Executive summary
Over the last few months, the French government has issued several new regulations, impacting the secondment of foreign workers to France. Overall these require that employers ensure that remuneration for posted workers is aligned with French compensation as a whole. Furthermore, employers must ensure that certain administrative process are followed for such individuals. The relevant regulations are:
► A French law of 5 September 2018 relating to the freedom to choose a professional future.
► A French law of 10 September 2018 relating to controlled immigration, effective asylum and successful integration.

Failure to comply with these regulations can, in certain discrete circumstances, result in an organization not being allowed to post workers to France.

Background
A posted worker is defined as an employee who:
► Works for a company regularly established and performing or exercising its activities outside of France; and
► Commonly works outside of France on behalf of this employer; and
► Carries out their work at the employer’s request on the French territory for a limited period of time.

New rules surrounding the posting of foreign workers to France
An employer based outside of France may temporarily post employees to France under the conditions that there is an employment contract between the employee and the employer which remains in force during the posting period, and provided the posting is under one of the following circumstances:
► Scenario 1: for the benefit of the employer and under its direction in the context of a services provision agreement between the employer and the beneficiary of these services in France.
► Scenario 2: in the context of an intra-group transfer (“ICT”).
► Scenario 3: for its own benefit, without any services agreement with an entity in France.

Directive EU 2018/957 of 28 June 2018 amending Directive 96/71/EC relating to the posting of workers in the framework of the provision of services
Entry into force
Member States have until 30 July 2020 to transpose the provisions of the Directive into national law. France has not yet transposed this EU Directive into French domestic law.

Scope
The EU Directive concerns all types of postings detailed above, EU and non-EU nationals and employers based in the EU or in a third country.
**Key changes**
Where a posting exceeds 12 months (or 18 months, where applicable), all terms of French labor law will apply to posted workers, rather than just the mandatory minimum protection provisions of French employment law specific to posted workers. The only exceptions are the rules regarding the conclusion of the employment contract, the non-compete clauses and the complementary retirement scheme.

Posted workers’ compensation should be aligned with French compensation as a whole, and not simply with the French minimum wage. Remuneration means all the salary components rendered mandatory by national law, regulation, administrative provision, collective agreements or arbitration awards (the individual or contractual provisions are excluded).

**French law of 5 September 2018 relating to the freedom to choose a professional future**

**Entry into force**
7 September 2018.

**Scope**
All workers, regardless of nationality, employed by a company based outside France who are temporarily posted to France.

**Background**
Foreign employers seconding employees to France must comply with several requirements, which include:
- Performing a preliminary posting declaration (“déclaration préalable de détachement”).
- Appointing a representative in France to liaise with the French labor authorities on the employer’s behalf in the event of an audit.
- Keeping specific information and documents.

**Key changes**
The definition of a posted worker is specified (the usual work for an employer based outside of France, has to be performed outside of France).

The requirements when posting workers to France are waived for:
- Employers seconding employees to France for their own benefit, without any services agreement with an entity in France (scenario 3 above), irrespective of the duration of the secondment, such as work meetings, training, commercial prospecting, filming or business trips.
- Very short assignments or one-time events for specific activities. At the time of writing the application decree clarifying the scope of exemptions (a list of activities and the length of the exemption) has not yet been published. This could notably include participation in seminars, fairs and exhibitions, artistic or sports activities.
- Recurring secondments, where, upon employer’s request, French labor authorities are entitled to alleviate administrative obligations for a renewable one-year period (the nature of the arrangements will be clarified in an application decree to be published).

There is an increase in the administrative fines applicable to employers who fail to comply with the requirements surrounding the posting of workers, such as the failure to submit the posting declaration or to appoint a representative in France. The foreign employer and the French host company can both be liable to an administrative fine amounting to €4,000 per posted worker and by breach (€8,000 in the case of a repeated offence), capped at €500,000.

The French host company must verify that the foreign employer has duly paid, if any, the fines mentioned above (extension of the originator’s duty of care (« obligation de vigilance du donneur d’ordre »)) and must do so before the conclusion of the secondment contract with an employer based outside of France.

Where the administrative fines are not promptly paid (by the foreign employer or the originator), the labor authority is allowed to order the prohibition of the international service provision and prevent the employer from posting workers to France.

**French law of 10 September 2018 relating to controlled immigration, effective asylum and successful integration**

**Entry into force**
1 March 2019 for provisions relating to posted workers.

**Scope**
Non-EU nationals posted to France in the framework of an intra-company transfer

**Key changes**
The seniority condition for an intra-company secondment (ICT) will change from three to six months for transfers within a group. A cooling-off period of six months outside of the EU is also required between two intra-company secondments to France. The ICT residence permit is issued for a maximum period of three years and is not renewable.
Next steps

Employers will need to factor the revised compensation requirements into their costings when assessing posting employees to France, and should update their mobility policies in light of this.

They must also ensure that the administrative requirements are met for posted workers.

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