



Mobility: Immigration alert

September 2020

Italy

Posted Workers in Italy: the principle of “equal pay for equal work” transposed into national law

Executive summary

On 15 September 2020 the Italian Government's legislation implementing the 2018 EU directive on Posted Workers was enacted.

The new rules will affect international assignments into Italy as of 30 September 2020 and, amongst other areas, impose the principles of equal pay for equal work that are behind the 2018 EU directive.

Background

With a significant increase of international assignments in the last decades, EU has been focusing on ensuring that workers posted from their home country to a host country are granted the same set of core rights and protection that local employees in that country enjoy.

The EU Directive n. 957/2018 was conceived to strengthen the posted workers' rights introducing, amongst other amendments to previous regulations, the principles of “equal pay for equal work”. Moreover, assignments will have a maximum duration of 12 months (with possibility to extend the period to 18 months), after which the employer will have to meet all the labor and occupational requirements of the host country and guarantee to the posted workers an additional set of rights and employment conditions.

How the new Posted Workers Directive has been transposed in Italy

The new Posted Workers Directive is implemented in Italy with Legislative Decree n. 122/2020 which introduces the following measures and provisions to ensure that workers assigned to Italy are entitled to the same labor law rights of the local work force.

The principle of equal pay for equal work is established in the amended article 4.1 of the Legislative decree n. 136/2016 that now sets forth:

- ▶ The service provider must guarantee to posted workers, if more favorable, the same conditions in terms of minimum salary and working conditions provided by the Italian labor law rules and applicable Collective Bargaining Agreement (CBA)
- ▶ The allowances are considered as part of the posted worker's remuneration only if they are not paid as a reimbursement of expenses incurred due to the international assignment

Introducing the article 4-bis Distacco di lunga durata, the legislative decree n. 122/2020 provides that:

- ▶ The maximum period during which the posted workers can remain under employment provisions of the home

country is now limited to 12 months (that, in presence of a reasoned notification to the Ministry of Labor, may be extended to 18 months)

- ▶ The so called “distacchi a catena” (consecutive postings for the replace of previous assignments) are now forbidden
- ▶ After 12 months (with possible extension to 18), the posted worker is entirely subject - if more favorable - to the Italian labor law set of rules and to the applicable CBA (at both national and territorial level)
- ▶ The only exceptions to the above, which shall not be required even for long term assignments, are the following:
 - ▶ Procedures and conditions for the termination of the employment
 - ▶ Non-competition clauses
 - ▶ Supplementary social security schemes

Key steps

As of 30 September 2020, companies will be required to observe new rules and focus on additional employment and CBA requirements which will be applicable to long-term postings (longer than 12-18 months) into Italy.

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