

# Posting of workers to Poland in the framework of the provision of services during SARS-CoV-2 virus outbreak

A foreign employer posting a worker to perform work in the territory of Poland on temporary basis is obliged to fulfil a number of requirements related to posting of workers as provided for in Chapter 5 of the *Act on posting of workers in the framework of the provision of services (Official Journal 2018, item 2206 consolidated text)* concerning, among others:

- designating **aperson to liaise in contacts** with the State Labour Inspection and the posting employer and to send and receive documents or notifications – who will stay in the territory of Poland during posting. The Act does not specify any other requirements concerning the above person (it could even be one of the posted workers) except for the requirement to stay in Poland during the posting;
- submitting to the State Labour Inspection – no later than on the day of commencement of the provision of service in Poland – **a statement on posting of a worker to the territory of the Republic of Poland** comprising:
  1. identification data of the employer, estimated number of workers posted to work in Poland (specifying their name, surname, date of birth and nationality),
  2. expected date of commencement and completion of the service,
  3. addresses of workplaces of posted workers,
  4. the nature of service justifying posting,
  5. contact details of the liaison person in contacts between the posting employer and the State Labour Inspection (specifying their name, surname, residence address in Poland, telephone number and business email address),
  6. storage place of documents on employment relationship of a posted worker (concerning their working time, and remuneration for work during posting).

The statement should be submitted to the State Labour Inspection **in writing** (on paper or electronically);

- Storage of documents in the territory of the Republic of Poland – in paper or electronic form:
  1. documents (or copies thereof) on working time indicating the number of working hours on a given day, as well as the start and end time of work,
  2. documents on the amount of posted worker's remuneration along with the amount of deductions made (in line with the law applicable to the contract of employment) and proofs of payment of remuneration to the worker.

The Act does not require that the a/m documents be stored at the factual place of posted workers' work in the territory of Poland (**they can be stored at any other place in Poland**).

**Owing to extraordinary circumstances related to the announcement in the territory of Poland of a state of epidemic due to the outbreak of SARS-CoV-2 virus no special regulations have been introduced that would exempt foreign employers from obligations imposed by the Act.**

In the period of posting of a worker to the territory of Poland a legal relationship with the domestic employer still exists. Mutual obligations of the parties to an employment relationship are still regulated by the law applicable to the contract of employment. The foreign employer is obliged to comply to a limited extent, with the Polish legal provisions arising from the stipulations of the Act of 26 June 1974 Labour Code and other provisions on worker rights and duties which are considered to be overriding, regardless of the legal system chosen by the parties to regulate individual employment relationship. The Act requires that a posted worker in the territory of Poland for the duration of the performance of work on a temporary basis, be ensured **working conditions that are no less favourable** than the ones provided for in the Polish legislation, in terms of:

The conditions referred to above cover the following aspects of employment:

- standards and working hours and daily and weekly rest periods;
- length of annual leave;
- minimum remuneration for work established on the basis of separate provisions, whose gross monthly amount in 2020 is PLN 2600;
- the amount of remuneration and allowance for overtime work;
- occupational safety and hygiene;
- protection of female workers during pregnancy and during maternity leave;
- employment of minors and performance of work or other gainful activities by a child;
- principle of equal treatment and the prohibition of discrimination in employment as referred to in Art. 11<sup>2</sup> and Art. 11<sup>3</sup> of the Act of 26 June 1974 – Labour code;
- performance of work in accordance with the provisions on employment of temporary workers (in relation to this category of posted workers)

**A posted worker who stays and performs work (including telework) in the territory of Poland during the state of epidemic due to the outbreak of SARS-CoV-2 virus should be ensured the above mentioned minimum working conditions of employment laid down in the Polish legislation (in relation to minimum remuneration, maximum work periods and minimum rest periods, safe and hygienic working conditions, etc.**

In case it is unfeasible for a posted worker to perform work in the territory of Poland in a workplace or in the framework of telework owing to COVID-19 related restrictions, it should be assumed that **such circumstances are out of the posted worker's control**. By no means should they bear any negative consequences of this situation. If the worker stays in the territory of Poland without performing any type of work, yet they are ready to perform it, **relevant Polish labour law provisions should be applied**.

In line with Art. 80 of *the Labour Code* remuneration shall be due for work actually performed. The employee shall only preserve the right to remuneration for the period not worked if the provisions of the labour law so provide. An example of remuneration that is due to a worker despite no work performance is the **remuneration for the so-called downtime**. Pursuant to Art. 81. if the employee is ready to perform work, but they are

prevented from it for reasons attributable to the employer, they shall be entitled to remuneration for the period not worked in accordance with their individual rate of pay expressed as an hourly or monthly rate, and if such component of the remuneration is not specified in the conditions of remuneration – in the amount of 60% of the remuneration. **In any case, such remuneration shall not be lower than the minimum remuneration for work established pursuant to separate regulations.**

Downtime pay is due to a worker for the time of downtime that was not due to the worker's fault. If the downtime was due to the worker's fault no remuneration shall be due.

**In the opinion of the State Labour Inspection the above regulations concerning remuneration for downtime are applicable to workers posted to the territory of the Republic of Poland who, owing to the state of epidemic, cannot perform work while they stay in the territory of Poland in spite of their readiness to perform it.** In this situation workers will be at least entitled to minimum remuneration for work in the meaning of the *Act of 10 October 2002 on minimum remuneration for work* in the amount provided for in the *Regulation of the Council of Ministers of 19 September 2019 on the amount of minimum remuneration for work and minimum hourly rate of pay in 2020*.

There are no obstacles to ensure more favourable working conditions for a worker posted temporarily to work in the territory of Poland (including downtime) than the conditions resulting from the legislation of the posting country (pursuant to *Art. 3 par. 7 of Directive 96/71/EC*), e.g. in terms of amounts of remuneration for work. In this case it is assumed that minimum standards of employment guaranteed to the worker under overriding Polish regulations are met.

**Currently, posting new workers to perform work in the territory of Poland on a temporary basis may be hampered due to restrictions concerning entry into the territory of the Republic of Poland and crossing the national border.**

Restrictions and exceptions regarding travel to the territory of Poland are laid down in the *Regulation of the Council of Ministers of 2 May 2020 on establishing certain restrictions, injunctions and prohibitions due to the state of epidemic*.

The competent authority to provide binding information in this regard is the Border Guard. Contact with the border service in the above cases is indicated as advisable also on the website of the Office for Foreigners: [www.udsc.gov.pl](http://www.udsc.gov.pl)

Queries concerning the conditions of entry and stay of foreigners in the territory of the Republic of Poland can be addressed to the Border Guard by email at: [zdsc.kg@strazgraniczna.pl](mailto:zdsc.kg@strazgraniczna.pl) or by phone, from Monday to Friday (from 10.00 to 14.00) at the telephone numbers listed at: <https://www.strazgraniczna.pl/pl/granica/utrudnienia-w-ruchu/8312,Infolinia-Strazy-Granicznej.html>.

A special service was put in operation at: <https://granica.gov.pl/>, where information is available – also in English – on current restrictions concerning crossing of the border and entry of foreigners into the territory of Poland - <https://www.gov.pl/web/coronavirus/travel>.

#### **USEFUL LINKS:**

**State Labour Inspection:**

<https://www.pip.gov.pl/pl/>

**Helpline of the Border Guard:**

<https://www.strazgraniczna.pl/pl/granica/utrudnienia-w-ruchu/8312,Infolinia-Strazy-Granicznej.html>

<https://granica.gov.pl/>

**Office for Foreigners:**

<https://udsc.gov.pl/cudzoziemcy/epidemia-koronawirusa/>

**Ministry of Family, Labour and Social Policy:**

<https://www.gov.pl/web/koronawirus>

**Social Insurance Institution:**

<https://www.zus.pl/o-zus/aktualnosci/-/publisher/aktualnosc/1/tarcza-antykryzysowa-w-sparcie-z-zus/2551371>

**European Commission:**

<https://ec.europa.eu/social/main.jsp?catId=89&langId=pl&furtherNews=yes>.

<https://ec.europa.eu/social/main.jsp?langId=pl&catId=89&furtherNews=yes&newsId=9630>.

<https://ec.europa.eu/social/BlobServlet?docId=22486&langId=pl>

**EURES**

<https://eures.praca.gov.pl/o-nas/informacje-o-eures/koronawirus-wplyw-na-mobilnosc-pracownikow-w-ue-efta>