



GMS Flash Alert

Immigration Edition

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France - New Rules on Seconding Employees and Stricter Anti-Fraud Provisions

France's Law "for the choice of the professional future" contains certain provisions on secondments.¹ The new law aims to advance the fight against illegal work and increases penalties for illegal secondments in France.

In addition, it proposes adjustments to employers' obligations. To clarify, an employer that seconds an employee to France for a temporary period has two obligations:

- It must declare the secondment on a specific website of the French ministry (called "SIPSI"), and
- It must appoint a representative of the foreign company during the assignment of the employee.²

These two obligations are mandatory in respect of European and non-European nationals, regardless of applicable rules about work and residence permits for non-European nationals.

WHY THIS MATTERS

In an effort to root out fraud and illicit work, the French authorities are increasing their scrutiny of secondments to France. Stricter rules and more onerous administration are now in effect and stiffer penalties will apply to employers and their employees that do not adhere to the rules. However, some relief is available in the form of exemptions and case-by-case exceptions.

The rules can be complicated, and affected parties should be consulting with their labor law and immigration attorneys, as well as their global mobility advisers.

New Requirements

I. The Modified Rules Concerning Secondment of Employees to France

1. Exemptions for pre-secondment declarations and the letters of the representative of the foreign company.
 - a) In the case of a secondment for an operation on the employer's behalf, when there is no agreement between the employer abroad and the beneficiary of the services in France, the employer is no longer required to declare the secondment and to draft the letter of appointment of a representative (article L1262-2-1 amended of the French Labor Code) – for example, in situations such as meetings, follow-up of production, visits to explore new markets, etc. This exemption is applicable from September 7, 2018.
 - b) In the case of a short secondment or of specific activities during the secondment (for example, sports, cultural activity, participation in fairs), the two above-noted mandatory obligations will no longer be required (new article L1262-6 of the French Labor code). (The professionals at Fidal are awaiting a text of application which will determine the activities and the length of the activities concerned. We do not know at this stage the length of a "short" secondment.)
2. A company that regularly seconds employees to France may ask the French administration to adapt the two mandatory obligations of a pre-secondment declaration and the letter of a representative (new article L1263-8 of the French Labor Code).

The adaptations will be authorized for one year provided the employer respects the legalities and bargaining agreement rules regarding the assignment. The authorization may be renewable. (A decree of application will determine the nature of the adaptations possible.)

II. Stricter Rules and Penalties to Fight against Fraud

Administrative fines are doubled for the employer or for the beneficiary of the services in cases where there is no pre-secondment declaration and letter of appointment of a representative. The amount of the fine is EUR 4,000 per employee. In case of repeat offences taking place within a two-year period, the amount is EUR 8,000 per employee (before the new law, it was "within a one year period").³

Other measures are planned such as the publication on a specific website (for a duration of one year) of the employer's conviction.

In addition, the banning of services for a period of two months may be decided if a company liable for fines has not paid the sums due. The administration will decide when the services may continue once the fines are paid.

The penalties are applicable starting September 7, 2018.

FOOTNOTES:

1 For the "Loi pour la Liberté de Choisir Son Avenir Professionnel." For the Loi n°2018- 771 dated September 5, 2018, published in France's Official Journal (*Journal Officiel*), Septembre 6, 2018, click [here](#).

Alternatively, click [here](#) for additional information.

For the text and status of the law on the Senate's Web site (in French), click [here](#).

2 The representative is a person based in France, most of the time working in the HR department of a company based in France. The representative must be able to communicate with the French administration and provide documents regarding the assignment and assignee upon request. He or she is appointed for the duration of the secondments.

3 Article L1264-3 as amended of the French Labor Code.

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