



News

WagwEU: Do you send employees abroad?

When you send an employee to another EU country or an employee of another EU country comes to the Netherlands, the so called WagwEU legislation is important. The Dutch government announced a few weeks ago, that the strict notification obligation of the WagwEU will enter into force as of January 1, 2020. Failing to comply with this obligation will result in penalties. In this newsflash we shortly explain the WagwEU, the corresponding penalties for non-compliance and an overview of penalties in the EU.

In 2016 the European Commission proposed a revision of the rules on posting of workers within the EU to ensure the rights and working conditions of employees are protected throughout the EU. This Posted Workers Directive (PWD) is implemented in almost all 28 European countries. The administrative obligations and applicable terms of employment have high impact on companies' international mobility policies and procedures across Europe. EU Member states have implemented the new Enforcement rules to varying degrees. Some countries have decided to implement the provisions not only to the posting of workers between Member States, but also to workers coming from non-EU countries. In the Netherlands this enforcement Directive is implemented in the 'Wet Arbeidsvoorwaarden gedetacheerde Werknemers in de EU' (WagwEU) which entered into force as of June 18, 2016.

Transnational service provision and employment terms

The WagwEU applies to the following forms of transnational service provision:

- Pure services: a service provider from one Member State makes its own staff available to a service recipient in another Member State. The assignment is carried out under the direction, supervision and for the account of the service provider
- Posting within multinational groups: an employee of a group in one member state is seconded to a branch of the group in another member state
- Temporary agency work: a temporary worker is made available to a recipient in a Member State other than where the temporary agency is located. Management and supervision lies with the hirer / service recipient

A posted worker is a worker who, for a limited period, carries out his or her work in the Netherlands (so outside the EU state in which he or she normally works). Posted workers may be sent to the Netherlands to carry out work for their employer's customers or clients, or to work for a subsidiary or associated employer established in the Netherlands. *Business travellers* who work in more than one EU Member State, as well as workers who are hired by an employment agency to carry out work for a client in the Netherlands also qualify as posted workers.

Employers are obliged to assign certain minimum terms of employment to the personnel that comes to the Netherlands to work temporarily, like the Minimum Wage and Minimum Holiday Allowance Act and the Working Conditions Act. Moreover, when a foreign employer gets to work in a sector in which a binding collective labour agreement applies, the hard core of the terms of employment from this collective labour agreement also apply.

Obligations WagwEU

The WagwEU has four administrative obligations for companies who post workers temporarily to the Netherlands. Below you find a short summary. The fourth obligation (notification) enters into force as of January 1, 2020. The other obligations are already implemented and into force.

1. Information obligation

The service provider must, at the time the SZW inspection requests it, provide information from which the inspection can establish that there is a real posting. This is the case when it comes to substantial activities and a temporary secondment.

2. Contactperson

The service provider who employs an employee in the Netherlands must appoint a contact person in the Netherlands. This person is the contact person on behalf of the service provider and must be available to answer questions about the posting and to receive and send relevant information. The posted employee can also act as a contact person. One contact person can also act as a contact person for several posted employees. It is also possible to have several contact persons.

3. Administration obligation

The service provider has the following written or digital documents available during the posting:

- Employment contract with posted worker
- Payslip
- An overview of the obliged subjects of a Dutch employment contract as mentioned in article 7:665 Burgerlijk Wetboek
- Overview of the worked hours of the employee
- A1 – certificate
- Proof of salary payment

The documents must be provided within a reasonable timeframe.

4. Notification obligation

We expect that the notification obligations enters into force as of January 1, 2020. Every company who posts an employee from another EU-country to the Netherlands, is obliged to make a notification. This notification must be filed before the activities of the employee in the Netherlands start.

The following information must be provided:

- Identity service provider
- Identity service receiver and posted worker
- Contactperson
- Identity of the person who is responsible for the wage payment
- Nature and duration of the activities (start – and end date). Possible extensions must be reported as well
- Address of the workplace
- Contribution to the social security system in country of origin

The service receiver in the Netherlands must check if the copy of the notification is correct. The service receiver has a maximum of 5 days after the beginning of the activities to report the fact that he didn't receive a copy of the notification or to report any mistakes in the notification.

Exemptions

An exception has been made for seafarers from merchant shipping companies for which the provisions of the WagwEU do not apply. Furthermore, foreign transport companies may notify the authorities about their employees in one notification for the entire calendar year. The other obligations of the WagwEU do apply.

Sanctions for non-compliance

When the obligations to provide information to the supervising authority, the notification obligation, to appoint a contact person and/or the obligation to administrate have been violated, a fine of EUR 12,000 *per violation* can be imposed. Based on the circumstances the fine can be higher or lower. The service recipient can be penalized in case of not reporting the lack of notification or incorrect notifications as done by the service provider (as soon as the notification system is available).

Implementation across the EU

Each Member State of the European Union has implemented the directive in its own legislation, as a result of which every country has its own specific rules. When you temporarily send employees from the Netherlands to another EU country, you have to deal with the legislation and obligations in the other country.

It is important to have a clear understanding of where you should report, the timeframe for reporting and the financial risks associated with not meeting your obligations. It is also important to know which documents the employee must carry with him.

Sometimes it's irrelevant how many days the employee works abroad. In some countries the reporting period starts on the 1st day the employee arrives, while others use a period of a few days. It is important to pay attention, as the terms and procedures differ per country.

In the overview below you will find more information about the reporting period and the fines for a number of countries. The fines generally apply per violation. Based on the facts and circumstances, the fine can be set lower and possibly higher (for example in the event of repeating an offense)

Country	Notification obligation	Sanction
Netherlands	Before posting	€ 12.000
Belgium	Before posting	Imprisonment and fine € 48.000
Germany	Before posting	Imprisonment and fine € 500.000
France	Before posting	Ja
Finland	Before posting	€ 1.000 - € 10.000
Czech Republic	First day of the posting	CZK 100.000 – CZK 500.000
Hungary	First day of the posting	HUF 30.000 – HUF 10.000.000
Italy	Before posting	€ 150.000
Luxembourg	Before posting	€ 5.000
Poland	First day of the posting	PLN 1.000 – PLN 30.000
Portugal	Before posting	€ 102 - € 61.200
Slovakia	First day of the posting	€ 33.000 - € 100.000
Spain	Before posting	€ 6.251 - € 25.000
Sweden	Sixt day of the posting	SEK 20.000

In case you work with posted workers, make sure you comply with the EU regulations! Non-compliance will result in severe sanctions.

We are pleased to support you with mapping the consequences of working throughout the EU. Do you want to know more about the WagwEU and the different obligations within the EU, please contact us.