

GMS Flash Alert

Immigration Edition

2020-296 | June 25, 2020



Poland - New Rules for Posted Workers under Consideration in Parliament

New legislation has been proposed that would set Poland's national framework governing posted workers.

On 15 June 2020, Poland's parliament, the Sejm, published on its website a bill amending the Act on the posting of workers in the framework of the provision of services and certain other acts transposing the provisions of 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.¹

The bill's measures are expected to enter into force on 30 July 2020.

WHY THIS MATTERS

The amendments refer primarily to the rules on remuneration of posted workers and the period of posting. Their goal is to establish a common framework of provisions, measures, and control mechanisms for more efficient and uniform action in the field of posting of workers.

This legislation should help employers and their posted workers make more sense of the rules and thereby foster compliance.

Period of Posting

The currently applicable regulations on the period of posting have not imposed any heavy restrictions, especially on posting duration; they only assumed that posting is temporary. However, under the amended provisions, the period of posting was limited to 12 months.

After 12 months, posting will still be possible, but the posted workers must be guaranteed an additional set of terms and conditions of employment that are mandatorily applicable to workers in the member state where the work is carried out.

It should be kept in mind that this will not apply to procedures, formalities, or the conditions of the conclusion and termination of an employment contract – that includes non-competition clauses as well as supplementary occupational retirement pension schemes.

Under the amendments, the maximum posting period may be extended to 18 months, as long as the service provider submits a “motivated” notification. In other words, there will be a need to prepare a notification for the Polish Labour Agency with the indication that a period of assignment is being prolonged from 12 to 18 months. The duration of the posting shall also cover the period for which the posted worker is replaced by another posted worker performing the same task at the same place.

After the end of the posting period the status of “posted worker” shall be equivalent to the status of “local worker.” Moreover, under the “principle of advantage,” the mandatory domestic rules of the host state shall not prevent application of the terms and conditions of employment in force in the posting state that are more favourable to workers.

Equality of Treatment

Other amendments introduced by the bill include changes to applicable legal provisions on protections for parents and related rights, the right or freedom to strike, rest periods, days off work, paid leave, hours of work and rest periods for adolescent workers, as well as pay – including overtime pay – health and safety regulations, child labour, and illegal work, as well as reimbursement of expenditures to cover travel (including business trips), and board and lodging expenses.

Changes in Rules Regarding Remuneration of Posted Workers

The amendments introduced by the bill intend also to ensure equality of treatment in terms of remuneration. In other words, a posted worker shall be remunerated on the same terms as the comparable permanent worker is in the host State (“equal pay for equal work”).

The requirement of equal pay for equal work is associated with the obligation on the member states to provide information on remuneration laid down by laws, industry, and regional collective agreements, and with the possibility of verifying market benchmarks by employers.

This amendment is of essential importance to remuneration schemes, since up to now posted workers were paid based on minimum rates applicable in host member states.

Role of the National Labour Inspectorate

With the introduction of the new provisions, the powers of the National Labour Inspectorate have been beefed up. Under the new regulations, the authority shall assume the function of a liaison body responsible for cooperation with competent authorities from other member states in terms of providing information on the conditions of employment of workers posted to Poland, reporting irregularities and offenses related to the posting, requesting inspections, and carrying out controls at the request of authorities of other member states, etc.

KPMG NOTE

The new provisions may pose a challenge to Polish companies in terms of implementation of new administration and logistical procedures. Moreover, due to the coronavirus pandemic some of the EU states are still struggling to complete legislative processes related to implementation of the new provisions. Another difficulty is the fact that the changes take place in the middle of the year.

FOOTNOTE:

- 1 For text of the legislation and related documentation (in Polish), see:
<http://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=20DF10820D1E4601C125858C0037D733> .

* * * *

GMS Flash Alert is on “summer holiday” Monday, 29 June through Friday, 3 July. There will be no **Flash Alerts** published during this time. Usual publication will resume on Monday, 6 July. Thank you for your continued support of **GMS Flash Alert!**

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Poland:



Andrzej Marczak
Partner and GMS Country Leader
Tel. + 48 22 528 11 76
amarczak@kpmg.pl

Mateusz Kobyliński
Partner
Tel. + 48 22 528 11 91
mkobylinski@kpmg.pl

Grzegorz Grochowina
Senior manager, Tax
Tel. + 48 12 424 94 90
ggrochowina@kpmg.pl

* Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.

The information contained in this newsletter was submitted by the KPMG International member firm in Poland.

© 2020 KPMG Tax M Michna Sp.K, a Poland limited company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint ventures. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.