

Mobility: Tax alert

July 2020



Sweden

Increasingly equal treatment and protection of posted workers in Sweden

Executive summary

New Swedish legislation will implement the Revised EU Posted Workers Directive into the Swedish Posted Workers' Act (the Act) requiring that posted workers, including temporary agency works, receive the same remuneration as a local worker performing the same role. The new rules also include stricter employer obligations.

The new legislation will come into effect 30 July 2020.

Key issues

The legislative amendments are described below.

Equal pay and certain reimbursements for posted workers

- ▶ Sweden will aim to improve the conditions for posted workers and align them to those conditions mandated by Swedish Collective Bargaining Agreements (CBAs) for the relevant sector. It will do so legislating that salary levels throughout a posting should no longer be limited to the minimum wage levels. Instead, a posted worker shall be entitled to the same salary levels as a Swedish worker performing the same work.
- ▶ Additionally, the new legislation clarifies how to determine whether a posted worker is paid properly throughout the posting. For example, any reimbursements paid to the posted worker relating solely to expenses arising from the posting in itself should not be considered salary under the Act but rather a one-off cost. This

refers for example to costs associated with relocating from the home to host country.

Better protection for temporary agency workers posted to Sweden

- ▶ The protection for temporary agency workers posted to Sweden is increased as well, by granting these individuals conditions equal to Swedish temporary agency workers. The current provisions on equal treatment for Swedish temporary agency workers should apply for temporary agency workers posted to Sweden.

Postings exceeding twelve months

- ▶ Protection for long-term postings will be strengthened. According to the new legislation, all standard Swedish terms and conditions of employment should also apply to long-term posted workers; with the exception of *inter alia* formal requirements regarding entering and termination of employments, occupational pension schemes and post-employment restraints. Today, under the Act a posted worker is only granted mandatory terms and conditions relating to the so called "hard core"; which refers to e.g. minimum wage, maximum working hours and minimum paid vacation days as well as protection under relevant discrimination and working environment acts.
- ▶ A posting is considered a long-term posting if it exceeds twelve months. However, an exception can be granted

for up to 18 months, meaning that a posted worker is only entitled to available for those posted for less than twelve months. This exception should be applied for in advance, and, at the latest by the day the posted worker has been in Sweden for twelve months. Applications should be made to the Swedish Work Environment Authority.

- With the new legislation it is further confirmed that a posting can be considered, long-term if different periods of posting are combined.

Extension of the right to take industrial actions

- Under the Act, trade unions may take industrial actions for purposes of ensuring that posted workers are granted the mandatory employment terms and conditions set forth under the "hard core". However, such industrial actions cannot be taken for purposes of claiming terms and conditions of employment - such as salary levels - exceeding those levels stated in the applicable central CBA relevant for the sector.
- According to the new legislation, the right to take industrial action is expanded to cover claims for reimbursement of expenses for travel, food and conditions for accommodation in Sweden as to mirror levels offered to Swedish workers under any relevant central CBA. This right is granted to posted temporary agency workers as well.

Stricter notification obligation for foreign employers and service recipients in Sweden

- Foreign employers who post workers to Sweden will from the first day of posting be required to notify the Swedish Work Environment Authority regarding the posting and state the contact person in Sweden. Currently, the obligation to register the posting does not apply for postings up to five days. Employers that post workers to Sweden will be required to provide documentation to the service recipients in Sweden showing that a declaration has been made to the Swedish Work Environment Authority. This obligation could be applicable even to an individual travelling to Sweden on business
- Service recipients in Sweden must notify the Swedish Work Environment Authority if they do not receive documentation from the foreign employer that the posting has been reported. This notification must be provided no later than three days after the work has begun. This requirement does not apply if services are received for private use as a private person.
- If the foreign employer and service recipient do not fulfil these obligations, an administrative penalty can be imposed with an amount of SEK 20,000.

Key steps

The legislative amendments will come into force on 30 July 2020; in accordance with implementation phase of the Revised Directive. Thus, swift action should be taken by organizations to determine whether they fall under the Stricter notification obligation for foreign employers and to ensure compliance with the new legislation.

According to the Swedish Work Environment Authority, their registration services will be updated during Q4 2020, to align them with the new rules.

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