

The posting of workers from abroad to the Grand Duchy of Luxembourg

The provisions of the Law of 20 December 2002, having transposed into national law Directive 96/71/EC, sought to remove any obstacles which might impede the freedom to provide services as laid down in the Treaty establishing the European community, whilst at the same time ensuring protection for posted workers.

According to those provisions, which apply to all economic sectors with the exception of the merchant navy, an undertaking whose registered office is abroad may, in connection with a cross-border provision of services, temporarily post works to Luxembourg territory.

The new Law of 14 March 2017, which transposes into national legislation Directive 2014/67/EU, seeks above all to improve execution of the rules on posting and introduces additional means needed to establish a better balance between the freedom to provide services and compliance with the social legislation applicable in the Grand Duchy of Luxembourg.

That new Law is intended to prevent abuses committed in connection with posting and establishes additional monitoring procedures facilitating a more effective fight against social dumping. Moreover, the new Law enables posting undertakings to make their posting declaration with a view to obtaining a social badge for their employees by electronic means.

The new features adopted include:

- extension of the list of documents to be produced by posting undertakings (pay slips, payment proofs and time card's Details showing the start, end and duration of daily work throughout the period of the posting to Luxembourg territory), making it possible to ensure that posted workers are actually paid the wages due to them for the hours of work actually performed in Luxembourg;
- joint and several responsibility of undertakings in subcontracting chains;
- the introduction of appeal mechanisms enabling posted workers to bring an action before the Luxembourg courts even after leaving the Grand Duchy or to bring such actions through trade unions;
- the introduction of administrative penalties in the event of infringement of the provisions on the posting of workers;
- the cross-border enforcement of financial administrative penalties and fines;
- the possibility for the Director of the ITM to order cessation of works, having regard to the circumstances and the seriousness of the infringements.

As regards the joint and several liability of undertakings in subcontracting chains, the prime contractor or the principal and the subcontracting undertakings are subject to an obligation of information and injunction vis-à-vis the ITM.

In the event of non-compliance with the above-mentioned obligations, as from now on, the prime contractor or the principal becomes jointly and severally liable with the posting undertaking (that is to say a co-contractor, a direct or indirect subcontractor, or the co-contractor of a subcontractor) for the

payment of remuneration, compensation and charges payable to the workers of an undertaking, including social security contributions relating thereto.

Furthermore, the prime contractor or the principal who contracts with a provider of services who posts workers to Luxembourg territory is required to verify, vis-à-vis the latter, and, if appropriate, vis-à-vis any direct or indirect subcontractor or any co-contractor of a sub-contractor, that it has complied with its obligations concerning the posting declaration and the obligation to indicate, in that declaration, a reference person for communications with agents of the ITM, of the Customs and Excise Administration and of the Grand-Ducal police. In the event of non-compliance with the above-mentioned obligations, the prime contractor or the principal incurs liability to administrative penalties.

As regards administrative penalties, infringement of the provisions on the posting of workers shall be punishable by an administrative fine of an amount of between EUR 1,000 and EUR 5,000 per posted worker and of between EUR 2,000 and EUR 10,000 in any case of a repeated offence committed within a period of 2 years following the date of notification of the first fine. The total amount of the fine may not exceed EUR 50,000.