

Regulations relating to posted employees

Section 1. Scope

These Regulations apply when foreign undertakings post employees to Norway in connection with the provision of services, cf. Section 1-7, subsections 1 to 3, of the Working Environment Act, provided that there is an employment relationship between the foreign undertaking and the posted employee during the period of posting.

Sections 14a to 14e apply when a foreign undertaking, by agreement with a recipient of transport services in Norway, posts a driver to Norway for its own account, at its own risk and under its own management to engage in the:

- a. carriage of goods by road in Norway with vehicles that have a total weight exceeding 3,500 kilograms, including trailers or semi-trailers;
- b. scheduled or unscheduled carriage of passengers by road in Norway with vehicles intended for the transport of more than nine persons, including the driver.

These Regulations shall not apply on Svalbard.

Section 2. Assessment of whether employees have been posted

When determining whether an employee works for a limited period of time in a country other than that with which the employment is normally associated, cf. Section 1-7, subsection 1 of the Working Environment Act, an overall assessment of the work and the employee's situation must be made, which may include the following factors:

- a. whether the work is performed in Norway for a limited period of time,
- b. the date on which the posting commenced,
- c. whether the posting is to a country other than where the employee normally works,
- d. whether the employee will return to or is expected to resume work in the country from which the employee was posted,
- e. the type of activity that is carried out,
- f. whether expenses for travel, board and lodging are covered by the employer that posts the employee and, if so, how expenses are covered,
- g. previous periods in which the same or another employee has been posted for the same work.

When determining whether an undertaking is engaged in actual activities in the country of establishment that go beyond internal management or administration, an overall assessment of the activities that characterise the undertaking must be conducted, which may include the following factors:

- a. where the undertaking has its headquarters and administration, has offices, pays taxes and social security contributions, has been granted an operating permit or is registered in a professional association,
- b. where the employee is employed and posted from,
- c. which country's laws apply to employment agreements and contracts that the undertaking enters into with its customers,

- d.the location where the undertaking carries out its most important business activities and has employed its administrative personnel,
- e.the number of assignments performed or the amount of turnover in the state where the undertaking was established, but where consideration is made to whether the undertaking is newly established and its size.

Section 3. Working and employment conditions

The following provisions relating to working and employment conditions shall apply for posted employees, irrespective of which country's laws otherwise regulate the employment arrangement, and irrespective of the duration of the period of posting:

- a.Chapters 10, 11, 13 and Section 3-1, Section 3-2, Section 3-5, Section 4-1 to Section 4-5, Section 5-1, Section 5-2, Section 6-1 to Section 6-3, Section 6-5, Section 12-1 to Section 12-9, Section 14-5, Section 14-6, Section 14-8, Section 14-12 to Section 14-14, Section 14-15 subsection 6 and Section 15-9 of Act 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act),
- b.Act 29 April 1988 No. 21 relating to holidays (Holiday Act),
- c.Section 27 of Act 10 December 2004 No. 76 relating to labour market services (Labour Market Act),
- d.Chapters 5 and 6 and Sections 6 to 8, Section 9, paragraph one, Section 9, paragraph two, Section 11, Section 13, paragraphs one to three, Section 13, paragraph six, and Section 14 of Act 16 June 2017 No. 51 relating to gender equality and prohibition against discrimination (Gender Equality and Anti-Discrimination Act),
- e.provisions relating to pay, working and employment conditions laid down in the Regulations relating to the general application of collective agreements issued pursuant to Act 4 June 1993 No. 58 relating to the general application of collective agreements, etc., to the extent that the posted employee's working conditions fall within the scope of the Regulations.

The provisions in paragraph one shall only apply if the posted employee is not covered by more favourable working and employment conditions by agreement or pursuant to the country's laws that otherwise apply to the employment relationship.

If the period of posting for a posted employee who is a skilled or specialist worker does not exceed eight days, the provisions in the Holiday Act and Section 10-6, subsection 11 of the Working Environment Act, as well as provisions referred to paragraph two relating to holidays, holiday pay and salary, including overtime pay, shall not apply when:

- the work performed involves initial assembly or installation subject to an agreement for the delivery of goods, and
- the work is necessary for taking the goods into use.

This exception shall not apply for a posted employee who carries out work within the construction industry which involves the erection, repair, maintenance, conversion or demolition of buildings. If, during the last 12 months, the undertaking has posted other employees to perform the same work, these periods must be included when calculating whether the period of posting exceeds eight days.

Section 3A. Calculation of allowances that apply specifically to the posting

When calculating the posted employee's remuneration, allowances that specifically apply to the posting shall be considered part of the salary unless these are paid as reimbursement of expenses that were actually incurred due to the posting, for example, expenses for travel, board and lodging. If the employment contract does not state which parts of the allowance are part of the salary pursuant to paragraph one and which parts are paid as reimbursement of expenses, the entire allowance shall be deemed to be reimbursement of expenses.

Section 3B. Working and employment conditions in the event of a long-term posting

In addition to the working and employment conditions stipulated in Section 3, all Norwegian rules relating to working and employment conditions shall apply for posted employees who are on service assignments in Norway, when the actual duration of the posting exceeds 12 months. However, this does not apply to the rules in Section 2 A-6, Section 14 A-1 to Section 14 A-5, Section 14-1 to Section 14-4b, Section 14-9 to Section 14-11, Section 15-1 to Section 15-8 and Section 15-10 to Section 15-17 of the Working Environment Act, and the Act relating to mandatory occupational pensions.

The period stated in paragraph one may be extended by up to six months if the employer notifies the Norwegian Labour Inspection Authority in writing no later than within 12 months after the employee started the period of posting in Norway that the period of posting needs to be extended. Such notification must state the grounds for why the period needs to be extended and which employees this concerns.

If the employer replaces a posted employee with another posted employee who performs the same task at the same location, the total duration of the periods of posting for these employees will constitute the period of posting in paragraphs one and two. When assessing what constitutes the same task at the same location, emphasis shall be placed on factors such as the nature of the service provided, the work that is to be performed and the address of the workplace.

Section 4. Documentation requirements

When a foreign undertaking posts employees to Norway in connection with the provision of services, the undertaking must have employment agreements, an overview of working hours and pay slips for the posted employees who perform the service available at the workplace in Norway during the period of posting. The undertaking must also be able to present documentation showing the expected duration and planned start and end dates for the posting, the expected number of posted employees, and the identities of the employees. The documentation must be in writing or available electronically.

The documents referred to in paragraph one must be available in Norwegian, Swedish, Danish or English.

Section 5. Information and cooperation

In its capacity as liaison office, the Norwegian Labour Inspection Authority shall provide information relating to the working and employment conditions that will apply to the posted employee. The Norwegian Labour Inspection Authority must also be able to make reference to employer and employee organisations in instances in which provisions in a general collective agreement are applicable, cf. Section 3, paragraph one (e).

The Norwegian Labour Inspection Authority shall cooperate with responsible authorities in other EEA member states on the enforcement of the rules relating to working and employment conditions that apply for posted employees. The Norwegian Labour Inspection Authority shall respond to requests for information and carry out the investigations and checks that are necessary for complying with the requests.

Section 6. Mutual assistance in providing notification of decisions

If requested by the responsible authority in another EEA member state, the Norwegian Labour Inspection Authority must provide notification of a decision as stated in Section 18-11 of the Working Environment Act. The request may be rejected if the information in the request is incomplete or it is clear that there is no correlation between the request and the decision for which notification shall be provided. If a request is rejected, the Norwegian Labour Inspection Authority must, as soon as possible, provide notification of the rejection and the grounds for this to the responsible authority that sent the request.

The undertaking which the decision pertains to must be notified as soon as possible and no later than one month after the request was received. Documentation that accompanied the request must be sent together with the notification. Section 27 of the Public Administration Act shall apply insofar as this is applicable.

The Norwegian Labour Inspection Authority shall notify the authority that has requested notification of when notification was sent to the undertaking.

The Norwegian Labour Inspection Authority may submit a request to the responsible authority in other EEA member states to provide notification of decisions pursuant to Sections 18-7 (coercive fines) and 18-10 (administrative fines) of the Working Environment Act for breaches of working and employment conditions pursuant to Sections 3 and 3b of these Regulations, and breaches of documentation requirements pursuant to Section 4.

Section 7. Mutual assistance in connection with recovery

The Norwegian National Collection Agency must, as soon as possible and no later than one month after receiving a request to recover a claim pursuant to Section 18-11 of the Working Environment Act, provide the undertaking with written notice of the claim. The notice must include the documentation that accompanied the request.

The Norwegian National Collection Agency must notify the authority that has requested recovery as to when recovery was initiated and whether the claim was fully or partially enforced.

The Norwegian National Collection Agency may reject a request for recovery if the information in

the request is incomplete or it is clear that there is no correlation between the request and the decision on which it is based. A request for recovery may also be rejected if:

- a.the total amount to be recovered does not exceed EUR 350, or
- b.the costs of recovery are disproportionately high in relation to the amount to be recovered, or recovery would involve significant difficulties, or
- c.fundamental rights that apply under Norwegian law are not respected.

If a request is rejected, the Norwegian National Collection Agency must, as soon as possible, provide notification of the rejection and the grounds for this to the responsible authority that sent the request.

Section 8. Suspension of assistance

The provision of assistance referred to in Sections 6 and 7 shall be suspended if the authority that requests assistance gives notice that the decision or monetary claim has been appealed, brought before the courts or contested in some other manner. Provision of assistance shall be suspended until a decision has been reached by the correct body in the EEA member state that has requested assistance.

If a decision or monetary claim that the Norwegian Labour Inspection Authority or National Collection Agency has requested another EEA member state to provide notification of or recover has been appealed, brought before the courts or disputed in some other manner in Norway, the Norwegian Labour Inspection Authority or National Collection Centre must notify the responsible authorities from whom assistance was requested as soon as possible.

Section 9. Jurisdiction

In order to assert the right to working and employment conditions pursuant to Sections 3 and 3b, a posted employee may institute legal proceedings in Norway. The legal proceedings can be instituted in the judicial district to which the employee has been posted.

Section 10. Protection against retaliation when a posted employee initiates legal or administrative action against an employer

Retaliation against posted employees who initiate legal or administrative action against the employer in order to safeguard the right to working and employment conditions pursuant to Sections 3 and 3b of these Regulations is prohibited. If the employee presents information that provides grounds to believe that retaliation has taken place in violation of the first sentence, it shall be assumed that such retaliation has taken place unless the employer can prove otherwise.

A person who has been subjected to retaliation in violation of paragraph one may claim redress without regard to the fault of the employer. The redress shall be fixed at the amount that the courts deem reasonable in view of the circumstances of the parties and other facts of the case.

Compensation for financial loss may be claimed in accordance with the general rules.

Section 11. Remuneration for living quarters made available by the employer

If remuneration for living quarters made available by the employer is deducted from the posted employee's salary, the amount of the remuneration must be in reasonable proportion to the employee's net salary and the quality of the living quarters.

Section 12. Posting from Norway

When a Norwegian undertaking posts an employee to another country within the EEA, the employer must ensure that the employee is covered by the provisions in the host country relating to working and employment conditions that were issued for implementing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This shall not apply when the employee is covered by more favourable working and employment conditions pursuant to agreement or the country's laws that otherwise regulate the employment relationship.

Section 12A. Posting from Norway of employees hired from temporary employment agencies

If an undertaking in Norway has hired an employee from a temporary-work agency and sends that employee on a temporary service assignment outside of Norway, the temporary-work agency is responsible for ensuring that the employee is covered by the provisions of the host country such as the working and employment conditions issued for implementing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This applies irrespective of whether the temporary-work agency is established in Norway or in another country.

In the event of an employee being posted as referred to in paragraph one, the hirer must inform the temporary-work agency of the posting within a reasonable period of time before the assignment commences.

Section 13. Penal provisions

Violation of the statutory and regulatory provisions that apply pursuant to Section 3, paragraph one and Section 3B, shall be punishable in accordance with the penal provisions that apply to violations of the aforementioned provisions.

Section 14. Use of the Internal Market Information System (IMI)

If, pursuant to Section 18-11 of the Working Environment Act or Sections 5 to 7 of the Regulations relating to posted employees, a responsible authority provides assistance to an authority in another EEA member state, or requests equivalent assistance from an authority in another EEA member state, the exchange of information shall take place through the Internal Market Information System (IMI).

Section 14a. Posting in the road transport sector

Posting of an employee shall be deemed to take place when a foreign undertaking, by agreement with a recipient of transport services in Norway, posts a driver to Norway for its own account, at its own risk and under its own management, to perform:

- a. cabotage operations, i.e. carriage of goods where the loading and unloading of goods takes place in Norway, or carriage of passengers, where passengers are both picked up and set down in Norway;
- b. cross-trade operations, i.e. transport between Norway and another country if:
 - i. neither of the countries is the country where the undertaking is established; and
 - ii. the transport operation is not an additional activity pursuant to paragraph four.

Posting is not deemed to take place when the driver:

- a. performs a bilateral transport operation pursuant to paragraph three or performs an additional activity pursuant to paragraphs four and five;
- b. transits through Norway without loading or unloading freight and without picking up or setting down passengers;
- c. performs the initial or final road leg as part of a combined transport operation, cf. Section 1, paragraph one, no. 10 of Regulations 11 August 1995 No. 716 relating to the implementation of common rules for domestic transport in the EEA Agreement, if the road leg is a bilateral transport operation as stipulated in paragraph three (a).

Bilateral transport operation means:

- a. the movement of goods by road between the country where the undertaking is established and another country based on a transport contract;
- b. the carriage of passengers where:
 - i. passengers are picked up in the country where the undertaking is established and set down in another country;
 - ii. passengers are picked up in a country and set down in the country where the undertaking is established;
 - iii. passengers are picked up and set down in the country where the undertaking is established if the purpose of the transport operation is to carry out local excursions in another country in accordance with Regulation (EC) No 1073/2009, cf. Section 55 of Regulations 26 March 2003 No. 401 relating to professional transport by motor vehicle and vessel.

Additional activity means that, in connection with a bilateral transport operation in respect of goods or passengers, the driver:

- a. performs one activity of loading and/or unloading in the countries that the driver crosses. It is a requirement that the driver does not load goods and unload them in the same country.
- b. performs two activities of loading and/or unloading during a bilateral transport operation in respect of goods back to the country of establishment, if no loading or unloading activities were performed during the preceding bilateral transport operation from the country of establishment. It is a requirement that the driver does not load goods and unload them in the same country.
- c. picks up and/or sets down passengers in countries that the driver crosses, provided that the driver does not offer the carriage of passengers between two locations within the same country.

The same shall apply to the return journey.

For a driver performing additional activities referred to in paragraph four to not be deemed posted, the vehicle used for the transport operation must be equipped with a smart tachograph that complies with the requirements for recording border crossings and additional activities pursuant to Articles 8, 9 and 10 of Regulation (EU) No 165/2014, cf. Section 1 of Regulations 2 July 2007 No. 877 relating to driving times and rest periods and tachographs for road transport in the EEA.

Section 14b. Delimiting the period of posting

When posting a driver as referred to in Section 14a, paragraph one, periods of posting that are ended by the driver leaving Norway in connection with the performance of the international carriage of goods or passengers shall not be cumulated with periods of posting for the same driver or another driver when assessing whether the driver is entitled to extended protection pursuant to Section 3b.

Section 14c. Obligation to submit posting declaration

Foreign undertakings that post drivers in the cases referred to in Section 14a, paragraph one must submit a posting declaration to the Norwegian Labour Inspection Authority at the latest at the commencement of the posting.

The posting declaration shall contain the following information:

- a.the identity of the undertaking in the form of the number of the Community licence where this number is available;
- b.the contact details of a transport manager or other contact person in the country of establishment;
- c.the name, the address of the residence and the number of the driving licence of the driver;
- d.the start date of the driver's contract of employment, and the country whose law regulates the employment arrangement;
- e.the envisaged start and end date of the posting;
- f.the number plate(s) of the vehicle(s);
- g.statement of whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations.

The undertaking must inform the Norwegian Labour Inspection Authority of any changes to the information referred to in paragraph two.

Undertakings established in an EU member state or other country authorised to use the Internal Market Information System (IMI) for this purpose, must submit a posting declaration pursuant to paragraph two and any updated information pursuant to paragraph three via IMI. Foreign undertakings that are not authorised to use IMI must submit a posting declaration and any updated information using the method stipulated by the Norwegian Labour Inspection Authority.

Section 14d. Documentation requirement during the period of posting

A foreign undertaking performing a transport operation with a posted driver in the cases referred to in Section 14a, paragraph one must ensure during the period of posting that the documents referred to in paragraph two are available in the vehicle and that the driver presents these when requested during roadside checks.

The documentation requirement pursuant to paragraph one includes:

- a. copy of posting declaration submitted pursuant to Section 14c;
- b. documentation concerning the transport assignments that take place in Norway, for example, an electronic waybill or documentation relating to the inbound international carriage and all subsequent cabotage assignments as referred to in Article 8 (3) of Regulation (EC) No 1072/2009 or journey form referred to in Article 12 of Regulation (EC) No 1073/2009, cf. Sections 53 and 55 of Regulations 26 March 2003 No. 401 relating to professional transport by motor vehicles and vessels.
- c. tachograph printouts, including information concerning border crossings in accordance with Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014, cf. Section 1 of Regulations 2 July 2007 No. 877 relating to driving times and rest periods and tachographs for road transport in the EEA.

Section 14e. Documentation requirement following the period of posting

If requested by the Norwegian Labour Inspection Authority following a period of posting, foreign undertakings that have posted a driver who has engaged in the carriage of goods or passengers as referred to in Section 14a, paragraph one, must submit:

- a. documentation referred to in Section 14d, paragraph two, (b) and (c);
- b. documentation regarding the driver's remuneration, for example, pay slips;
- c. employment contract or equivalent document accepted in the country where the undertaking is established and in compliance with the requirements in Article 3 of Directive 91/533/EEC;
- d. timesheets for the driver's work;
- e. proof of payment of remuneration.

Undertakings established in an EU member state or other countries that are authorised to use the Internal Market Information System (IMI) for this purpose shall submit the documentation to the Norwegian Labour Inspection Authority via IMI. Undertakings that are not authorised to use IMI must submit the documentation in the manner stipulated by the Norwegian Labour Inspection Authority.

The obligation pursuant to paragraph one must be fulfilled within eight weeks of the Norwegian Labour Inspection Authority having put forward its request.

Section 15. Entry into force

The Regulations enter into force on 1 January 2006.