



Bulgaria



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A trend toward greater protection of posted workers

The steadily growing appeal of Bulgaria as an outsourcing services destination has boosted workforce inflow and outflow, particularly in high-tech industries. In posting situations, employers commonly grapple with this question: which country's law governs the employment relationship, and what consequences ensue?

Posting of workers to Bulgaria

The parties are free to choose the applicable law, as recognized in both EU and non-EU cross-border employment situations. For the term of the posting, the parties can decide to apply the home country's laws or to subdue their employment relationship to the local legislation of the host country (i.e., Bulgaria), which is sometimes the case in long-term secondments. However, this flexibility is limited by mandatory worker protection rules.

The treatment of inbound EU and non-EU posted workers is being developed on a largely uniform basis. Posted workers, irrespective of whether the employer is based in the EU, are entitled to a set of core rights that replicate and even build on those enshrined in Directive 96/71/EC.¹

However, Bulgarian labor law might envisage less favorable working conditions than the law of the jurisdiction where the employer is established. In that case, the receiving entity must *ensure* the more favorable working conditions for the posted workers and must attest to that before the Bulgarian labor agency. The scope and content of that obligation are not clearly defined either by the law or by the practice of the local labor authorities and courts. But the general view is that it should not extend to covering the difference between the salary levels by the receiving entity, because that remains an obligation of the employer.

¹Directive 96/71/EC on the posting of workers in the framework of the provision of services.

The tendency toward uniform treatment of EU and non-EU workers is also manifested by the statutory requirement not to afford more favorable treatment to non-EU-posted workers than to EU workers sent to a receiving entity in Bulgaria. The legislative rules do not elaborate on whether the assessment of working conditions should be performed at the receiving entity's level or at a more generalized level. However, the first interpretation should be given more credit because there is no publicly available database at the national or regional level.

Posting of Bulgarian workers to EU and non-EU countries

The "conflict of law" rules governing the employment relationship between a worker and an employer based in Bulgaria, *irrespective* of whether the employee is sent to work temporarily in an EU or a non-EU country, are fundamentally the same, and they mirror the rules set forth by Rome I.² The choice of law made by the parties will be respected. However, employees cannot be deprived of worker protections that, in the absence of choice, would have applied.

Only when the posting lasts more than 30 calendar days does the employer have to afford at least the same minimum working conditions as those applicable to employees who perform the same or similar work in the host country, if it's an EU or European Economic Area (EEA) Member State or part of the Swiss Confederation.

This higher standard of protection, however, does not extend to workers sent to a third country. They are protected only within the boundaries delineated by the applicable mandatory Bulgarian labor law provisions, even though the host country's legislation may be more beneficial.

²Regulation (EC) No. 593/2008 on the law applicable to contractual obligations.

Expected changes in the legislative landscape

A Government initiative toward enhancing worker protections is in motion. Although the bill has not been officially submitted to the National Assembly, the fundamental principles underpinning the forthcoming changes are not expected to shift.

One major change is the removal of the "30-day period" mentioned above – i.e., the granting of more beneficial working conditions in the host state should encompass short-term assignments as well.

The legislative proposal reflects the tendency towards expanding the applicability of the host country's rules (not just the minimum standards). However, that applies only to postings in an EU or EEA Member State or in the Swiss Confederation. Furthermore, an employer sending workers to Bulgaria in the framework of provision of services must comply with additional obligations, including submitting information about the posting to the Bulgarian labor inspectorate before the provision of services begins.

New rules for administrative cooperation and control between the competent authorities of the EU Member states are to be implemented by the end of the year, in compliance with the Directive 2014/67/EU³. Another important change is the introduction of joint liability for the main contractor and its subcontractor for unpaid employment-related remuneration owed to workers.

³Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

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