



Mobility: tax alert

February 2020

Netherlands

Dutch Posted Worker notification requirements

Executive summary

Following the Dutch implementation of the European Posting of Workers Directive ('the WagwEU') a duty to notify temporary posting of workers to the Netherlands applies as of 1 March 2020. All required notifications should be made prior to the posting.

The obligation applies to employers in respect of temporary posted workers starting their activities in the Netherlands as of 1 March 2020. There is no (retroactive) duty to notify any postings commenced prior to this date. Employers from EU member states, another country within the European Economic Area (EEA (Norway, Iceland and Liechtenstein), or Switzerland should notify the Dutch government of temporary posting of workers via the online portal and must do so prior to the start of the activities. For example, a temporary posting of a US national who is employed by a Spanish employer and is temporarily posted to the Netherlands, must be notified to the Dutch authorities.

For self-employed persons the duty to notify only applies when active in so called "High Risk" industries like the construction sector.

Who has the duty to notify?

The employer abroad who is temporary posting workers to the Netherlands has the duty to notify the Ministry of Social Affairs and Employment via the online notification portal. Employers abroad are foreign employers who are:

- ▶ Coming to the Netherlands temporarily with their own personnel to carry out work;

- ▶ Posting workers temporarily from a multinational company to a group entity in the Netherlands;
- ▶ Acting as a foreign temporary employment agency, making temporary agency workers available in the Netherlands, for a certain period of time.

The formal duty to notify the Dutch Ministry of Social affairs and Employment lies with the employer abroad. However, the Dutch group entity or client (i.e. the service recipient) is obliged to verify whether the duty to notify has been satisfied in a correct manner. Upon completion of the notification by the employer abroad, the Dutch group entity or client is informed automatically and is able to review the notification via the online portal. For incorrect or late notifications fines may be imposed both on the employer abroad as well as on the Dutch group entity or client. The exact fines have not been published yet.

How to submit a notification?

Notifications should be made via the online notification portal. The website will already go live 1 February 2020.

A notification should include the following details:

- ▶ Identity of the person making the registration;
- ▶ Company details;
- ▶ Contact person;
- ▶ Identity of the group entity or client (i.e. service recipient);
- ▶ Applicable sector in which the activities in the Netherlands will be performed;
- ▶ Address of the work location in the Netherlands;
- ▶ Expected duration of the work;

- ▶ Identity of the person responsible for payment of the salary of the posted worker;
- ▶ Identity of the posted worker(s);
- ▶ Presence of an A1 declaration and/or any other proof of payment of applicable social security contributions.

The employer abroad needs to appoint a contact person. This contact person must be present in the Netherlands for answering questions about the posting from the Inspectorate of Social Affairs and Employment or to provide additional information during an audit. This cannot be a legal person or entity.

Exception: one-year notification

For small businesses (up to 9 workers) and self-employed persons with a duty to notify, located within 100 kilometers from the Dutch border, the notification per individual posted worker may, under certain conditions, be replaced with one annual notification. However, one-year notifications do not apply to the construction sector or the temporary employment sector.

Other exceptions for incidental duties

There is no duty to notify if the posted worker temporarily performs the following types of incidental work in the Netherlands:

- ▶ Conducting business meetings or concluding contracts with companies or institutions, provided the stay in the Netherlands does not exceed 13 consecutive weeks within a period of 52 weeks;
- ▶ Attending academic conferences, provided the stay in the Netherlands does not exceed five days per calendar-month;
- ▶ Urgent maintenance to tools, machinery or equipment supplied by the employer abroad to the Dutch group entity or client, as well as workers who install software that has been provided by the employer abroad or who provide instructions on the use of the software provided that the stay in the Netherlands does not exceed a period of 12 consecutive weeks within a period of 36 weeks;
- ▶ Initial assembly of the first installation of goods by qualified or specialized workers, provided that the services are an integral part of the agreement for the supply of these goods and are necessary for taking the goods into use. The work performed should not exceed eight days, unless it concerns work in the construction sector.

Next steps

The above information is based on the announcement of the notification obligation by the Ministry of Social Affairs and Employment via their website [postedworkers.nl](https://www.postedworkers.nl). However, the duty to notify is not yet formally incorporated in the 'WagwEU' legislation. Furthermore, the fines that can be imposed for incorrect or late notifications have not yet been published.

The administrative obligations of the 'WagwEU', specifically the introduction of the notification obligation to be performed by the employer abroad and the verification of this notification to be carried out by the Dutch service recipient, is an enormous additional administrative burden. We are happy to support you to assess the new obligations and to determine any possible exemptions for your company and to assist you with complying with the Dutch notification obligation as of 1 March 2020.

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