



POSTING OF WORKERS

PRACTICAL GUIDE
for Employers



About the Project

The international project STEP UP –“Stepping up the European cooperation and communication among Public & Private organizations for the PROTECTION of posted worker’s rights” is focused on the phenomenon of transnational posting of workers and aims to verify the application of recent European regulations in the field of labour migration, entrepreneurial behaviour and the concrete role played by inspection bodies.

STEP UP PROTECTION is managed by universities in 5 European countries and takes place between 2020 and 2022.

Project has received funding from the European Union Programme for Employment and Social Innovation (“EaSI” –Progress Axis) 2014-2020 under grant agreement number: VS/2019/0383.

1. Introduction

Posting of workers, which has been widely used on the labour market of the European Union in the recent decades, is a unique legal and social phenomenon of the Union. As it is known, the existence of the European Union and the functioning of the single market is ensured by the fundamental principles: freedom of establishment, freedom to provide services and free movement.

The freedom to provide services includes the right of undertakings to provide services in the territory of another Member State and to post their own workers temporarily to the territory of that Member State for that purpose.

The legal basis for the posting of workers in the European Union is Article 56 of the Treaty on the Functioning of the European Union, in accordance with which restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

Posting is a specific form of cross-border labour mobility necessary to ensure the freedom to provide services. Whereas companies can provide services not only in the Member State where they are established but also in other Member States, they must have an opportunity to send out their employees to another Member State to carry out the tasks required.

It should be noted, however, that the posting of workers has been and still is regarded as controversial primarily because it is difficult to find the right balance between the protection of workers, their employment guarantees and the competitive conditions of companies.

In line with its commitment to remove obstacles to the free cross-border movement of services and ensure equal conditions for business as well as the protection of employee rights, the European Union adopted a special directive for the posting of workers – the Posting of Workers Directive. The Directive established a set of “hard core” minimum terms of employment and working conditions (such as maximum work periods, minimum paid annual holidays, minimum rates of pay, health and safety at work, etc.) which must be respected in accordance with the host state principle. For the rest of the employment relationship, the labour law rules of the sending country continued to apply.

As new Member States have joined the European Union over time and the European Treaties have been revised, the labour mobility situation has changed considerably and the European Union has reformed the legal regulation of posting of workers in order to:

- create a level playing field for cross-border service provision with the least restrictions possible;
- protect the rights of posted workers by ensuring equal social rights in order to prevent unfair treatment and the creation of a low-cost workforce.

For this purpose, the following Directives have been adopted:

1. Directive 2014/67/EU – the Enforcement Directive which creates a common legal framework for identifying the real extent of posting and allows for a more uniform implementation, application and enforcement of common standards. The Directive also clarifies the definition of posting and defines the responsibilities incumbent on Member States to verify compliance with the Posting of Workers Directive, especially in sectors with a greater risk of malpractice, such as construction or road haulage. The Directive seeks to ensure better cooperation between the national authorities in charge of posting (such as

labour inspectorates), by enforcing the obligation to respond to requests for assistance and setting time limits for responses to information requests. It also provides for the possibility to have the administrative penalties and fines imposed on service providers by one Member State enforced and recovered in another Member State.

2. Directive (EU) 2018/957 revising and amending the 1996 Posting of Workers Directive – the Revised Posting of Workers Directive. This Directive establishes that: (i) posted workers shall be subject to the rules on remuneration in the country they have been sent to (this could either be set by law or by certain collective agreements); (ii) employers shall have to pay for travel, food and accommodation; (iii) defines the concept of long-term posting – at the expiry of 12 months, it shall be considered that an employee has been posted for a long time (with a possible extension of this time period for six months after the service provider submits a reasoned notification) and he/she shall be subject to almost all the labour rules of the host country; (iv) temporary employment agencies shall guarantee posted workers the same conditions that apply to other temporary workers hired in the country they have been sent to; (v) enhanced cooperation to tackle fraud and violations in the area of posting.

Facts and figure

The issue of posted workers is relevant all over the European Union. Each Member State of the European Union is involved in the ensuring of rights and application of guarantees for posted workers. Although the share of posted workers represents only 0.4% of the EU's total workforce, the recent period suggests that these figures are likely to increase. For example, there was a major increase in the number of posted workers between 2010 and 2016 when the number of posted workers in the European Union has increased by as much as 69%.

The issue of posted workers is in particular relevant for certain business areas. Most of the posted workers work in the construction sector – 45%, in the manufacturing industry – 21.8%, in the services sector – 29.4%, in agriculture and fisheries – 1.5%.

It is also possible to single out individual EU Member States which either send out their workers to other states very often or receive a large proportion of posted workers. In the recent years, Germany, France and Belgium have been the host countries receiving most of the posted workers (50% of all the workers posted), while Poland, Germany and Slovenia have been the countries that send out most of the posted workers.

Information about the workers hosted and posted by each EU Member State and about the states that send out and host most of the posted workers is available on the website of the European Parliament:

<https://www.europarl.europa.eu/news/en/headlines/society/20171012STO85930/posted-workers-the-facts-on-the-reform-infographic>

2. General framework of transnational posting

2.1. Notion of posting

Posting of employees includes the following cases:

Situation	Subcontracting	Transfer within a company	Temporary agency work
Description	An employee is posted to perform work for which a contract has been made between the posting company, i. e. the employer, and the contractor. The employee performs work on behalf of the posting company and under the direction of its management.	An employee is posted to work for a company located in another member state and belonging to the same group of companies.	An employee is posted to another state for use by another company. The employee's own employer is a temporary employment agency.

Important !!!

Posting is always temporary. The undertaking can only post workers for a limited time, and an employment relationship must exist for the entire posting.

In order to assess whether a worker is actually employed in one state (for example, Lithuania) and carries out temporary work functions in another state (for example, Germany), the following criteria are considered:

- 1) the work is carried out in a foreign state for a **limited period of time**;
- 2) after completion of the work or the provision of services for which the worker was posted, he/she returns for permanent work to the State from which he was posted, he/she **returns for permanent work to the State from which he was posted**;
- 3) **the employer who posts the worker reimburses the expenses relating to the posting** (travel, accommodation, meals, and other costs).

Posting duration. Directive 96/71/EC applies to all postings irrespective of the duration of posting. Some provisions of the directive, however, are not applicable to short-term posting or allow host countries not to apply their rules to short-term posting:

- (i) an exemption always applies in the case of initial assembly and/or first installation of goods, if the period of posting does not exceed 8 days. In this case, the rules on minimum paid annual leave and remuneration do not apply (however, this exception does not apply to the construction sector);
- (ii) host countries may (after consulting social partners) decide not to apply the rules on:
 - minimum paid annual leave and remuneration when the length of posting does not exceed one month within the time period of one year from the start of the posting;
 - the rates of remuneration set out in collective agreements when posting takes place under service agreements or within a group of companies and the duration

of posting does not exceed one month within the time period of one year from the start of the posting (however, this exemption is not applicable to temporary workers!);

– minimum paid annual leave and remuneration on the grounds that the amount of work to be done is not significant as defined in national legislation (however, this exemption is not applicable to temporary workers!);

(iii) host Member States may exempt from the requirement to submit declarations in the cases of short-term posting.

In Lithuania, provisions relating to:

(i) remuneration, including extra pay for overtime, night work, and work on days off and holidays, shall not apply if the posting duration does not exceed 30 days (except for temporary workers);

(ii) minimum duration of annual leave, remuneration and pay for overtime work shall not apply if the initial assembly and/or first installation of the product is carried out by qualified employees and/or specialists of the company that supplies the product where this is stipulated in the contract for the supply of goods and is necessary for the use of the product supplied, and when the duration of their posting does not exceed 8 days. This exception shall not apply when the posted worker is performing, in the territory of the Republic of Lithuania, construction work specified in the Republic of Lithuania Law on Construction.

The duration of the posting shall be calculated by adding together all the calendar days of the posting or postings within a period of one year from the beginning of the first posting. If a posted employee is replaced by another posted employee performing the same work at the same place of work, the effective duration of the posting will comprise the overall duration of the periods of posting of the respective individual workers. The condition of the same work at the same place of work shall be assessed taking into account the nature of the service to be provided, the work function, workplace address(es) and other circumstances related to the performance of work.

Long-term posting

With the coming into force of the ***Revised Posting of Workers Directive*** as of 30 July 2020, the workers posted for periods longer than 12 months (or 18 months, following a motivated notification from the employer) are entitled to all the mandatorily applicable terms and conditions of employment of the host Member State, except the procedures and conditions for conclusion and termination of the employment contract and the rules of supplementary pension schemes which are not applicable to long-term postings as well.

In Lithuania, the employer who operates abroad and posts a worker to Lithuania may submit a reasoned notification to the State Labour Inspectorate under the procedure set out by the Minister of Social Security and Labour for the extension of the posting period as long as the actual posting duration does not exceed 12 months. The posting period shall in all cases be extended without exceeding the actual posting duration of 18 months. The application form is available here: https://www.vdi.lt/Forms/Tema_Eile.aspx?Tema_ID=73

Do you know that?

Workers who are temporarily sent to work in another Member State, but do not provide services there, are not posted workers. Such situations are called “business trips” and such workers are not covered by the Posting of Workers Directive. For example, a worker travels for business (when no service is provided), attends a conference, a business meeting, fair, training courses and etc.

2.2. European Union and national legal acts

- 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.
- Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).
- Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- Articles 12, 13 and 16 of the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
- Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
- Articles 108 and 109 of the Labour Code of the Republic of Lithuania.
- The Law on State Labour Inspectorate of the Republic of Lithuania.
- The Code of Administrative Offences of the Republic of Lithuania.

3. Official reporting about posting of workers

The Enforcement Directive (Directive 2014/67/EU) allows, but does not require, host Member States who receive posted workers of the European Union to impose further administrative requirements and control measures.

3.1. Administrative measures applicable before or at the very outset of posting

Article 9 (1) of the Directive allows the host Member State to impose the following requirements to be complied with not later than at the beginning of the posting:

- 1) make a declaration to the responsible national competent authorities containing the relevant information necessary in order to allow factual controls at the workplace, including:
 - (i) the identity of the service provider;
 - (ii) the anticipated number of clearly identifiable posted workers;
 - (iii) the person of liaison and the contact person;

- (iv) the anticipated duration, envisaged beginning and end date of the posting;
 - (v) the address(es) of the workplace;
 - (vi) the nature of the services justifying the posting;
- 2) designate a person to liaise with the competent authorities in the host Member State;
 - 3) designate a contact person who can act as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State.

It should also be noted that the Directive also requires, in case the Member States impose the above-referred requirements, to make it possible to complete the procedures and formalities relating to the posting of workers at a distance and by electronic means.

Do you know that?

Although, as mentioned, the Directive allows collecting the above-referred information, all the Member States have actually made use of this possibility and introduced the relevant administrative measures in their law or practice for the cases when employees from other Member States are posted to companies established and/or operating in their territories. It should be noted that the Member States are required to communicate all the information about the administrative measures in place to the European Commission which, in its own turn, informs other Member States; moreover, anybody interested can get this information on the national website of each Member State.

Useful link:

Practically all Member States have put in place the electronic system for the prior declaration of posted workers.

Links to the **contact point** of a specific country and its information are available here:

http://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

The Directive does not establish that directly, however, virtually all Member States oblige **the posting employer** to fill out the relevant declarations and inform the competent national authority. Thus, all legal and administrative information is published by competent authorities of the Member States on their websites not only in their national language but also in English and in other official languages of the Member States and, in some cases, also in the languages of third countries (normally considering the labour market situation, the states of origin of posted workers, etc.).

In Lithuania, the competent national authority is the State Labour Inspectorate (www.vdi.lt).

In Lithuania, an employer from abroad who posts a worker for temporary work in the Republic of Lithuania for a period longer than 30 days or to carry out construction work (under the Republic of Lithuania Law on Construction) must submit a notification about the posted worker and applicable work conditions and guarantees to the State Labour Inspectorate before not later than before the start of the posted worker's work in the territory of the Republic of Lithuania. The notification shall be submitted electronically by completing the relevant form on the website of the State Labour Inspectorate in Lithuanian or English (see here: https://www.vdi.lt/Komandiruotes/Komandiruotes_titulinis.aspx).

The notification shall contain the following information:

- (i) information about the employer posting a worker (company name, office address, telephone No.; e-mail address, activity type);
- (ii) employer's representative – person to liaison with the State Labour Inspectorate;
- (iii) employer's representative – person to keep contact with social partners;
- (iv) information about the posted worker (name, surname, date of birth, ID number, the state where the worker has social insurance, data about Certificate A1;
- (v) information about the posting (legal basis of posting – subcontracting, transfer within a company, temporary agency work, specific beginning and end dates of the posting, duration of the intended posting in months and days, address and place of work functions where the documents relating to the worker's posting will be stored (employment contract, payrolls, time sheets, etc.).

If, after the notification on a posted worker is submitted, there is a change in the above-referred working information or declared working conditions, the employer shall submit an amended notification to the State Labour Inspectorate within one work day.

The employers operating in Lithuania and employing foreigners, including posted workers, in their companies shall submit a notification of the approved form to the Employment Service and to the State Labour Inspectorate. This notification shall be submitted not later than one working day before the beginning of the posted worker's work in Lithuania. The notification shall be completed through the EDAS system of the Social Insurance Fund Board (SODRA):

<https://www.sodra.lt/lt/dokumentai/formos-ir-sablonai-darbdaviams/ldu-pranesimo-pildymas-ir-pateikimas> by completing the so-called notifications on foreigners working in Lithuania (LDU). Notifications shall be submitted only electronically, signed by an electronic signature.

The employers accepting posted workers shall indicate what working conditions (work and rest time, duration of annual leave, remuneration rate) will be applied to the worker during work in Lithuania.

The State Labour Inspectorate shall use the information about the workers posted to Lithuania in the prevention of posting rule violations and in the monitoring of labour relations in Lithuania.

3.2. Administrative measures applicable during posting

The Enforcement Directive allows the Member States to impose an obligation on the host employer to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided.

The companies operating in Lithuania shall store all employment-related documents in the archive for at least 10 years. For more see: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.394402/asr>

4. Working conditions and guarantees in the host country

4.1. Working conditions

The working conditions set out in the Posting of Workers Directive to be ensured for posted workers in the host country:

(1) **Maximum work periods and minimum rest periods** – the employee working in a company of the host country shall be ensured the same work and rest periods as applicable in the host country.

In **Lithuania** – (i) normal working time is 40 hours per week. Average working time, including overtime, is 48 hours per week; maximum working time, including overtime and additional work, is 12 hours per day and 60 hours per week. Maximum overtime – eight hours per week or 12 hours per week if the employee agrees; maximum annual overtime – 180 hours.

(ii) Employees shall be granted a break of maximum two hours and minimum half an hour to rest and to eat. This break shall be provided not later than after five working hours. The duration of uninterrupted rest between working days/shifts may not be shorter than 11 consecutive hours. An uninterrupted weekly rest period shall not be shorter than 35 hours.

(2) **Minimum paid annual leave** – for the time period worked by a posted worker in a foreign company, he/she shall get at least the minimum paid annual leave guaranteed in that foreign country or a proportionate part of the paid annual leave for the time period worked.

In **Lithuania** – minimum annual leave is an annual leave of at least **20 work days (for a 5-day week) or at least 24 work days (for a 6-day week)**. Workers under 18 years of age, those single-handedly raising children under 14 years of age or a disabled child under 18 years of age and disabled workers shall be given an annual leave of **25 work days** (for a 5-day week) or an annual leave of 30 work days (for a 6-day week). Payment cannot be taken in lieu of holiday unless employment has terminated.

(3) **Remuneration**, including overtime rates (this requirement does not apply to supplementary occupational retirement pension schemes) – it should be noted that the initial Posting of Workers Directive required that the minimum remuneration shall be ensured. After the Revised Posting of Workers Directive comes into force, remuneration shall include all the constituent parts of remuneration mandatory and applicable to local employees under national laws or universally applicable collective agreements from the first working day of the posted worker in the host country, i.e. the principle of equal pay for equal work at the same workplace shall apply.

In **Lithuania**, there are no universally applicable collective agreements regulating pay rates applicable to different business activities.

(i) The remuneration of staff working at companies, institutions and organisations under employment contracts is regulated by the Labour Code of the Republic of Lithuania. **Each employment contract shall state remuneration per month (monthly salary) or remuneration per hour (hourly rate).**

(ii) The Labour Code stipulates that a remuneration system shall be determined in a collective agreement. Where there is no such collective agreement, in workplaces with an average of 20 or more employees, a remuneration system must be approved by the employer and made available to all employees to review. The remuneration system shall specify: categories of employees by job descriptions and qualifications and payment forms for each of them; salary levels (minimum and maximum); grounds and procedure for awarding additional pay (bonuses and premiums); procedure for salary or wage-indexing.

(iii) Minimum monthly wage (minimum hourly rate or minimum monthly wage) is the minimum amount permitted for unskilled work paid to a worker per hour, or for the whole standard working time per calendar month. **Unskilled work** is work that does not require any special qualifications or professional skills.

(iv) An employee's monthly wage may not be lower than the minimum wage approved by the Government. The collective agreements may provide for higher minimum hourly rates and minimum monthly wages than the ones approved by the Government.

From 1 January 2022, the minimum hourly wage is €4.47 and the minimum monthly wage €730.

(v) For **work on rest days** not included in the work (shift) schedule and for **work on holidays**, at least **2.0** the employee's regular rate of pay shall be paid. For **work during night shifts** and **for overtime work**, at least **1.5** times the employee's regular rate of pay shall be paid. For **overtime work on a rest day** not included in the work (shift) schedule or **for overtime during a night shift**, at least **2.0** the employee's regular rate of pay shall be paid, while **for overtime work on holidays**, at least **2.5** times the employee's regular rate of pay shall be paid.

(vi) At an employee's request, work time on rest days or holidays, or overtime multiplied by 1.5, 2.0 or 2.5, respectively, may be added to the time of annual leave.

Important !!!

The posted worker's employer must guarantee that the amount paid to the worker during posting is at least equivalent to the remuneration determined according to the rules of the host Member State. The comparison between the amount actually paid to the worker and the amount payable according to these rules of the host Member State must be based on gross remuneration (i.e., pay before contributions, deductions or taxes) rather than on separate constituent parts of the remuneration.

Points to note !

The host Member State does not have an obligation under Directive 2014/67/EU to indicate the actual remuneration to be paid. Member States must provide information on the terms and conditions of employment, including the constituent elements of remuneration to be applied to the workers posted to their territory. However, it is employer's responsibility to establish in each individual case how much a posted worker must be paid based on this information.

(4) ***Health, safety and hygiene at work*** – posted workers shall be ensured the same safety and health conditions during their work in the host company as those ensured for permanent workers according to work conditions and other specifics.

In ***Lithuania*** – (i) occupational safety and health issues are regulated by a special Law on Safety and Health at Work.

(ii) Each worker must be provided with working conditions free of health and safety risks. The workplace and workplace environment of each worker must meet the requirements of the occupational health and safety legislation. Workplaces must be set up so that workers are protected against possible injuries and against harmful or dangerous risk factors in their working environment. Physical capabilities of workers must be taken into consideration when setting up workplaces. Work premises, workplaces and territory of the company where there are risks to worker safety must be marked using the signs required by occupational health and safety legislation. Only work equipment in good technical condition and meeting requirements of occupational health and safety legislation must be used at the company.

(iii) Employers cannot demand workers to start performing the work assigned before they are instructed and/or trained to do it safely. Workers shall be instructed according to the specifics on their workplace or assigned work, when being hired, transferred to another work or workplace, when starting to use new or updated work tools and new technologies. If workers lack professional skills and knowledge provided through instruction to be able to work safely and without harm to their health, the person representing such workers or a person authorised by the employer shall organise training for the workers at the workplace, company or school or other educational institution taking into consideration harmful and/or dangerous factors to which workers are exposed.

(iv) Workers who, under agreement between employers, are sent for temporary work from one company to another, cannot start working before they are informed about the present and potential risk factors at the company they are sent to work at and before they are instructed on how to work safely in a specific workplace, even if they were instructed and trained on safe work practice at their permanent place of employment.

(v) Workers sent to work to another company must also be informed about such company's employees responsible for the provision of first aid, organising of rescue operations and evacuation of workers in case of emergencies, natural disasters or fires, and about fire-fighting and evacuation devices; they must also be introduced to employee evacuation schemes.

(5) **Protective measures with regard to the terms and conditions of employment for pregnant women or women who have recently given birth, for children and young people** – posted workers shall be ensured the same work safety and health conditions, the terms and conditions of an employment contract and related conditions (for example, additional breaks, shortened working time, longer paid leave, etc.) during their work in the host company as those applicable to permanent workers of these categories.

In **Lithuania** – (i) **safety for workers who are pregnant, who have recently given birth, or who are breastfeeding: workers who are pregnant**, have recently given birth or are breastfeeding must be guaranteed safe and healthy working conditions and protected from harmful factors and professional risks at work as it is established in the special Government resolution “The description of working conditions for workers who are pregnant, who have recently given birth or are breastfeeding”. If dangerous or harmful effects in workplace cannot be eliminated the employer must transfer workers (with their consent) to a different work (workplace) at the same company. After such transfer, the workers who are pregnant, who have recently given birth or are breastfeeding shall receive at least the same pay as before the transfer. Assigning **overtime work** to workers who are pregnant, who have recently given birth or are breastfeeding without their consent shall be prohibited; such workers may be assigned to being *on duty, working night-shifts, resting days and holidays, and posted on missions* only with their consent. Breastfeeding workers shall be guaranteed at least 30-minute breaks for breastfeeding no less than every three hours and these breaks shall be remunerated according to the worker's salary. When a worker who is pregnant, who has recently given birth or is breastfeeding must undergo a health check, she must be excused from work without any pay reduction for that time if the health check is during working time.

(ii) **Safety at work for persons under 18:** child labour shall be prohibited with the exception of light work in line with their physical abilities and without any harmful effect on children's safety, health, physical, mental, moral and social development. Work for persons under 18 years of age must not present any health and safety risks and risks to their physical, mental, moral and social development or learning. Persons under 18 must be protected against any risks to their safety, health or development arising from their lack of experience and awareness of present or potential risks, or due to the immaturity of persons under 18 years of age. Working time of adolescent children (*16 to 18 years*) shall not exceed 8 hours a day, including daily

school hours, and 40 hours a week including weekly school instruction. Adolescent children are prohibited from working from 10pm to 6am. Rest time for persons under 18 years – at least 2 rest days must be granted, if possible, in sequence, with one of them falling on a Sunday; when working time or practical training lasts longer than 4 hours, at least a 30-minute rest break must be granted; daily continuous rest time for adolescents within a period of 24 hours must be at least 12 hours.

(iii) **Health and safety guarantees at work for people with disabilities:** the opinion from a responsible health care institution on the ability of a person with a disability to do a specific job shall be binding on the employer and the worker. People with disabilities may be asked to **work overtime, night-shifts** and be on **duty** provided that the opinion of the health care institution allows this, and only with the worker's consent.

(6) ***Equality of treatment between men and women, and other provisions on non-discrimination*** – posted workers may not be subject to any discrimination or treated less favourably during their work in the host company as a result of their personal or private circumstances not related to work skills.

In **Lithuania** – (i) it is prohibited to discriminate employees irrespective of their gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities.

(ii) When implementing the principle of gender equality and non-discrimination on other grounds, employers must apply equal selection criteria and conditions when hiring; ensure equal working conditions and opportunities to improve qualification, pursue professional development, requalification and obtaining practical work experience, and also ensure equal benefits; apply equal criteria for work evaluation and dismissal from work; ensure equal pay for the same work and work of equal value; take measures to prevent employee bullying and sexual harassment, provide instructions about workplace discrimination, avoiding retaliation, and ensuring protection against hostile behaviour or negative consequences after complaints or lawsuits are filed for discrimination; take appropriate measures to facilitate the employment, work, career or training of disabled persons, including the adaptation of suitable facilities, unless such measures would disproportionately hinder the duties of the employer.

(iii) Employers with over fifty (50) employees on average must additionally adopt and publish (using usual workplace channels) measures for implementing equal opportunity and enforcement policies. Before such measures are adopted and published, procedures for notification and consultation with worker representatives must be completed.

(7) ***Working conditions of temporary workers*** – a temporary employment agency shall ensure that posted temporary workers are subject to at least the basic employment conditions which would apply to such workers if they were recruited by the user undertaking to occupy the same workplace, including all the collective agreements applicable on the company level.

Important !!!

The temporary work user undertaking shall inform the temporary employment agency about the employment terms and conditions it applies for working conditions and remuneration.

In **Lithuania** – (i) during periods of temporary employment, the temporary work user enterprise must ensure that the employees posted in the Republic of Lithuania as temporary workers are subject to the same legal provisions, collective agreements (i.e. not only provisions of broader national (interindustry), territorial and industrial (production, service, professional) collective agreements, but also provisions of employer level collective agreements) and other provisions of labour law that apply to the regular staff of the temporary work user enterprise.

The collective agreements made and effective in Lithuanian companies are available on the official website:

<https://socmin.lrv.lt/lt/paslaugos/administracines-paslaugos/kolektyviniu-sutarciu-registras-ir-kolektyviniu-sutarciu-registravimo-tvarka>

(ii) A temporary employment agency shall ensure that the remuneration of temporary workers for work at a temporary work user enterprise should be no lower than remuneration that would have been paid to them if the temporary work user enterprise had employed the temporary worker under an employment contract for the same job, except where temporary workers working under a temporary employment contract with an indefinite term receive remuneration from the temporary employment agency between assignments, and the amount of that remuneration between assignments is the same as during the assignments. The employing undertaking bears auxiliary responsibility for fulfilling the duty to pay the temporary agency worker for the work performed for the temporary work user enterprise and such remuneration shall be at least as much as the remuneration paid if the temporary work user enterprise had hired the temporary worker under an employment contract at the same workplace. In addition, the temporary work user enterprise is required to submit information on the remuneration paid to the workers of specific categories working at the temporary work user enterprise.

Temporary workers have the right to use the temporary work user enterprise's infrastructure intended for work, rest and meeting the needs of the employees (rest areas, dining rooms, child care and transportation services, etc.) under the same conditions as the regular staff of the temporary work user enterprise, except in the cases when different conditions are justified by objective reasons.

(iii) Temporary work user enterprises (operating in Lithuania) must notify the temporary employment agency about the above working conditions and remuneration. In case a temporary worker is transferred to another country (where a temporary worker posted in the Republic of Lithuania will be posted to another country in order to provide services of the undertaking), the temporary work user enterprise must notify the temporary employment agency before the start of the scheduled work in another country. In such a case, it shall be considered that the temporary employment agency has posted such worker on the territory of another (third) country.

(8) Conditions of workers' accommodation, where provided by the employer for workers away from their regular place of work – a new guarantee for posted workers set out in the Revised Posting of Workers Directive. In such a case, the employer shall ensure to posted workers the same accommodation conditions as required by national law or practice to the regular staff of the company when sent to a different location.

In **Lithuania** – the temporary residential premises provided to employees by employers due to workplace mobility must meet the minimum requirement of comfort and hygiene. Such requirements are established in the Regulations on Setting up Workplaces at Construction Sites as approved by the Minister of Social Security and Labour and in other legislation regulating hygiene requirements for residential premises.

Premises for workers' rest areas and/or accommodation at construction sites: taking into consideration a long distance from the place of residence to the construction site, the nature of work and the number of workers, rest areas and/or accommodation must be easily accessible to workers; taking into consideration the number of workers, such premises should be spacious enough and furnished with a proper number of tables and chairs; residential premises for worker accommodation with the exception of those reserved for exceptional cases must be equipped with a proper number of sanitary installations, with a dining room and a rest area; the residential premises must be equipped with beds, cabinets, tables and chairs based on the number of workers; when allocating accommodation, female and male needs have to be taken into account; rest areas and/or residential premises must ensure protection of non-smokers against tobacco fumes.

(9) ***Allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons*** – the employer shall reimburse the travel, board and lodging expenses for a posted worker in accordance with legal acts and/or practice applicable to employment relations in the home Member State. The amounts payable (or the expenses reimbursable) by the employer in relation to travel, board and lodging expenses are not regarded as part of the remuneration. They shall be paid or reimbursed in addition to the salary.

In **Lithuania** – if workers incur additional expenses (transportation, travelling, accommodation, etc.) during a mission, employers must compensate them. If a mission lasts longer than one workday (shift) or if a worker is posted abroad, workers must be paid daily allowances. Daily allowances shall be calculated based on the approved maximum daily allowances or lower daily allowances if lower allowances are stipulated in the collective bargaining agreement or employment contract. The daily allowances provided for in the collective agreement or employment contract may not be less than 50% of the maximum daily allowances approved by the Government of the Republic of Lithuania.

If workers are sent on a mission in the Republic of Lithuania for more than one workday or sent abroad, they shall be paid expenses for the mission: the daily allowance rate within the Republic of Lithuania is EUR 15/calendar day; the maximum accommodation rate within the Republic of Lithuania is EUR 140/day; transportation expenses and other mission expenses (e. g. car parking fees, local fees, event registration fees or event ticket expenses, etc.) are paid according to the invoices submitted.

When going on a mission abroad, the daily allowance for the day of the mission and accommodation rate when the worker leaves the Republic of Lithuania shall be calculated based on the rate in the destination country. See more: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.232345/asr>

Important !!!

The posting employer shall ensure non-discriminating working conditions to the worker compared to those guaranteed to the regular employees of the host country. That means that a posted worker is actually subject to the labour law of the country of his/her permanent employment (the employment contract with his/her permanent employer remains in force during posting) as well as to the legal acts of the country where he/she has been posted for work. If legal regulation differs, the employer shall ensure the most favourable working conditions for the employee.

4.2. Information to posted workers

In accordance with Article 4 of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, before posting an employee to work in another state, the employer shall provide the following written information:

- (i) the duration of the employment abroad;
- (ii) the currency to be used for the payment of remuneration;
- (iii) where appropriate, the benefits in cash or kind attendant on the employment abroad;
- (iv) where appropriate, the conditions governing the employee's repatriation.

It should be noted that Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union must be transposed into national law by 1 August 2022 (this Directive will replace the above-referred Directive 91/533/EEC) and, in accordance with its Article 7, before posting an employee to work abroad, the employer shall provide him/her with written information about:

- (i) the country or countries in which the work abroad is to be performed and its anticipated duration;
- (ii) the currency to be used for the payment of remuneration;
- (iii) the remuneration to which the worker is entitled in accordance with the applicable law of the host member state;
- (iv) where applicable, the benefits in cash or kind relating to the work assignments;
- (v) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;
- (vi) the link to the official national website developed by the host member state containing information about the rules of labour law applicable to posted workers;
- (vii) information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.

Important !!!

It is the posting employer who shall find out what working conditions and guarantees should be applied in the host country. That is your obligation. You have the right to get all the information necessary from your business partners, representatives of the company where you send your workers. In the case of posting of temporary workers, the receiving employer must be active and supply you, as the posting employer, with all the relevant information.

Under Article 5 of the Enforcement Directive 2014/67/EU, host Member States have the obligation to create and maintain updated a national website containing the information on the terms and conditions of employment applicable to workers posted to their territory. This information must be made generally available free of charge, in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means and in formats and in accordance with web accessibility standards that ensure access to persons with disabilities. The website should include, where possible, links to existing websites and other contact points, in particular, the relevant social partners. Each EU Member State shall have at least one contact point to provide detailed information on the posting of workers abroad. Such contact points shall also cooperate and exchange information, monitor working conditions during posting and take subsequent actions if any violations of the rules are suspected. Links to the contact point of a specific country and its information are available here: http://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

In **Lithuania** – the State Labour Inspectorate is responsible for the provision of information about the working conditions applicable to the workers posted to Lithuania. All necessary and relevant information as well as contact details of the persons who can provide you with additional information or help are available on the website of this institution: https://www.vdi.lt/Forms/Tema_Eile.aspx?Tema_ID=73

4.3. Social partnership and collective bargaining

Although the Directives on posting do not directly obligate social partners – trade unions and employer organisations – to participate in the processes relating to posting, their role is, nevertheless, very important.

Posted workers may request information and advice from trade unions both in the company of their permanent employment and in the host company. The activities and the degree of engagement of trade unions in separate states and even in individual companies differs considerably. Do not be surprised if there is no trade union active in a company. In such a case, seek contact with trade unions operating on the industry, territorial or even national level. Contact details of trade unions are normally available on the internet and you should search for them. You may also look for information and contact details on the website of the trade union active on the European Union level: <https://www.etuc.org/en>

In **Lithuania** trade unions function on the company, industry, territorial and national levels. Information about the trade unions operating in companies and the contact details of their representatives is available on the websites of companies. If you cannot find such information, ask your colleagues you will work with during posting.

There are many trade unions and employer organisations active on a higher than corporate level in Lithuania. Leading trade unions and employer organisations:

(i) Representatives of trade unions:

Lithuanian Trade Union Confederation: www.lpsk.lt
Lithuanian Trade Union Sandrauga: www.sandrauga.lt
Lithuanian Trade Union Solidarumas: www.lps.lt
Lithuanian Industry Trade Unions' Federation: <https://pramprof.lt/en/>
Lithuanian Service Workers Trade Union: www.lpsdps.com
Lithuanian Trade Union Alliance (road transport domain): www.lvps.lt

(ii) Representatives of employer organisations:

Association Investors' Forum: www.investorsforum.lt
Lithuanian Employers Confederation: www.darbdaviai.org
Lithuanian Confederation of Industrialists: www.lpk.lt
Lithuanian Chambers of Commerce, Industry and Crafts: www.chambers.lt
Lithuanian Business Confederation: www.lvk.lt
Lithuanian Chamber of Agriculture: www.zur.lt
Lithuanian National Road Carriers Association Linava (road transport domain): www.linava.lt
International Transport and Logistics Alliance (road transport domain): <https://www.ttla.lt/>

(iii) Works Councils:

In Lithuania, each company with more than 20 employees elects works councils which are responsible for participation in information and consultation processes with the employer.

Collective bargaining. As required by the Directive, the following collective agreements shall be applied to posted workers (except temporary workers who are subject to all the collective agreements effective in the host company):

- those which have been made universally applicable by the competent national authorities;
- those which are generally applicable to all similar undertakings of the geographical area, profession or sector concerned or which have been concluded by the most representative social partners at national level and which are applied throughout the national territory. Such collective agreements shall be applied where:
 - national undertakings in a similar position are subject, in the place in question or in the sector concerned, to the same obligations as cross-border undertakings;
 - national undertakings are required to fulfil such obligations with the same effects as cross-border undertakings.

The host country shall determine which collective agreements meet the above-referred criteria and should be applicable to posted workers. This information must be published on the single official national website containing information about the working conditions applicable to posted workers. The Member States, however, have no obligation to publish the texts or summaries of such collective agreements. Therefore, do not avoid contacting not only the employer but also trade unions, in particular those which operate in the country of the host employer, on this issue in each specific case.

Lithuania does not have a system for proclaiming collective agreements as universally applicable. At present, there are no national (interindustry), territorial and sectorial (production, service, professional) collective agreements or individual provisions of extended application. The provisions of employer-level collective agreements shall only apply to temporary workers and only to the extent that is necessary to ensure the application of non-discrimination principle for those workers.

Do you know that?

The posting employer may be approached by the trade unions of the host Member State to engage into a collective bargaining on working conditions for the posted workers. Therefore, Directive 2014/67/EU allows the host Member State to require the designation of a contact person through whom the relevant social partners may seek engagement in collective bargaining within the host Member State.

4.4. Do you know that?

The workers posted for temporary employment to another EU Member State continue using the social security system of the country they have been employed before posting – pay social insurance contributions and are entitled to social security benefits.

The employee posted to another EU Member State normally retains social insurance in the country of his/her permanent employment provided that the period of posting to another state does not exceed 24 months and provided that the employee has not been posted to that state in order to replace another employee.

The employer who posts an employee for work in another state must request a special Certificate A1, which is issued by the social security authority of the country where the employees have insurance. Certificate A1 confirms that the posted employee has been registered in the social security system of the employer's country and that he/she does not have to pay any contributions in the host country.

Certificate A1 confirms that the employee temporarily employed in another Member State has insurance in the country where the company of his/her permanent employer has been registered and where he/she has permanent employment.

Certificate A1 is not, in itself, a permit to post an employee. It only confirms that the posted employee continues participation in the social security system of the state of his/her permanent employment.

Important !!!

Certificate A1 shall in all cases be the responsibility of the employer who sends out a posted employee. In the meantime, Certificate A1 is issued in paper format, one copy whereof is normally given to the employee.

The authority which issues Certificate A1 in Lithuania is Vilnius Office of the State Social Insurance Fund Board. More information: <https://www.sodra.lt/lt/situacijos/a1-pazymejimu-isdavimas-ES>.

Medical assistance. Medical assistance. If medical assistance is necessary in the host country, the posted worker can get it in the same way as any other worker of that country. The costs of medical assistance shall be paid by the country where the person has health insurance.

4.5. COVID-19 and posted workers

After the outbreak of the COVID-19 pandemic, the European Commission outlined the relevant information for mobile workers – “COVID-19 information for frontier workers and posted workers”.¹ As far as posted workers are concerned, this document notes that irrespective of the COVID-19 situation, all employment guarantees for posted workers continue to apply during posting. However, all posted workers must comply with the restrictions imposed in the host country as a result of COVID-19 (for example, isolation, remote work, etc.).

COVID-19-related restrictions in Lithuania – Lithuania declared national emergency from 1 July 2021.

1) Arrival from abroad: In accordance with the Resolution of the Government of the Republic of Lithuania declaring a state of national emergency No. 152, the crossing of the state border is restricted by prohibiting foreigners from entering the Republic of Lithuania. This prohibition does not apply to, inter alia:

(i) citizens of the European Economic Area, the Swiss Confederation, the United Kingdom of Great Britain and Northern Ireland, the Principality of Andorra, the Principality of Monaco, the Republic of San Marino and the Holy See (Vatican City State), of the countries, which are included in the EU-level list of third countries, for the residents of which temporary restriction on non-essential travel to the EU should be lifted at external borders, and persons lawfully residing in these countries;

(ii) crew members, who are employed in Lithuanian companies engaged in international commercial transportation, or who carry out international commercial transportation by all the means of transport, also seafarers;

(iii) health professionals arriving into the Republic of Lithuania for the provision of health care services; (iv) foreigners holding a long-stay national visa issued by one of the Schengen States applying the Schengen acquis in full and going to the Schengen State which issued the long-stay national visa; (v) family members traveling with or joining the citizens of the European Union, the European Economic Area or Switzerland (spouse, person with a registered partnership agreement (hereinafter „partner“), direct descendants or dependents under the age of 21, including the descendants or dependents of the spouse or of the registered partner, direct dependent relatives in the ascending line, including relevant relatives of the spouse or of the registered partner);

(vi) foreigners holding a medical document, a country-specific vaccination certificate, an international vaccination certificate or an European Union digital COVID certificate prepared in accordance with the requirements of the European Commission confirming the full vaccination with one of the COVID-19 vaccines (COVID-19 Vaccine Janssen, Comirnaty,

¹ 30 Kovo 20201 #coronavirus: https://europa.eu/youreurope/citizens/files/Covid_FrontierPostedWorkers_en.pdf

Spikevax, or Vaxzevria) under the vaccination schedule approved by the competent authority of the country where the vaccination was carried out (the documents specified in this sub-paragraph must be provided in one of the official languages of the European Union), if at least 14 days have elapsed since the vaccine dose for COVID-19 disease (coronavirus infection) has been administered and the person has been vaccinated.

2) **National Certificate** (Covid passport): from 13 September 2021, all contact services and economic activities are carried out and events organised (except for the established exceptions) only for persons who meet the criteria set by the National Certificate. Only persons who can present a valid National Certificate are able to receive contact services.

3) **Protective face masks:** As of 1 October 2021, face masks are required indoors (in trade and service provision points, institutions, companies, or organisations, at work and in education, during events, etc.), regardless of whether the activities are carried out with or without the National Certificate. Reasonable and proportionate exemptions (e.g., when eating, singing, exercising, etc.) are allowed by decisions of the Commander of Operations. Medical face masks or respirators are mandatory.

Information about COVID-19 situation is changing very often, therefore, it is advisable to check the most recent and relevant information here: <https://koronastop.lrv.lt/en/covid-19-related-restrictions-1>

5. Inspections by competent authorities

The Enforcement Directive (2014/67/EU) states that coordination between the Member States' competent authorities and cooperation at European level on combating fraud relating to the posting of workers should be strengthened. The Directive aims to improve the implementation and enforcement of Posting of Workers Directive in practice by setting a framework for measures and control mechanisms. The Enforcement Directive aims to improve the implementation, application and enforcement of the Posting of Workers Directive. For this purpose, the Internal Market Information System (IMI) is used. IMI plays a key role in supporting the strengthened administrative cooperation underpinning the Directive.

Important !!!

The internal market information system (IMI) may be used only by registered users, i.e. only by representatives of competent national authorities.

General principles for mutual assistance of the Member States' competent authorities are described in Article 6 which also introduces legal deadlines for replying to information requests. Article 7 describes the roles of the host Member State and the Member State of establishment in the framework of administrative cooperation. To help ensure enforcement, Chapter VI of the Directive foresees mutual assistance between authorities, where needed, to notify decisions and recover administrative penalties and/or fines, through what is referred to as a uniform instrument generated via the IMI system.

The European Labour Authority (ELA) also takes part in the control of the posting of workers, coordination of cross-border cooperation and joint inspections. The ELA aims to facilitate information about workers' rights and support cooperation between Member States in cross-border enforcement of relevant Union law. For more about ELA, read: https://www.ela.europa.eu/sites/default/files/2021-07/LT_Guidelines-for-concerted-and-joint-inspections.pdf

In **Lithuania**, compliance with labour laws, including in case of posted labour, is controlled by the State Labour Inspectorate. The State Labour Inspectorate:

- (i) inspects whether there are no breaches of the rights and guarantees of the workers posted to the Republic of Lithuania;
- (ii) carries out the monitoring of posted labour;
- (iii) carries out the control of accommodation space of seasonal and posted workers;
- (iv) carries out the control and prevention of illegal and undeclared work by foreigners.

Inspections of the workers posted to Lithuania are carried out on the initiative of the State Labour Inspectorate; inspections of Lithuanian companies that post their workers to other Member States are carried out at the request of foreign competent authorities. A decision on the genuine posting is made only with respect to the workers posted to Lithuania.

For more see: https://www.vdi.lt/Forms/Tekstas1.aspx?Tekstai_ID=30

6. Sanctions

Directive 2014/67/EU imposes on Member States to put in place appropriate and effective checks and monitoring mechanisms, on a non-discriminatory and proportionate basis. It also provides that Member States must have in place penalties applicable in the event of infringements of national provisions adopted pursuant to the Directive and must take all the necessary measures to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive.

In **Lithuania**, liability for infringements of the working conditions of posted workers is provided for in the Code of Administrative Offences of the Republic of Lithuania:

- (i) failure to communicate information about the work conditions applicable to a posted worker to the territorial division of the State Labour Inspectorate under the established procedure subjects the employers or other responsible persons to a fine from 360 to 660 euros (or from 720 to 1320 euros, if committed repeatedly);
- (ii) failure to apply or improper application of guarantees to posted workers entails a fine from 420 to 900 euros (or from 900 to 1680 euros, if committed repeatedly).

7. More information

1. European Commission official information on Posted Workers:

<https://ec.europa.eu/social/main.jsp?catId=471>

2. National liaison offices and authorities: https://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

3. State Labour Inspectorate of the Republic of Lithuania:

https://www.vdi.lt/Forms/Tema_Eile.aspx?Tema_ID=73

4. Posting of workers before national courts:

https://www.etui.org/sites/default/files/202101/Posting%20of%20workers%20before%20national%20courts_2020.pdf

5. The international project STEP UP – “Stepping up the European cooperation and communication among Public & Private organizations for the PROTECTION of posted worker’s rights”: <https://stepup-protection.com/about-project/>

This copy is free

Sole responsibility lies within authors. The European Commission is not responsible for any use that may be made of the information contained therein.



ȘCOALA NAȚIONALĂ DE STUDII
POLITICE ȘI ADMINISTRATIVE



UNIVERSIDADE
CATOLICA
PORTUGUESA



UNIVERSIDAD
DE GRANADA



Vilnius
University



Funded by
the European Union