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The posting of a mobile worker in the case of providing services

The principles

The free movement of persons and services is one of the principles of the construction of the European Community single market. The transnational provision of services frequently leads to the posting of workers for temporary work in a State other than that in which they usually perform their work. Directive n°96/71/EC of 16 December 1996, supplemented by Directive n°2014/67/EU of 15 May 2014, provides the rules for posting workers which must be carried out in the context of fair competition and in rights of workers.

These standards have been transposed into French law in the Labor Code (Articles L 1261-1 to L 1265-1 and Articles R 1261-1 to D 1265-1) for the general framework and the Transport Code (Articles L 1331-1 to L 1331-3 and Articles R 1331-1 to R 1331-11) to take into account the specificities of the transport sector.

Road transport undertakings concerned

The measures provided for in the Transport Code apply to road transport undertakings established outside France that temporarily posts mobile worker in the context of transport regardless of the tonnage of the vehicle used.

Own-account transport carried out by undertakings which have an industrial or commercial activity other than road transport does not derogate from the general framework provided for in the Labor Code. As for the self-employed, they are not subject to the Labor Code and are not affected by the posting rules.

Posting situations

The haulier must carry out a significant transport activity outside France and must not be created solely to use labor in France. The haulier established outside France and the employee are bound by a contract of employment and their employment relationship must subsist during the period of posting which can take three different forms provided for in article L 1262-1 of the labor Code.

- Posting carried out « **on behalf of and under the direction of the employer, under a contract concluded between the latter and the recipient of the service established or operating in France.** »

This is the case most commonly encountered with the cabotage operation provided for in whereas 17 of Regulation (EC) n°1072/2009 of 21 October 2009. The French administration also assimilate to the posting rules, the french part of an international transport whose origin or destination is in France. The time of presence of the employee in France in the framework of these transports is subject to the posting rules. On the other hand, international transports that transit through French territory are not affected.

- Posting carried out « **between establishments of the same undertaking or between undertakings of the same group.** »

It is a non-profit provision of an employee.

- Posting carried out « **on behalf of the employer without a contract between the employer and a recipient.** »

These are the services performed for the undertaking itself which will carry out, for example, the transport of equipment belonging to it.

Employer's obligations

Rules applicable to employees

During the posting period of the worker in France, the employer is subject to certain provisions of the french Labor Code and the national collective bargaining agreement for road transport and axillary transport activities which are listed in Article L 1262-4 of the Labor Code :

- Individual and collective freedoms in the employment relationship ;
- Discrimination and equal treatment between women and men ;
- Maternity protection, maternity and paternity and child adoption leave, leave for family events ;

- Provision conditions and guarantees due to employees by temporary employment undertakings ;
- Right to strike ;
- Working time, compensating rest, holidays, paid annual leave, working time and night work of young workers ;
- Conditions of liability for leave and bad weather funds ;
- Minimum wage and wage payment, including overtime pay, as well as perquisites set legally or conventionally ;
- Health and safety at work, minimum employment age, children employment ;
- Illegal work.

Within the framework of a short-term posting for cabotage operation or international transport to or from France, most of the provisions to be complied concern **working times, rest periods and pay calculation**. Maximum work periods and minimum rest periods must be respected if the employee is posted for a period at least equal to the reference period (daily, weekly). The employee benefits from the minimum rates of pay in France unless the remuneration provided for by his contract of employment is more advantageous.

Work accident

The labor inspection services are informed in accordance with the provisions of Article R 1262-2 of the Labor Code when a posted worker suffers a work accident.

Establishment of a posting attestation

The haulier must draw up for each worker a posting attestation prior the first operation which must include certain particulars identifying the employer and his representative in France, the worker, the contract of employment and the remuneration provided for. This document was drawn up until 31 December 2016 on the basis of a [Cerfa](#) model corresponding to one of the 3 possible forms of posting and may be used up to the expiry date. From **1 January 2017**, the posting attestation must be drawing up on the [SIPSI](#) website of the Ministry of Labor. The data thus collected serve as a statistical basis and facilitate the action of the control services.

For each posting attestation, the employer will have to pay a contribution of 40 euros by internet telepayment. This obligation will enter into force no later than 1 January 2018.

The posting attestation is drawn up in French and has a maximum validity period of 6 months from its issue date and may cover several posting operations during this period (except for the provision of a worker between establishments of the same undertaking or between undertakings of the same group).

A copy of the posting attestation shall be given to the employee and kept on board the vehicle.

Within the framework of the provision of a worker between establishments of the same undertaking or between undertakings of the same group, a copy of the posting attestation shall be attached to the single staff register of the user undertaking in France.

Appointment of an employer's representative in France

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The haulier established outside France shall appoint in writing a representative domiciled in the national territory who shall liaise with the control services. Such representative is a natural or legal person and his remuneration shall be freely agreed upon. The representative acts on behalf of the employer without engaging his own responsibility. It must keep a certain number of documents over a period of 18 months after the posting operation in order to be able to present them at the request of the control officers :

- The payslip corresponding to the period of posting for each worker or any equivalent document certifying the remuneration and containing the following information :
 - Gross hourly wage, including surcharges for overtime, in euros ;
 - Period and hours of work to which the salary relates, distinguishing between hours paid at the standard rate and those with a surcharge for overtime ;
 - Leave and holidays and related remuneration.
- Any document attesting the actual payment of the salary ;
- The copy of the employer's representative appointment ;
- If applicable, the title of the branch collective agreement applicable to the employee.

As of 1 July 2017, all the documents must be translated into French and amounts are expressed in euros.

Posting of an employee by a temporary employment undertaking

A temporary employment undertaking established outside France may posts temporarily an employee to a user undertaking in France in accordance with Article L 1262-2 of the Labor Code. When it comes to a road driver, the French administration allows at

the temporary employment undertaking to benefit from the same arrangements as a haulier. The posting is subject to the same obligations, in particular the establishment of the attestation, the appointment of a representative and the submission of documents. A copy of the attestation is attached to the single staff register of the user undertaking in France.

Involvement of the Principal

The principal is the person who contracts with a service provider who posts an employee. It can be a haulier, a freight forwarder or the sender of goods. In the event that none of these parties to the transport contract is established in France, the professional consignee is assimilated to the principal in accordance with Article L 1331-2 of the Transport Code.

The principal must verify before the start of the posting that his co-contractor has drawn up the posting attestation and appointed a representative in France and he shall be given a copy of the documents.

In the event of partial or total non-payment of the statutory or contractual minimum pay due to the posted worker, or of non-compliance with legal or contractual provisions, the principal informed of these deficiencies by the control officer will have an obligation to ask its subcontractor to stop the infringement and to inform the administration in return. If the principal does not respect his obligations, he can be penalized and will be held severally liable with the employer for the payment of the sums due.

Control

In the case of a roadside check, the posted worker must present :

- In all cases, a copy of the **posting attestation** drawn up in French and a **copy of the contract of employment** which is not necessarily translated ;
- In case of worker transfer between establishment of the same undertaking or between undertakings of the same group, the translated copy of the agreement regarding the transfer of staff and the translated copy of the amended employment contract ;
- In case of posting by a temporary employment undertaking, the translated copy of the temporary employment contract and the translated copy of the agreement regarding the transfer of staff.

Failure to present the posting attestation or the presentation of a non-conforming document is punished by a 4th class fine (€ 135). The non-presentation of the other documents is punishable by a 3rd class fine (€ 68).

In the case of inspection carried out by the labor inspection services, any failure to comply with the requirements, such as the non-appointment of an employer's representative or failure to draw up the posting attestation, may be punished by an administrative fine of up to € 2.000 per employee concerned in accordance with Article L 1264-1 of the Labor Code.