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GMS Flash Alert

2017-015 | January 25, 2017

France - New Penalties If Audits Find Employees without Certificates of Coverage

As part of the effort to prevent fraud in relation to the cross-border posting rules, Article 27 of the French Social Security Financing Act for 2017[1] institutes a procedure for auditing the situation of posted assignees.

Certificates of Coverage showing affiliation to the home-country social security system must be kept available for inspection; non-compliance will be subject to a financial penalty, which will apply as of 1 April 2017.

WHY THIS MATTERS

It is essential that employees going on international assignment in France have a Certificate of Coverage issued to them by their home country's authorities prior to their departure to France. If an audit should occur and the foreign employee, or the employer or the representative of the employer in France, is unable to present a valid Certificate of Coverage ("CoC"), then under the terms of the new social security financing law, penalties and sanctions could apply. Furthermore, this could bring unwanted attention to the company or companies responsible for the audited person's employment.

Background

Under the provisions of the social security agreements that France has signed with countries outside the European Union (EU), individuals may remain covered by their home-country social security systems for the length of time specified in the agreement. Similar provisions exist under EU Regulation 883/2004, which provide that individuals may remain affiliated to their home-country social security scheme, so long as their assignment does not exceed a period of 24 months.

In practice, a foreign employee who performs activities in France while remaining covered by another state's social security legislation must keep available (or, failing which, his or her employer or the employer's representative) for the French Labor Inspectorate's audit officers, at the place where the employee performs his or her work (e.g., a construction site), the CoC showing which social security legislation is applicable to the employee.

Social Security Finance Law Authorizes New Penalties

Any failure to produce the requested CoC and related document(s) during an audit will entail a penalty payable by the principal or the project owner and collected by Urssaf (French social security collection agency). This penalty is set (for each foreign employee) at the amount of the monthly social security ceiling in force, i.e., €3,269 in 2017. The amount of the penalty is doubled in the event that a new infringement occurs within two years of notification of the penalty concerning a first infringement.

The penalty will not apply if, during the audit, a document is produced attesting that the CoC has been requested. The production of the Certificate must follow within two months of the audit.

FIDAL NOTE

Employers are encouraged to make the relevant application for a CoC early – in any case, prior to sending individuals to France – and to seek advice on how to remedy situations of non-compliance.

The introduction of a penalty for failure to produce a valid CoC should be seen in the wider context of the fight against fraud and, in particular, the requirement to declare the posting of employees to France to the French Labor Inspectorate.

FOOTNOTE:

1 For the social security finance law for 2017 (*le projet de loi de financement de la Sécurité sociale 2017*) (in French), see the website for the *Service Public de la Sécurité Sociale* at: http://www.securite-sociale.fr/LFSS-2017.

Or, for the same law, Act no. 2016-1827 of 23 December 2016, known officially as *Loi n° 2016-1827 du 23 décembre 2016 de financement de la sécurité sociale pour 2017* (published in the *Journal Officiel* n°0299 du 24 décembre 2016), see: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033680665&categorieLien=id.

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Watch the latest GMS video "The Importance of Certificates of Coverage When Sending Employees Overseas"!

In this video, featuring Bob Rothery and Stacy Finch with the KPMG LLP (U.S.) Global Mobility Services practice, we delve further into the nuts and bolts of social security totalization agreements and learn about certificates of coverage, the "detached worker rule," the application of home versus host country social security rules, in general, to different kinds of assignments, and respective employee and employer obligations and responsibilities. See: "The Importance of Certificates of Coverage When Sending Employees Overseas," from KPMG's GMS practice (app. 8-1/2 minutes).

Contact us

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