

POSTING OF WORKERS WITHIN THE THE FRAMEWORK OF THE PROVISION OF SERVICES

The provisions of Directive 96/71/EK 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, has been transposed to the Greek legislation by means of the Presidential Decree (P.D.) 219/2000 “Measures on the protection of workers, posted in Greece in order to carry out a temporary work, within the territory of Greece in the framework of the transnational provision of services”. P.D.219/2000 applies in case of posting of workers in the framework of the provision of services, in Greece.

SCOPE OF APPLICATION

Presidential Decree 219/2000 applies to undertakings established in a Member State or in States which have signed the agreement of the European Economic Area, which post workers in Greece in one of the following cases:

A) Post workers under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in Greece, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting.

B) Post workers to an establishment or to an undertaking owned by a group, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting.

C) In cases that a temporary employment undertaking or placement agency, hire out worker to a user undertaking established or operating in the territory of Greece, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting.

DEFINITIONS

1. The term “worker” means, any person, bound by a dependent working relationship, and employed by an undertaking, within the scope of application of the present decree.
2. The term “ posted worker” means, any worker, in accordance with the above definition, who usually works in the territory of another member state of the E.U. or in the territory of a state which has signed the agreement on the European Economic Area and is not an E.U. Member state, who is posted by the undertaking in the territory of Greece in order to perform his work for a limited period of time, within the scope of application of the present decree
3. The term “group” means, any group, consisting of a controlling undertaking and controlled undertakings, by virtue of Art.3 P.D. 40/1997(39/A’)

TERMS AND CONDITIONS OF EMPLOYMENT

Undertakings which post workers in the territory of Greece, according to the previous paragraph, must guarantee, irrespective of the law applicable to the employment relationship, the terms and conditions of employment stipulated by

- Greek employment policy (laws, decrees, ministerial decisions),
- the national general labour collective agreement which is generally applicable by law as well as
- the, each time existing, labour collective agreements or arbitration awards which are generally applicable in accordance with Article 11 of the Law 1876/1990 "Free collective bargaining and other provisions"(27/A),

concerning the following issues:

- a)** maximum work periods and minimum rest periods
- b)** minimum paid annual leave
- c)** minimum wages, within the meaning of par.2 of the present article
- d)** protection of children and of young people at work
- e)** protection of pregnant women or women who have recently given birth
- f)** protection of health, safety and hygiene at work
- g)** equality of treatment between men and women
- h)** promotion of non- discrimination mainly due to :racial or national origin, color, language, physical or mental illness on condition that workers are clearly capable of carrying out their duties, social origin, part-time work, accession or not to a trade union, political or religious beliefs
- l)** the position of workers being at the disposal of a user undertaking by temporary employment agency or by undertakings or hiring- out agencies.

IMPLEMENTATION OF THE ABOVE MENTIONED IN ACCORDANCE WITH THE EMPLOYMENT POLICY

For the purposes of implementing this Presidential Decree, as **minimum wages** are considered gross wages –determined by Greek labour law (acts, decrees, ministerial decisions), by national general labour collective agreement which has been declared generally obligatory as well as by the each time existing labour collective agreements or arbitration awards which have also been declared generally obligatory – which include the minimum wage ,additional allowances provided for by law, including payments and additional increases for overtime work. Contributions to supplementary retirement schemes and relevant benefits are not included in the minimum rates of wage. Similarly, allowances paid to posted workers due to the posting, paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, accommodation or lodging.

EXCEPTIONS

The above mentioned provisions which refer to the **minimum paid annual leave and the minimum rates of wage** do not apply in the cases of: initial assembly and /or first installation of goods, where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and carried out by the skilled and/or specialized workers of the supplying undertaking, if the period of posting does not exceed eight days. The above mentioned exception does not apply to activities in the field of constructions regarding building, restoration, regular maintenance, transformation or demolition of buildings and specifically : excavation, earthmoving, actual building work, assembly and dismantling of prefabricated elements, fitting out, installation, alteration, renovation, repair, dismantling, demolition, maintenance, painting, cleaning work, improvements.

The **length of the posting** must be calculated on the basis of a reference period of one year from the beginning of the posting. For the purpose of such calculations, account shall be taken of any previous periods for which a posted worker has filled the post.

The above mentioned provisions shall not prevent application of terms and conditions of employment, which are more favorable to posted workers.

REQUIRED DOCUMENTS

In order to ensure the efficient inspection of the implementation of Presidential Decree 219/2000, undertakings in its scope which post workers in the territory of Greece, are obliged, before the beginning of the provision of services, irrespective of the period of posting, to submit to the competent services of the Labour Inspectorate Body (S.EP.E.) in the territory where the

provision of services takes place, the following documents in the Greek language:

A) written statement with the following information:

- name or corporate name of the undertaking, its location, its address and its legal form
- identity elements (name, surname, name of father, name of mother, date of birth, address etc) of the legal representative of the undertaking
- identity elements (name, surname, name of father, name of mother, date of birth, address etc) of the legal representative of the undertaking in Greece during the provision of services
- the address of the place or places where the posted workers shall provide services and the name or the corporate name, the location, the address and the legal form of the undertaking or of the undertakings where workers shall provide their services
- the date of the beginning of the provision of services as well as the date of the posting of workers and its possible duration and
- the nature of the provided activity as well as the use or not of dangerous materials or methods.

B) List of the posted workers for authentication, in two copies, where the following elements shall be presented:

- name, surname, age, expertise of each posted worker
- the date that the employment contract is concluded, similar previous experience in other employers and family status
- duration of daily and weekly work, times of commencement, interruption, break and end of the daily work as well as the weekly rest and
- all kind of paid wages .

The undertaking must make sure that a copy of the above mentioned list, is placed on a board at an obvious point in the place of work ; the other remains in the file of the competent services of the S.E.P.E.

In case of **change of any of the above-mentioned elements**, undertakings are obliged to submit additional lists, depending on the case, within 15 days from the date of the change.

When the work is carried out at shifts, undertakings are obliged, in addition to the above-mentioned lists, to submit tables on the weekly alternations of shifts.

Employment of posted workers without the prior submission of the documents, provided for in par.1 of this article, is not allowed.

When the terms of work and employment are covered through the contract, by the employer of origin, then the representative of the undertaking of origin, being responsible before the Greek law, is obliged to keep the following documents at the place of work:

- Personnel list
- Work time table, in case of employment in shifts,
- Book of new hired workers of the Social Insurance Institution (IKA) (system of social security),
- Individual labour contract.
- Pay statement of wage and possible additional benefits.
- Presence cards or sheets
- Book of recording of paid leaves
- Book of overtimes

The two first of the above mentioned documents, are submitted to the Labour Inspectorate Services, the third is granted by IKA and is received within the same day. The person in charge of the undertaking is responsible for keeping the rest of the documents at the place of work.

SANCTIONS

In case of non-compliance with P.D.219/2000, both penal and administrative sanctions are provided for by Law, and are imposed by S.E.P.E.

Sanctions are also provided for by articles 16 and 17 of Act 2639/1998 as have been amended and apply as follows:

Administrative Sanctions

1. To an employer who infringes the provisions of the Labour Law, through a justified act of the competent Labour Inspector and following his invitation to explain, the following are imposed:
 - a) A fine, the amount of which ranges from 1.000 to 30.000 euros for each infringement.
 - b) Temporary shut down of the production progress, of a department or departments or of the whole undertaking or enterprise for a period of time, up to three days maximum. Furthermore, by decision of the Minister of Employment and Social Protection, after a justified suggestion of the competent Labour Inspector, the employer may be punished with a temporary shut down of the operation or the enterprise longer than three days and may reach a final shut down of the specific productive progress or of a department or departments or of the whole undertaking or enterprise
2. The act concerning the imposition of the fine is communicated to the employer who has infringed the law and who signs a form, certifying he has received the act. The fine constitutes state revenue.

Against the act of the imposition of the fine, an appeal of substance is lodged, within 20 days from the notification date, before an Administrative Court. The appeal is unacceptable, unless it is communicated to the competent Service of S.E.P. within 10 days from the day of its lodging. The appeal is of a suspensive character for the 80% of the fine. The competent service of S.E.P. confirms the 20% of the imposed fine by means of an appeal within a fixed time period. This fine which is to be paid to the competent Public Economic Service constitutes state revenue.

Penal Sanctions

1. Every employer who fails to comply with the provisions of the labour legislation regarding terms and conditions of work and more specifically working time limits or remuneration or health and safety of workers is liable to an imprisonment of at least 6 months or to a fine of at least 900 euros or to both.
2. Special provisions of the labour legislation stipulating a different penal sanction are still in force.

Additionally, workers and/ or their representatives can appeal to the Labour Inspectorate Body either directly or through processes of a labour dispute or a tripartite representation.

Judicial Authority

Irrespective of the law that governs the working relationship, differences resulting from the application of the provisions regarding to the working terms of the posted workers, can also be resolved by means of Greek Courts of Justice according to the provisions in force.

The fact that available measures do not favor any kind of discrimination is obvious since posted workers are treated the same way as the rest of workers in Greek legislation and there is no distinction between posted and non-posted workers, the only distinction being the temporary nature of employment. Furthermore, the above-mentioned measures are absolutely imperative, in order to ensure a minimum level of protection for workers of this category.

Liaison offices

Information on legislation applicable to undertakings, which, for a limited period of time, post workers to the territory of another Member State, can be obtained at the following address:

Ministry of Employment and Social Protection

Directorate-General for Employment

Directorate for Employment Conditions

Individual Labour Contracts Section

Contact Persons: Despoina Pantazidou, Venetsiana Garyfalaki

Pireos 40

10182 Athens, Greece

Tel. +30 210 5295203

Fax.+30 210 5295186

Email:sarav02@otenet.gr

Website:

<http://www.ypakp.gr/index.cfm?Level1=2&Level2=2&Level3=0&Level4=0&Level5=0&Level6=0>

Ministry of Employment and Social Protection

Directorate-General for Employment Conditions

Contact Person: Vasilios Giannakopoulos

Epikourou 29

Athens, Greece

Tel.+30 210 3214436

Fax. +30 210 3214294

email: grhsa@otenet.gr

website : www.ypakp.gr

Information can also be obtained at:

Labor Inspectorate Body

Contact Person: 1)Olympia Toumpa (Directorate of Administrative and
Technical Support, Dept. Of Legal Support)

Tel. +30 210 3748822

+30 210 3748743

Fax. +30 210 3748744

2)Chrisoula Toufekoula (Directorate of Programming, Planning and
Co-Ordination of Inspections of the Technical and
Hygiene Labour Inspectors)

Tel: +30 210 3748711

Fax: +30 210 3215716

Dragatsaniou 8

10110 Athens, Greece

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