

## Regulatory Aspects:

### 1. What situation must a company be in to be able to post a worker to an EU Member State?

For a company established in a Member State of the EU, or the European Economic Area, to temporarily relocate its workers within the framework of a transnational provision of services, it must be in one of the following cases:

- Have a service contract with a recipient operating in another Member State;
- Posting a worker to an establishment or a company belonging to the same group in the territory of another Member State;
- Be a temporary employment agency or a placement agency and post a worker to a user company that is established or carries out its activity in the territory of another Member State.

### 2. What conditions must I meet to be considered a posted worker?

The posted worker is one who “*for a limited period of time, carries out his work in the territory of a Member State other than that in which he normally carries out his activity (Art. 2.1 Directive 96/71)*”

Your **posting** to another Member State is **temporary**, it cannot be done to replace another worker who has completed the maximum posting time **and an employment relationship** (dependency) must be maintained with the company throughout the posting, subject to the following assumptions:

- That the movement is on behalf of and under the direction of the company, executing a contract concluded between it and a company based in the host State or that carries out its activity there.
- That the trip is made to a work center of the company itself or another of the same group.
- That the posting is from a temporary employment agency to be made available to a user company that is established or carries out its activity in the host Member State.

### 3. Can my employer send me to work temporarily in another EU Member State? In that case, what are my employment conditions and rights?

Yes, your employer can send you to work temporarily in another EU country.

During this period, you will acquire the status of posted worker and will benefit from the same basic working conditions and rights as workers in your host country.

A post can be as long as necessary to complete a specific task. When you have completed your shipment, you must return to your place of work in the EU country from which it was sent.

During that time, your working conditions will be governed by the terms and conditions of employment of your host country if they are more advantageous than those of your home country. These conditions and terms of employment relate to:

- **All basic elements of remuneration** defined in national legislation or in collective agreements of universal application.
- Subsidies or **expense reimbursement to cover travel, subsistence, and accommodation expenses** in the host country during the posting (if you must travel during the posting assignment)
- **Maximum work periods**
- **Minimum rest periods**
- **Health and Safety at Work**
- Conditions for recruiting workers, in particular through **agencies providing temporary staff**
- Conditions of employment for **pregnant women, women who have recently given birth and young people** (under 18 years of age)
- **Equal treatment** for men and women and other rules to **prevent discrimination**
- **Accommodation**, if provided by your employer

Additionally, while you are posted to another EU country:

- You **will not need a [work permit](#)** - unless you are informed from Croatia to Austria, where restrictions apply in certain sectors
- You **will not have to have your [professional degrees](#) recognized** ; However, you may need to make a written declaration for some professions: find out more about the [recognition of professional qualifications](#)
- You **do not need to register with the social security authorities** in the country in which you are posted, as you will remain insured in the country in which you normally work. Therefore, during his assignment he does not accumulate any additional rights to social security, such as pension rights or the right to unemployment benefits, in the country where he has been assigned.
- You **must [register your residence](#)** with the authorities in case your displacement is more than 3 months
- That the right of [permanent residence](#) in the host country **does not accumulate** .

#### 4. If I make a professional trip to attend a specific event, such as a conference, meeting or fair (what are called “business trips”), am I considered a displaced worker?

NO. Workers temporarily sent to work in another Member State, but who do not provide services there, are not posted workers, and are not covered by the Posting of Workers Directive and, consequently, the requirements, protection measures are not applicable to them. control and rights that apply to posted workers.

#### 5. Can a Third Country National move to a Member State?

Yes. A third-country national who legally resides and works in a Member State can be posted by his or her employer to another Member State, under the same conditions as an EU citizen.

The Court of Justice of the EU has made it clear in a series of cases , among them : Van der Elst (C-43/93) or Danieli Officine Meccaniche (C-18/17), which state host members do not have the right to demand a construction site . permit for third party nationals countries displaced by a company established in another Member State .

With regard to the coordination of social security in the EU, the third party nationals countries are covered by he Regulation 1231/2010/EU, as long as they reside legally ( reside and work legally ) in he territory of a Member State and are in a situation that is not limited in all its aspects to a single Member State .

## 6. What differences exist between displaced workers and migrant workers?

The posted worker is one who is temporarily sent by his employer to carry out his work in another territory of a Member State, with the working conditions and basic labor rights of the country to which he is posted.

The posted worker does not need a work permit (\*); nor does he need his professional qualifications to be recognized (\*\*); nor should you register with the social security of the country to which you are traveling; and can only travel to another EU Member State.

The migrant worker can carry out his or her work activity in any State (whether or not it is a member of the EU) in accordance with the free movement of goods, people and capital and the free movement of workers, compliance with the employment requirements demanded in the country where intends to develop his work activity.

(\*).- Except in Croatia and Austria for certain professional sectors

(\*\*).- Although in some countries a written declaration may be required for some professions regarding the professional qualification one has.

## 7. How is my posting, as a worker, communicated to the host country? What information does the employer need to provide?

The company will inform la Autoridad Laboral the host country of the posting of a worker **before the start of said displacement** , stating:

- The identification (address, NIF...) of the company that is posting the worker.
- The personal and professional data of the displaced worker or workers.
- Identification of the company and work center, where the displaced worker will provide services.
- The start date and expected duration of the trip.
- The determination of the work that is going to be carried out in the host State and indication of the type of displacement.
- The identification of the representative designated by the company, in the host country, as a liaison with the competent authorities, for the sending and reception of documents, and as an interlocutor in the information, consultation and collective bargaining procedures of the posted workers.

This communication will not be necessary if the trip is less than eight days, except for **ETTs** , who must communicate, in addition to what is indicated:

- Prove that you meet the legal requirements of your country to assign the worker.
- Specify the temporary needs of the user company to be covered by the provision contract.