

# Posting of employees to carry out work outside Latvia

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Obligations of the employer who posts an employee to perform work outside Latvia.

An employer who posts an employee to carry out work in another EU Member State, European Economic Area State or Swiss Confederation, irrespective of the law applicable to the employment contract and employment legal relationships has a duty to ensure for such posted employee the fulfilment of employment provisions and the working conditions, including the minimum rates of pay, in accordance with the regulatory enactments of the relevant country or collective agreements, which are recognized as generally binding.

The concept “minimum rates of pay” shall be determined in accordance with the national law of the country to which the employee is posted to carry out work or collective agreements, which are recognized as generally binding.

According to the 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 the employer who posts employee to carry out work in another country, shall comply with at least the following minimum requirements established by the other country:

maximum work periods and minimum rest periods;

minimum paid annual holidays;

the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

the 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.

An employer who posts an employee to carry out work in another EU Member State, European Economic Area State or Swiss Confederation, shall comply with the national administrative requirements of the country to which the employee is posted, and the requirements of the supervisory and control institutions thereof.

When posting an employee to carry out work in another EU Member State, European Economic Area State or Swiss Confederation, the employer shall apply the respective [provisions on travel expenses, including the reimbursement thereof](#) Subsistence allowance relating to the respective posting shall be considered as a part of the minimum rates of pay, if provided by the country to which the employee has been posted to carry out work. Please find the respective website of the host country for detailed information on the relevant provisions. Other reimbursements related to the actually incurred expenses shall not be considered as a part of the minimum rates of pay.

For detailed information on the legal framework setting forth the working conditions and employment provisions in another European Union Member State, the European Economic Area State or Swiss Confederation please refer to the section "Information about other countries' legal framework".

Social security and A1 form

A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not

exceed twenty-four months and that he is not sent to replace another person. (Article 12 of the Regulation No 883/2004).

#### Requirements applicable to posting of employees to another EU Member State

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99 1. The employee shall be a socially insured person in Latvia. The employee shall be a socially insured person in Latvia prior to posting for at least one month, and social security contributions shall be paid or had to be paid for the respective employee in Latvia;

2. Work in another Member State shall be carried out for the benefit of the company who posts the employee to the respective country and there shall be a direct connection between the worker and employer. There shall be a direct employment legal relationships between the company posting the employee (or the sending undertaking) and the posted employee during the entire posting period. Such posted employee shall be affiliated with the company who posts him/her to perform work in another Member State. Direct connection means that the employee is subject to the management of the company that posts the employee. In order to determine whether such a direct connection exists, the following factors shall be taken into account:

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- responsibility for employee recruitment;
  - responsibility for the conclusion of employment contract;
  - responsibility for the work remuneration (without prejudice to possible agreements between the company in the sending country and the company in the host country with respect to work remuneration);
  - responsibility for the termination of employment legal relationships;
  - responsibility for the definition of work to be performed.
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99 3. The anticipated duration of the posting shall not exceed 24 months. Also, the employee shall not be posted to replace another person previously posted to the respective country. If a longer period of posting is required, the employee/employer may request for a derogation in accordance with Article 16 of the Regulation 883/2004, assessing whether it is in the interest of the employee. A new period of posting for the same employee to the same country and the company shall be accepted only after the expiry of two months between the posting periods.

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99 4. The company who posts an employee shall carry out a substantial part of its economic activity in Latvia. A company in the Member State in which it is established should usually carry out other essential activities, rather than those that are related purely to the internal management, taking into account all the criteria characterizing the company's business. The relevant criteria shall comply with the specifics of each employer and the actual nature of the performed activities. A company is considered to be carrying out its activities in a Member State if such activities are real and constitute a substantial part of its overall activities. Thus, the company shall carry out activities also in Latvia, not only in the Member State to which the employees are posted. If a Latvian registered company employs only administrative staff, then such company shall not be subject to the provisions of Article 12 (1) of the Regulation No 883/2004. The following criteria shall be used to determine whether a company carries out substantial activities in Latvia:

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- the place where the undertaking has its registered office and administration;
  - the number of employees in the Latvian company and in the company of another Member State;
  - the place where posted employees are recruited and from which they are posted;
  - the place where the majority of contracts with the clients were concluded;
  - the law applicable to contracts concluded by the Latvian company with its employees and with its clients;
  - the number of contracts performed in Latvia and another country;
  - the size of the company's turnover for the previous 12 months in Latvia and another Member State. 25% of the total

turnover in Latvia may be a sufficient criterion;

period of operation of the Latvian company since it was established, etc.

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Please refer to the State Social Insurance Agency's website for more information: <http://www.vsaa.gov.lv/en/>

Information on legal framework in other countries

If a Latvian employer has intended to post his/her employee to a Member State of the European Union, European Economic Area State or the Swiss Confederation within the framework of the posting of employees, he/she shall refer to the information on the requirements applicable in the respective country prior to posting.

<https://www.lm.gov.lv/en/posting-employees-carry-out-work-outside-latvia>