Posting workers to Belgium : all you need to know

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1. Introduction

Mobile workers are key for many employers seeking to develop their businesses across various countries around the world. A globalised economy triggers enhanced workforce mobility. Managing such a global workforce is challenging for HR-managers, who often face complex set-ups that raise specific employment, immigration, social security and tax questions.

In this guide, ALTIUS' Employment Team gives a general overview of the employment-related requirements and points for attention that sending and receiving companies have to comply with when temporarily posting workers to Belgium.

2. What is a posted worker

Under the Belgian Posted Workers Act of 5 March 2002, a 'posted worker' is a worker who temporarily works in Belgium and who, either habitually works in one or more countries other than Belgium or who is hired in a country other than Belgium. Drivers active in the road transport sector crossing Belgium when carrying out a transport operation do not always qualify as a posted worker. A posting set-up therefore differs from a set-up in which a worker simultaneously works in two or more countries.

- A Polish worker assigned to a temporary project in Belgium and who will return to Poland upon completion of the project is a posted worker under the Belgian Posted Workers Act.
- A manager of a UK-company on a 10-day business trip is a posted worker under the Belgian Posted Workers Act.
- A worker employed by a French company spending 50% of their working time in France and 50% of their working time in Belgium is not a posted worker under the Belgian Posted Workers Act.

3. Applicable law: general rules

As a general principle and whether inside or outside the framework of a posting, the employer and worker are free to agree on the employment law that will apply to their relationship in a so-called "choice of law clause". However, such a choice of law must not result in depriving the worker of the protection given by the so-called 'mandatory provisions of Belgian employment law' (i.e. provisions that cannot be derogated from by agreement) if (1) Belgian employment legislation would have applied in the absence of such a 'choice of law clause' (the so-called 'objectively applicable law') and (2) such Belgian law would be more favourable than the law chosen by the parties.

In the absence of a choice of law clause, the objectively applicable law is the law of the country where the worker habitually exercises the work. It is important to note, especially in the context of posting, that the habitual place of work is in principle not deemed to have changed if a worker is temporarily employed in another country. In other words, there is a 'fiction' that the 'habitual' country of employment remains the same in the context of a temporary posting. In this regard, performing work in a country is usually regarded as temporary if the worker is expected to resume work in the country of origin after completing the tasks abroad.

If it is not possible to determine the objectively applicable law based on the location where the worker habitually carries out the work, then the employment contract will in principle be subject to the laws of the country where the place of business through which the worker was hired is situated.

Finally, where it appears from the circumstances as a whole that the employment contract is more closely connected with another country, the employment legislation of that other country will apply.

Therefore, it should be kept in mind that, in certain circumstances, the laws of the country of posting (here Belgium) may be (or become after a certain time) the objectively applicable law.

However, even if the mandatory provisions of Belgian employment legislation would not kick-in based on the principles as set out above, foreign employers must still comply with the Belgian Posted Workers Act of 5 March 2002 when posting workers to Belgium.

4. The Belgian Posted Workers Act of 5 March 2002

The Posted Workers Act of 5 March 2002 includes an important correction mechanism to the general rules mentioned in Section 3 that results in the application of a set of core rights under Belgian employment law on all postings to Belgium and this is irrespective of the objectively applicable law and regardless of the actual duration of the posting.

A distinction is made between postings that do not exceed 12 months and postings that do exceed 12 months.

4. The Belgian Posted Workers Act of 5 March 2002

Postings that do not exceed 12 months

For postings that do not exceed 12 months, a foreign employer posting workers to Belgium must comply with (i) all labour, salary and employment requirements of Belgian statutory provisions that are criminally-enforced (i.e. the vast majority of Belgian employment requirements) and with (ii) collective bargaining agreements (CBAs) that have been declared generally-binding by Royal Decree, unless more favourable terms and conditions are provided for under the law of the workers' home country.

Consequently, foreign employers must, as from the first day of a worker's posting to Belgium, amongst other things, comply with the following 'first layer' rules:

- **Observe working time limits and daily and weekly rest periods**
  In principle, the maximum working time is 8 hours per day and 38 hours per week. Yet, this maximum may be lower in some industries on the basis of a sector CBA. Exceptions apply, such as for shift work. Working at night, on Sundays and public holidays is only allowed in a few strictly-regulated cases.

- **Pay the correct mandatory remuneration as applies in the sector**[1]
  Minimum wages are generally set in sector CBAs and may differ by length of service, professional experience, or the function classification.

  Moreover, all wages, benefits and allowances (such as premiums, luncheon vouchers, eco vouchers, end-of-year bonuses, etc.) set out in CBAs that have been declared generally-binding apply to posted workers as from day one.

  To verify whether or not the amount paid to the posted workers is at least equal to the gross remuneration required under Belgian law, the total gross amounts of remuneration should be compared, rather than any individual constituent parts of remuneration.

  Posting related allowances are considered part of the remuneration to the extent that they are not paid as cost reimbursements. If there is any uncertainty as to whether such allowances (e.g. travel, board and lodging) are part of the posted worker's remuneration, then such allowances will be considered to be paid as a cost reimbursement and so will not be taken into account for verifying whether the Belgian salary conditions are met.

[1] See section 5 for more details

4. The Belgian Posted Workers Act of 5 March 2002

- Pay overtime and grant compensatory rest for overtime hours
- Provide paid legal holidays as required by the Belgian Holiday legislation
- Comply with rules on wage protection
- Grant workers Belgian public holidays during the posting period
- Comply with all other Belgian employment conditions applying within the sector[2] that are laid down in CBAs that have been declared generally-binding (e.g. salary indexation mechanisms, additional holidays, transportation allowances, etc.) but excluding supplementary pension schemes
- Comply with the provisions regarding forbidden employee lending and temporary agency work[3]
- Ensure healthy and safe working conditions in the work place and comply with all statutory obligations regarding well-being at work[4]
- Observe the protection of pregnant employees and employees who have recently given birth
- Observe special rules related to employing young employees (between 15 and 18 years old) and the prohibition on entrusting any work to children (below 15 years of age), save for some exceptions
- Prevent any form of discrimination and apply rules of equal treatment

[2] See section 5 for more details

[3] See section 13 for more details

[4] See section 6 for more details

4. The Belgian Posted Workers Act of 5 March 2002

Postings exceeding 12 months

Once a posting period exceeds 12 months, a foreign employer must comply with any and all Belgian labour, salary and employment conditions provided for by Belgian statutory provisions even if they are not criminally-enforced, as well as any CBAs that are declared generally-binding by Royal Decree.

However, as almost the entire set of Belgian employment legislation is criminally enforced, most of the employment rules already fall under the above list of 'first layer provisions' that immediately apply. Therefore, the 'second layer' rules that come on top of these 'first layer' rules for postings exceeding 12 months are very limited. Examples of second layer rules are a posted worker's entitlement to guaranteed salary in the case of illness, 15 days of paternity leave (20 days as of 2023) and short-term leaves of absence (e.g. days off to go to a funeral or the wedding of a close family member).

An important correction to note is that rules regarding the conclusion and termination of employment contracts and non-compete undertakings are explicitly excluded from this second layer.

Consequently, a posted worker will not benefit from the Belgian termination rules based on the Posted Workers Act if a posting period exceeds 12 months. However, the Belgian termination rules may still apply if, based on the specific circumstances, Belgian law would become the objectively applicable law [5] and so the mandatory Belgian employment rules, including termination rules, would apply.

The 12 month period during which a foreign employer is exempted from having to comply with the second layer rules can be extended by another 6 months period provided that the posting employer sends a justified notification that meets certain requirements to the inspection services before the end of the 12th month of a posting chain.

[5] See section 3 for more details

5. Joint Committee

In Belgium, all employers active in the private sector belong to a so-called Joint Committee according to the business activities undertaken on Belgian territory. For each specific type of industry a Joint Committee exists, e.g. the construction sector, metal industry, transportation industry, etc.

A Joint Committee can enter into CBAs that apply to all employers and employees of a particular sector and provide for a various set of industry-specific employment terms and conditions such as minimum wages, working time, reimbursement of transportation costs, an end-of-year premium, etc.

Based on the Posted Workers Act, an employer posting workers to Belgium must comply with the employment terms and conditions laid down in CBAs concluded in the Joint Committee provided they are declared generally-binding, which is almost always the case.

Therefore, it is crucial to know to which Joint Committee a foreign employer belongs when posting workers to Belgium.

Since the wage cost and worker flexibility may vary significantly from industry to industry, the applicable Joint Committee may impact the profitability of a foreign employer's operations in Belgium.

It is the foreign employer itself who decides which Joint Committee is competent depending on its actual activity in Belgium, but the decision can be overruled by the social inspection administration or by a labour court. In case of doubt, the Federal Public Service of Employment, Labour and Social Dialogue can be requested to provide an opinion about the competent Joint Committee(s). Such an opinion has an important authority but does not bind the courts.

6. Health and safety regulations at work

The Posted Workers Act obliges foreign employers posting workers to Belgium to comply with the Well-Being Act. Consequently, they are subject to the same health and safety-related obligations as any other employer employing workers in Belgium, which are often very technical and detailed. We list some key points.

6. Health and safety regulations at work

Internal prevention advisor

A foreign employer has to appoint a prevention advisor who meets certain qualification requirements. The qualification level varies by the number of workers active on Belgian territory and the nature of the activities performed. The internal prevention advisor does not have to be a Belgian national but should be sufficiently familiar with the Belgian well-being at work legislation and should have the required qualifications. If the foreign employer posts less than 20 workers in Belgium, then the foreign employer can exercise the function itself without any additional qualification requirements.

Affiliation with an external service for prevention and protection at work

A foreign employer will have to affiliate with an external service for prevention and protection at work. If a foreign employer calls upon an external service abroad, then this service should be capable of complying with the Belgian well-being at work legislation. Therefore, and as seen in practice, most foreign employers affiliate with a Belgian external service for prevention and protection at work.

Such Belgian external service for prevention and protection at work will also assist the foreign employer to ensure compliance with several technical and often complex well-being at work and safety requirements (e.g. drafting prevention plans, risk analysis regarding individual work equipment, etc.).

Occupational accident insurance

Provided the posted workers remain subject to the home country social security system, the foreign employer is not obliged to subscribe to an occupational accident insurance in Belgium. Of course, the foreign employer may be subject to a similar obligation in the home country.

7. Applicable tax system

When posting workers to Belgium, foreign employers must be aware of possible tax consequences as posting workers may, depending on the circumstances, result in a permanent establishment in Belgium triggering the payment of corporate income taxes.

The question of whether there will be a permanent establishment must be examined in the light of any double taxation treaty that might apply between two countries.

In general, a permanent establishment will be constituted as follows:

- material permanent establishment: a fixed place of business, with a sufficient degree of permanency, through which the business of an enterprise (with the exclusion of activities that have a preparatory or auxiliary character) is wholly or partly conducted; or
- personal permanent establishment: a person (with the exception of any independent agent), present in the contracting state, who habitually negotiates and/or concludes contracts in the name of the foreign enterprise.

If the foreign employer would have a Belgian permanent establishment under the applicable double tax treaty, then Belgium would become tax competent for the business profits attributable to such a permanent establishment. The foreign employer would have to file a non-resident tax return in Belgium in which it discloses the profits (or losses) that are attributed to the Belgian permanent establishment.

7. Applicable tax system

Furthermore, the posting might have tax consequences for the posted worker as well. The conditions under which the posted worker may be subject to Belgian taxes are in principle laid down in the double tax treaty concluded between Belgium and the state of residence (if there is one), which is based on or similar to the OECD model tax convention.

As regards income tax, the OECD model tax convention foresees that wages earned for work carried out in Belgium are taxable in Belgium, unless three conditions are cumulatively fulfilled:

- First, the stay of the posted worker in Belgium does not exceed 183 days in a twelve month period (new OECD Model Convention) or in a calendar year (previous OECD Model Convention);
- Second, the posted worker's wages must be paid by - or on behalf of - an employer who is not established in Belgium (i.e. a non-Belgian employer);
- Third, the salary must not be born by a permanent establishment that the employer would have in Belgium.

If those conditions are met, then the state of residence will be competent to tax the wages earned for the work performed in Belgium.

If one of these conditions is not met, then the part of the salary relating to Belgian working days will be taxable in Belgium.

It is important to note that this takes retroactive effect and thus applies from the first day of the posted worker's presence in Belgium (e.g. if the posted worker would unexpectedly reach the 183 day limit, then the worker will be taxed on the Belgian income as from day 1 of the posting), triggering additional obligations for the foreign employer and posted worker:

- The foreign employer may have to fulfil specific formalities relating to the tax withholdings on professional income that it will have to pay directly to the Belgian tax authorities. This prepaid tax on professional income will have to be deducted at source from the worker's "Belgian" salary;
- The posted worker has to complete an annual (non-resident) tax return in Belgium. The salary relating to working days in the state of residence remains taxable in that state.

Therefore, when posting workers to Belgium an assessment is needed as to whether the foreign employer must register, withhold or remit taxes to the Belgian tax authorities from both a corporate tax (the presence of a permanent establishment) and a personal income tax perspective. The applicable double tax treaty should always be consulted as some variations might exist with the principles set out above.

8. Applicable social security

Posted workers can remain covered by their home social security system subject to different requirements being met.

For workers normally working in the EU these criteria are, in a nutshell, as follows:

- The posting employer must normally carry out substantial activities in the home country, which requires a factual assessment based on several criteria such as:
  - the location of the foreign employer's registered office and headquarters
  - the length of time that the foreign employer has an official office in the home country
  - the number of administrative employees working in the home country
  - the place where the posted workers are recruited
  - the place where most of the contracts with the clients are concluded
  - the legislation applying to the contracts with the workers and the clients
  - the turnover achieved in the home country.
- During the posting, there should be a continued and direct relationship between the employer and the worker in which the employer at all times continues to exercise employer's authority.
- The worker is affiliated with the home country social security system for at least one month prior to the posting.
- The posting does not, in principle, exceed 24 months (but this can be extended to 5 years).
- The posted worker does not replace another posted worker.

8. Applicable social security

To prove the continued affiliation to the home social security system a so-called A1-form (for EU nationals or non-EU nationals legally residing in an EU country) must have been filed for with the foreign Social Security Office and this is, in principle, prior to starting the work in Belgium. An A1-form is in principle binding for the Belgian authorities.

Posted workers with an A1-form can apply for a European Health Insurance Card in the home country. When they need medical assistance in Belgium, the European Health Insurance Card guarantees that they are entitled to the same medical assistance as in the home country (including the same cost reimbursement arrangements).

If the requirements to remain subject to the home social security system are not met, then Belgian social security will apply (based on the general principle that a worker must be affiliated with the social security system in the country in which he or she actually carries out the work). In such a scenario, the foreign employer will have to affiliate with the Belgian social security administration and apply for a social security number.

For workers normally working in a non-EU country, it must be checked whether any specific and derogatory requirements apply in the applicable bilateral treaty entered into with Belgium. If so, they can apply for a Certificate of Coverage. If no such bilateral treaty exists, then it has to be verified (by looking at the internal legislation of the countries involved) which social security system applies.

Following the Brexit deal, specific rules were agreed upon when posting workers from the UK to Belgium.

9. Mandatory registrations

Limosa

A foreign employer posting workers to Belgium must, save some specific exceptions (e.g. attending a scientific congress), file a so-called 'LIMOSA-declaration' with the Belgian Social Security Office.

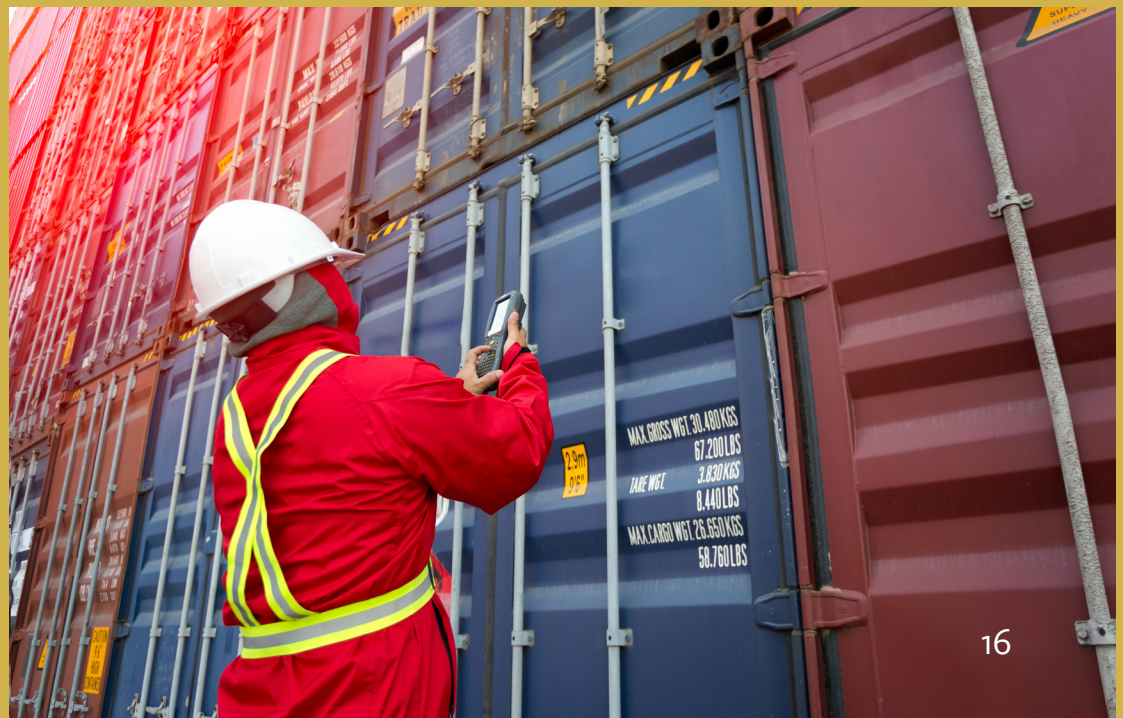
This LIMOSA-declaration must, in principle, be filed electronically (www.limosa.be) and prior to the start of the activities in Belgium.

The LIMOSA-declaration includes information regarding the posted worker, the foreign employer, the industry sector and details regarding the posting activities in Belgium. A LIMOSA-declaration can cover a maximum period of 12 months, and can then be renewed.

If a service user in Belgium relies on the services of a foreign employer posting workers for professional purposes but the latter cannot provide evidence that a LIMOSA-declaration has been filed for the posted workers, then such a service user has to notify the Belgian Social Security Office of the posted worker's presence.

Non-compliance with the registration and/or notification obligations can trigger very significant administrative and/or criminal penalties for both the employer and the service user.

For certain international road transport operations, the posting employer must submit a posting declaration.



9. Mandatory registrations

Dimona

If the posted worker is subject to the Belgian social security system (e.g. because the requirements to remain subject to the home country's social security system are not complied with), then the foreign employer has to proceed with a so-called 'DIMONA-declaration', which aims to register a new employee with the Belgian Social Security Office.

This DIMONA-declaration must, in principle, be filed electronically, via an online platform that is made available by the Belgian Social Security Office, at the latest when the posted worker starts working in Belgium. The DIMONA-declaration includes information regarding the foreign employer, the posted worker, and the industry sector.

Non-compliance with the Dimona registration obligation can trigger very significant administrative and/or criminal penalties for the employer.

10. Social documents

A foreign employer who has filed a LIMOSA-declaration or who is exempted from having to do so, is released, for a period of 12 months, from the obligation to draw up a number of Belgian social documents. These include, amongst others:

- work rules, i.e. an employee handbook including a number of mandatory provisions such as working time schedules and disciplinary penalties
- a personnel register
- documents allowing the social inspection services to check compliance with the formalities related to part-time work

The foreign employer will also be released, for a period of 12 months, from the obligation to draw up Belgian pay slips (for each payment period) and an individual account (an overview of annual earnings) provided that it delivers equivalent documents from the home country and/or a translation in French, Dutch, German or English of these equivalent documents and keeps these documents available for the inspection services if they request these documents. The inspection services can ask for these equivalent documents up to one year following the end of the posting.

After this exemption period of 12 months, the foreign employer posting workers to Belgium will be obliged to draw up and keep Belgian social documents.

Additionally, the following documents must be kept available for the inspection services and delivered to these services if so requested:

- a copy of the employment contract or an equivalent document (including some mandatory information on the most important aspects of the employment relationship, such as the identity of the parties, the start date of the contract, the salary)
- information regarding the foreign currency that is used to pay the worker's salary, the benefits in cash or in kind related to the posting in Belgium and the posted worker's repatriation conditions
- an overview of the posted worker's daily working hours
- proof of the salary payment to the posted worker

If so requested by the inspection services, these documents must be made available in Dutch, French, German or English.

This obligation applies during the posting as well as during a period of one year following the end of the posting.

Derogatory rules and additional obligations apply to foreign employers in the transport sector posting drivers to Belgium.

11. Liaison person

A foreign employer posting workers to Belgium must communicate to the inspection services the name and contact details of a 'liaison person' who will serve as the point of contact for the inspection services, e.g. to deliver and receive, on behalf of the foreign employer, any document or notification concerning the employment of the posted worker(s) in Belgium.

This liaison person can be the employer, a worker or a third person, but must be a natural person. The liaison person does not necessarily have to be domiciled in Belgium.

The name and contact details of the liaison person are communicated to the Belgian authorities using the LIMOSA-declaration.

For some types of activities exempted from the LIMOSA-declaration (certain activities of initial assembly or first installation of goods), the name and contact details of the liaison person must be communicated to the inspection services by post or by e-mail.

Employers posting drivers active in the road transport sector must not appoint a liaison person but a transportation manager or another contact person. This person must be appointed in the employer's country of establishment.

12. Visa and/or work permit requirements

In some cases, posting a worker to Belgium will require obtaining a work and/or residence authorisation prior to entering the country and the employer should bear in mind that obtaining such authorisation can be a lengthy process.

Nationals of an EEA member state

Nationals of a Member State of the European Economic Area ("EEA") are exempt from the requirement to obtain a work permit. In addition, EEA nationals are allowed to stay in Belgium without a residence permit provided that:

- if they stay for less than 3 months in Belgium: they declare their presence at the town hall of the local commune (municipality) in which they are staying within 10 working days following the day of their arrival in Belgium.
    - Exception: individuals who stay in an establishment that by law must register their guests as travellers (such as hotels and Airbnbs).
- if they stay for more than 3 months in Belgium: they register their presence at the town hall of the local commune in which they are staying within 3 months following their arrival in Belgium. To be able to register their presence in Belgium, the individuals must be able to demonstrate their employed activity in Belgium or be able to demonstrate that they have sufficient means of existence and medical insurance covering all risks during their stay in Belgium.

Non-EEA nationals

Non-EEA nationals must, in principle, obtain a work permit and a residence permit prior to being posted in Belgium. If their posting does not exceed 90 days, then they will need to apply for a Schengen visa (short-stay type), but note that some exceptions exist depending on the nationality of the posted worker and the passport type (whether biometric or not). The posting employer will also need to apply in advance for a so-called 'type B' work permit that allows the posted worker to perform any professional activity in Belgium.

If the posting exceeds 90 days, then the posted worker must be in possession of a single permit, i.e. a permit that combines an authorisation to work and a long-term residence permit into a single application procedure. On average, a single permit application can take up to 4 months prior to receiving all authorisations.

Following the Brexit deal, depending on the purpose of the posting, specific derogatory rules may apply for British citizens.

12. Visa and/or work permit requirements

Van Der Elst exception for non-EEA nationals

In the framework of posting and the freedom to provide services within the European Union, non-EEA nationals with a right of residence in another EU country can benefit from an exemption from having to obtain a work permit when being posted in Belgium in the context of the provision of services by their EEA employer (the so-called "Van Der Elst exception").

To benefit from this exemption, the following conditions must be met:

- the worker has a right of residence or a residence permit of more than three months in the EEA Member State in which the worker resides
- the worker is lawfully employed in the Member State in which he or she resides and this permit is valid for at least the duration of the work to be carried out in Belgium
- the worker is in possession of a regular employment contract
- the worker is in possession of a passport and a residence permit at least equivalent to the duration of the service, which ensures the worker's return to the home country or residence
- the provision of services cannot be considered as employee lending [6]

Even though these workers are exempted from obtaining a work permit, they still need to legally reside in Belgium. If their stay does not exceed 90 days, then they do not need a Schengen visa. They will however be required to declare their presence at the town hall of the local commune in which they are staying within 3 working days following the day of their arrival in Belgium, except if they stay in an establishment that by law must register their guests as travellers (such as hotels and Airbnbs). If their stay exceeds 90 days, then non-EEA nationals with a right of residence in another EU country must, in addition to registering their presence at the town hall of the local commune in which they are staying, submit an application for a long-term residence permit, either at the town hall of the local commune in which they are staying (if already in Belgium) or at a Belgian diplomatic post in the country that has issued such a non-EEA national's residence permit (if still in the home country).

[6] See section 13 for more details

13. Employee lending

What is employee lending?

Under Belgian employment law, and in particular under the Employee Lending Act, employee lending is defined as the situation in which an employer allows a third-party user to use the services of one or more of its workers in which the authority normally vested in the employer is (partly) exercised by the user.

13. Employee lending

General employee lending prohibition in Belgium

The Employee Lending Act prohibits that any instructions that qualify as “exercising part of the authority vested in the employer” are given by the user. The general employee lending prohibition in Belgium is in contrast to the situation in several other European countries. Consequently, when workers are posted to Belgium, there is often a risk of illegal employee lending set-ups without the foreign employer being aware of this situation.

Whether or not the authority that is vested in the employer is being (partly) exercised by the user will in practice appear from a number of factual elements, such as the fact that the posted worker must obtain approval from the user to take holidays, the obligation for the posted worker to report any absences to the user, appraisals conducted by the user, etc.

13. Employee lending

Intra-group employee lending

As a specific exception to this general prohibition, employee lending can be permitted in an intra-group context. However, this is only allowed in certain limited circumstances and is subject to strict formalities such as a prior notification to the inspection services and the execution of a tripartite agreement entered into between the employer, the user and the worker.

Interim work

Interim work is also a specific exception to the general employee lending prohibition. In short, interim work covers the situation in which a company (i.e. the client) calls upon the services of a recognised interim agency. The interim agency makes a temporary interim worker, formally employed by the interim agency, available for the client. Interim work is only permitted in a limited number of circumstances that are set out in the law, such as the replacement of an employee whose employment contract is suspended or in the case of a temporary increase of work.

Interim work can only be organised by recognised interim agencies.

If a Belgian client calls upon the services of an interim agency located abroad, the client is subject to a specific information obligation regarding the applicable employment terms and conditions.

Furthermore, if a Belgian client posts an interim worker to another country located in the EEA or to Switzerland, then the Belgian client must inform the interim agency of that fact in advance.

13. Employee lending

Entering into a service agreement including an instruction clause

The way in which the legal prohibition on employee lending is often dealt with is by entering into a service agreement between the foreign employer as the service provider and the company in need of such services as the service user.

Such a service agreement must be in writing and must clearly list in detail the exact functional and operational instructions related to the way the services need to be supplied that the service user can give to the posted workers, without these instructions undermining the legal employer's authority over the posted workers. Instructions given by the user regarding its legal obligations related to well-being at work (health and safety) are always allowed.
Even then, the essential employer's authority should at all times remain with the foreign employer.

13. Employee lending

Liability in the event of unlawful employee lending

A situation of unlawful employee lending may trigger substantial risks and liabilities.

- If a posted worker is hired with the exclusive purpose of being made available for a user, then the employment contract entered into between the foreign employer and the posted worker is null and void.
- The posted worker could claim an indefinite term employment relationship with the user.
- The foreign employer and the user will be jointly and severally liable for the payment of social security contributions, wages, notice pay etc.
- A situation of unlawful employee lending can trigger a substantial criminal liability with the foreign employer and the user.

14. Joint liability

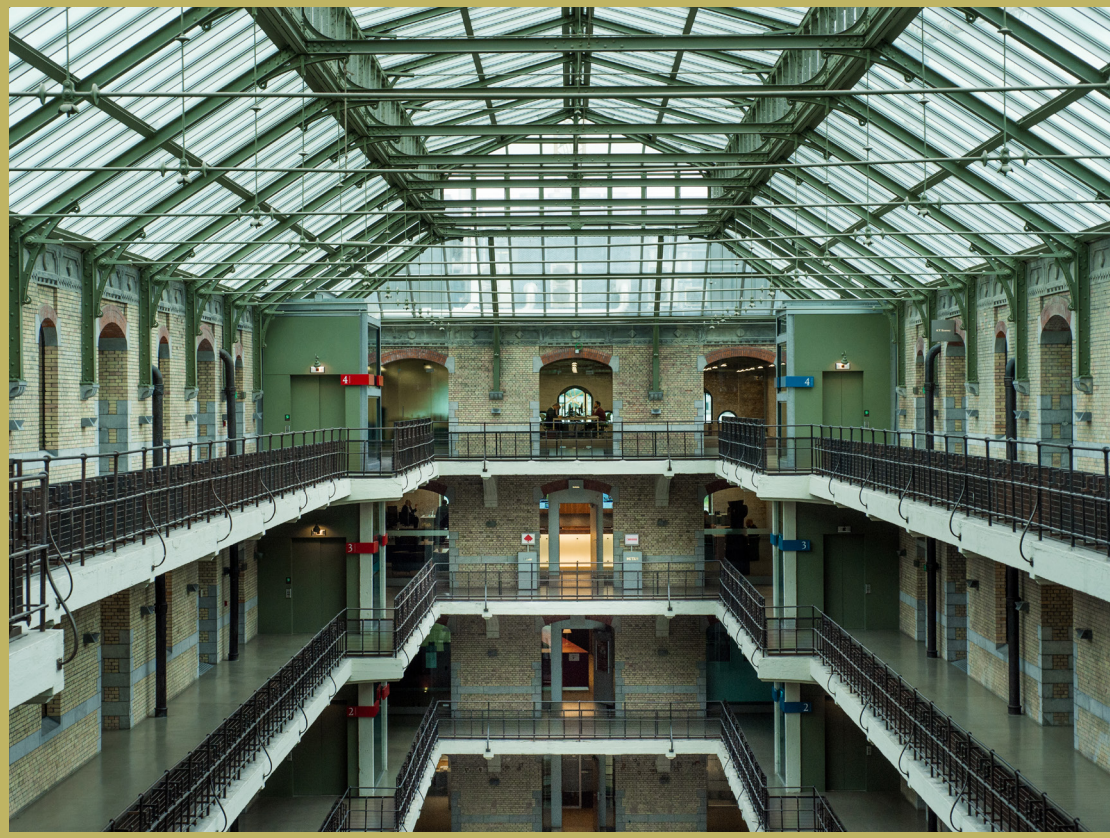
In some sectors, such as the construction sector, the meat sector and the cleaning sector, the law provides for joint and several liability schemes that enable the worker, under certain conditions, to, as an alternative, obtain the payment of his or her wage from the employer's direct or indirect client, contractor or subcontractor.

In addition - and this applies to all sectors - as soon as the client, contractor or subcontractor becomes aware that the work ordered is carried out by illegally resident third-country nationals, it becomes criminally liable (with the highest penalty possible being imposed). This may also trigger a joint and several liability for the unpaid remuneration. The client, contractor or subcontractor will also become liable for the costs of repatriation, a lump sum for accommodation and residence and health care of the foreign worker and his/her family. Non-compliance can give rise to an administrative fine or a criminal fine.

15. How can ALTIUS help you?

ALTIUS' Employment Team is available to assist employers considering posting workers to Belgium by providing effective hands-on and practical advice. On a daily basis, ALTIUS' experienced Employment Team assists international clients developing projects in Belgium and offers a full range of services, such as:

- Analysis regarding the competent Joint Committee
- Providing practical advice on the applicable working and employment conditions taking into account the Posted Worker Act's requirements
- Providing guidance regarding any additional employment-related formalities, registrations and obligations triggered by a posting set-up
- Assistance with the application procedure to obtain work and/or residence permits
- Drafting and reviewing services agreements in contractors' chains in view of protecting the client's interests and to ensure compliance with the Belgian legal requirements
- Conducting compliance audits
- Assistance in the event of a social (security) inspection audit.



For tax-related matters, ALTIUS' Employment Team works closely with its highly-regarded partner firm, Tiberghien.

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Disclaimer

This guide is only intended to give a general overview of the rules applying for posting workers to Belgium and does not include a comprehensive and exhaustive overview of any and all specific, complementary and/or derogatory obligations and/or formalities applying in specific industries (e.g. specific additional obligations in the construction and meat sectors that are in addition to the general obligations). For this reason, this guide should not form the basis of any decision concerning a particular course of action. It cannot be construed as legal advice. Obtaining further tailor-made advice is recommended.

This guide was last updated in July 2022.