

POSTING OF WORKERS

New decrees

Context

The French law n°2016-1088 of August 8, 2016 regarding labour, social dialogue modernization and securisation of professional pathways known as “Loi travail” reformed the Labour code and foresaw new provisions on posting of workers among others. This law complemented the transposition of the European directive n°2014/67/UE of May 15, 2014 into French law but it goes further than the directive (cf note dd. August 2016).

Some provisions regarding posting of workers required a decree in order to enter into force. Two of them were recently published in the “Journal officiel”. Please find here after a sum-up of these new provisions.

New information in the posting declaration done via Sipsi

A decree of May 5, 2017 completes the information that must be transmitted via the Sipsi platform by foreign companies which post workers to France:

- VAT number, or if the company hasn't such a number, its registration reference in a professional register or any other equivalent reference;
- the State where the posted worker will pay its social contributions. If it isn't France, the declaration must mention the A1 request.

Obligation for the French host company to get a copy of the posting declaration and of the representative appointment letter

The French host company or customer (in case of provision of services, temporary agency work and intra corporate mobility) has to obtain a copy of the Sipsi posting declaration and the representative appointment letter. These documents must be transmitted to the French company before the start of the posting. The French company also has an obligation to obtain a copy of the SPSI declaration sent by the foreign contractors of its contractors (in other words the indirect contractors).

A decree of May 5, 2017 foresees that this obligation is fulfilled when the French host company or customer has received a copy of these documents.

If the foreign company doesn't forward these documents to the French company, the latter has to do the declaration on its behalf at least 48 hours after the beginning of the posting. If not, the French company can be fined (2000 € maximum by posted employee) and/or the provision of services can be suspended during one month (maximum duration). This formality is called “subsidiary declaration”.

The decree of May 5, 2017 postpones the obligation to send this “subsidiary declaration” via Sipsi to January 1, 2018 due to technical problems.

Payment of a contribution

The law provides that foreign companies which post workers to France will have to pay a specific contribution. The goal is to finance the electronic system of declaration called Sipsi. A decree of May 3, 2017, gives more details about this contribution:

- its amount is set at 40 euros per posted workers;
- this contribution has to be paid by the foreign company which posts workers to France or by the French contractor, if the foreign company hasn't transmitted a copy of the Sipsi declaration to him;
- the payment of the contribution will occur via the Sipsi platform.

Please note that this contribution isn't yet in force as it requires the publication of another ministerial text regarding the payment system. But it should enter into force on January 1, 2018 at the latest.

Specific obligation for foreign user company in case of temporary agency work

According to the law, a foreign user company which uses posted workers provided by a foreign temporary agency to perform its activity in France has to send to the French labour inspection (located where the provision of service will be accomplished or if the provision of services occurs in several places, the declaration has to be sent to the labour inspection located in the first of these places) a specific declaration. In this document the foreign temporary work agency will confirm that it is informed that its workers are posted to France and that it is aware of the applicable rule on posting of workers in France.

The violation of this rule can lead to a fine of maximum 2000 € maximum per posted workers (capped at 500 000 Euros).

The decree of May 5, 2017 completes the compulsory mentions of this document. It must content :

- the name of the temporary work agency, its address, email, and phone number of the head office, as well as the name of the legal representative of the company;
- the name of the foreign user company, its address, email, and phone number of the head office, as well as the name of the legal representative of the company;
- the name, first name and professional qualification of the temporary agency workers.

Please note that there is currently no official form for this declaration.

Entry into force: July 1, 2017

Declaration of work injuries

If the posted employee has a work injury during its mission in France, its foreign employer or the French host company has to send a specific declaration to the labour inspection located where the work is performed. The French host company is responsible for the declaration in case of intra company mobility, provision of services, and temporary agency work. The sanction for non-declaration of the injury is a fine of 2000 Euros maximum by posted workers.

According to the decree of May 5, 2017 the declaration has to be sent within two days after the injury. It must contain:

- the name of the company employing the posted worker, its address, email, phone number as well as its registration reference in a professional register or any other relevant reference;
- name, first name, date and place of birth, address, nationality and professional qualification of the injured worker;
- date, time, place and detailed circumstances of the accident, nature of lesions as their situation on body, and the duration of incapacity of work, if applicable;
- identity of accident's witnesses, if applicable.

If this declaration is done by the French company, its contact information must be indicated.

Please note that there is currently no official form for this declaration.

Entry into force: July 1, 2017

Obligation to display the applicable rules to posted workers on some construction sites

According to the law, the French client has to display information on applicable rules to posted workers on construction sites which are employing more than 10 000 workers a day and on which:

- more than 10 companies or independent workers are working if it's a construction site;
- or more than 5 companies or independent workers if it's a civil engineering operation.

The published information must be easily accessible and translated into one of the official languages spoken in each of the posted workers' country of origin. The displayed rules deal with working time, minimum wage, accommodation, prevention of falls from height, individual required equipment, right for the employee to stop working in case of serious and imminent danger. The poster must also indicate how the employee can assert his rights.

This information must be displayed in the changing room and be readable.

The non-compliance with this obligation can be punished by a fine (2000 € by posted workers capped à 500 000 Euros).

Entry into force: July 1, 2017

Delivery of information on the applicable rules to posted workers with the professional identification card

As from 22 March 2017 posted workers in France in order to perform construction works have to possess a professional identification card.

The law also foresees that posted workers have to receive information on applicable rules in France with this card.

This document must list the applicable rules to posted workers in France such as working time, minimum wage and other elements of remuneration, health and safety rules, illegal work, etc... . The document must be translated into a language that posted workers are able to understand.

The decree foresees that this document must be made available by the Association of paid holidays funds of the construction sector (called Union des caisses de France – Congés intempéries BTP -UCF CIBTP) on its website in order to be transmitted by the foreign employer to the posted workers. The template of this document will be communicated by order (arrêté) of the Labour ministry. Please note that UCF CIBTP is already responsible to deliver Professional ID card in the construction sector.

Suspension of the service provision in case of serious breach

When the labour inspector states that a foreign employer who has posted workers to France has committed a serious breach of French labour law rules on e.g. daily rest, weekly rest, maximum working time (daily and weekly), a total or partial non-payment of statutory or collectively agreed minimum wage etc..., he requests the foreign employer by written form to bring this situation to an end within 3 days. In parallel he has to inform the French customer company of this serious breach of labour law.

If the foreign company doesn't regularize the situation within 3 days, the labour administration can decide, under certain conditions, a suspension of the service provision contract during a maximum of 1 month.

According to the decree of May 5, 2017, the provision of services can also be suspended if the French host company or customer has not sent the "subsidiary declaration" to the labour inspection.