted workers and local workers²
- Extension of the labor law applicable to seconded employees³
- Application of all local labor law in case of long-term secondment
- Strengthening the rights of temporary posted workers⁴

Finally, it should be noted that under the law "Avenir professionnel", the government may, within six months of the promulgation of the law, transpose by ordinance the provisions of the directive of 28 June 2018

¹ The hard core or mandatory provisions of labor law include all provisions of the labor law that apply imperatively to employees posted. It includes hours of work, compensatory rest, holidays, paid annual holidays, hours of work and night work of young workers; the minimum wage and salary payment, including overtime premiums, as well as legally or conventionally fixed wages.

² The 1996 Directive simply required the Member States to guarantee posted workers the benefit of the minimum wage applicable in the host country, including increases for overtime. From now on, posted workers will have to benefit from the principle of equal remuneration. Member States will have to publish information on the constituent elements of remuneration on an official national website.

³ Extension to the accommodation conditions for workers when the employer offers accommodation to workers who are distant from their usual place of work ; to the allowances or reimbursement of expenses to cover the travel, accommodation and food expenses of workers who are away from home for professional reasons.

⁴ The directive provides that temporary work agencies posting workers to user companies in the national territory will in future have to ensure that these workers have the same working and employment conditions as local temporary workers.

The law of 5 September 2018 "for the freedom to choose one's professional future" brings new details on the control of illegal work in the framework of the posting of foreign workers

The law contains a number of provisions relating to the posting of workers and the fight against illegal work.

New provisions to combat illegal work

- Duty of care of the client or owner in respect of fines imposed on his co-contractor⁵
- Display and dissemination of sanctions on a dedicated website.(Article L8224-3 of the Labor Code
- Professional secrecy is not enforceable against screening officers (Article L8113-5-2 of the Labour Code)
- Increase in the amount of the fines for failure to declare the posting and appointment of the legal representative.⁶

Relaxation of certain procedures for short-term postings and for foreign employers repeatedly assigning foreign workers.

- The fixed contribution of 50 Euros for the declaration of posting is repealed (Article L1262-4-6 is repealed by the law of 5 September 2018).
- Abolition of the posting declaration and the appointment of the foreign employer representative for certain short-term benefits and operations.⁷
- Adjustment of obligations imposed on foreign employers regularly posting paid staff in France.⁸

Publication of the law of September 2018, "for a controlled immigration, an effective right of asylum and a successful integration"

The law of 10 September 2018 came into force on 12 September. However, most of the provisions relating to professional immigration will have to be decreed by 1st. March 2019 at the latest.

The provisions relating to professional immigration described in our Client Alerts of 1 March and August 7, 2018 remain unchanged.

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⁵ Articles L1262-4-1 and L1263-4-2 of the Labor Code. The client or contracting authority who contracts with a service provider posting foreign workers must verify at the conclusion of the contract that his / her co-contractor has paid the sums due, where applicable.

⁶ The new law carries a fine of € 2,000 to € 4,000 per seconded employee and € 4,000 to € 8,000 in the event of a repeat offense. The total amount of the fine cannot exceed € 500 000.

⁷ New article L1262-6 of the Labor Code: Employers posting one or more employees under the conditions provided for in 1 ° and 2 ° of Article L. 1262-1 will be exempted from the declaration of posting and the designation of a representative of the foreign employer for services and short-term operations or in the context of specific events (list to be published by decree)

⁸ New article L1263-8 of the Labor Code: one or more foreign employers regularly posting workers may be exempted, for a period of up to one year, from the declaration of posting and the designation of the representative of the foreign employer and from making available documents usually required in the framework of the posting of workers, in French language (L1263-7) and provided these employers have in support of their request brought the information attesting to the respect of the provisions of the article L1262-4 of the labor code.