The Posted Worker Directive
March 2018

The Posted Worker Directive is an EU Directive concerning the posting of workers from one EU member state to another. Despite it being transposed into Irish law in 2016, Ireland (and other EU member states) are only now beginning to focus on their respective reporting requirements. The underlying principle of the Directive is to ensure that the full range of employee protection legislation applies equally to full-time Irish based employees and to posted workers working in Ireland (similar provisions apply across EU member states). However, general awareness of the law is limited and the penalties for non-compliance can be severe and vary considerably across Europe.

A Posted Worker is defined as a worker who normally works in another EU Member State but, for a limited period, carries out his or her employment duties in Ireland. For example, this would include an employee of a German company seconded to Ireland for a six month period or in its extreme an employee of an EU entity travelling on a business trip to Ireland.

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The Workplace Relations Commission (WRC) must be notified of any posted workers no later than the date that the posted worker commences working in Ireland. A submission must be made to the WRC by the home country employer in relation to each posted worker. Supporting documentation such as a copy of the assignment letter and related tax and social security documentation must also be retained and made available for review by the WRC, if requested. The home country employer may be unaware of its obligations in respect of the EU Directive, and in particular its implementation under Irish law, and as such may rely on the Irish entity to ensure it is compliant.

To date the WRC has not confirmed any minimum threshold of days which will be applied and therefore a submission must be made for any business trip or posting to Ireland no matter how short. However, if a posted worker is expected to have a number of business trips to Ireland a separate submission is not required for each trip; one submission can be made to cover all business trips in a specific period, e.g. annually.

It should be noted that failure to comply is an offence and can result in a fine of up to €50,000 in Ireland. Reputational damage from non-compliance is another serious factor to consider and to date the main area of concern is in relation to late submissions. While the WRC acknowledges that companies are only now becoming aware of their obligations we recommend that submissions are made for all current and future postings, while being mindful that the WRC may insist that submissions be made for all prior Posted Workers from 28 July 2016 to date.

The issue of posted workers is an area of ongoing focus within the EU with further developments likely. It is possible that legislation will be enacted to ensure equal pay for equal work for temporary workers, such legislation may be provided for under the Third Posted Worker Directive however this has yet to be enacted. Currently the law ensures only that minimum wage requirements are met.

While this alert focuses on the submissions that must be made to the WRC in Ireland by foreign employers, Irish employers similarly are required to make submissions to foreign authorities for Posted Workers employed by the Irish company who are temporarily working in other EU Member States. The obligation to make the submissions in the overseas jurisdictions rests on the Irish company. Penalties for non-compliance in the host jurisdiction are likely to apply and the Irish company would be liable for these.

At EY we have an international network of experienced specialists who assist companies on a daily basis with their Cross-Border Workers. We can assist you in determining if you have posted workers, making the submissions to the WRC and their overseas equivalent. We can also assist in reviewing your practices to ensure your company is fully compliant.

Please contact Sinead Langan (sinead.langan@ie.ey.com) or Colin Spence (colin.spence@ie.ey.com) with any queries or a member of our EY People Advisory Services team for further information. Our contact details are listed above.
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