

Issuer: Riigikogu  
Type: act  
In force from: 15.07.2018  
In force until: 29.07.2020  
Translation published: 02.07.2018

# Working Conditions of Employees Posted to Estonia Act<sup>1</sup>

Passed 17.03.2004  
RT I 2004, 19, 134  
Entry into force 01.05.2004

Amended by the following acts

Passed	Published	Entry into force
17.12.2008	RT I 2009, 5, 35	01.07.2009
23.11.2016	RT I, 07.12.2016, 1	17.12.2016
14.06.2017	RT I, 04.07.2017, 3	01.01.2018, partially 14.07.2017
13.06.2018	RT I, 29.06.2018, 4	15.07.2018

## § 1. Objective of Act

The objective of this Act is to ensure the protection of the rights of employees from a Member State of the European Union, a Member State of the European Economic Area or the Swiss Confederation (hereinafter *foreign state*) who have been posted to Estonia for the provision of services, and fair competition between employers engaged in the provision of services.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

## § 2. Application of Act

(1) This Act applies to an employee posted by their employer to work in Estonia in the following situations:

- 1) working at the employer's expense and subject to the employer's management and supervision, on the basis of a contract concluded between the employer and a contracting entity resident in Estonia;
- 2) working in the employer's branch or in a company that belongs to the same group as the employer;
- 3) if the employer is a legal person or sole proprietor that intermediates temporary workforce.

(2) This Act does not apply to a crewmember on a cargo ship belonging to merchant navy undertakings.

(3) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

## § 3. Definitions

(1) For the purposes of this Act, a posted employee is a natural person who usually works in a foreign state on the basis of an employment contract, and whom the employer posts to work in Estonia for a specified period of time for the provision of a service. A contract concluded in a foreign state concerning an employment relationship is considered to be an employment contract for the purposes of this Act provided it complies with the provisions of the Employment Contracts Act as regards to an employment contract.

[RT I 2009, 5, 35 – entry into force 01.07.2009]

(2) For the purposes of this Act, an employer is a legal person or sole proprietor registered or established in a foreign state that is not a resident of Estonia and with whom the posted employee has concluded an employment contract.

(3) [Repealed – RT I 2009, 5, 35 – entry into force 01.07.2009]

## § 4. Applicable law

(1) The Private International Law Act shall be applied in the selection of the law to be applied to the employment contract of a posted employee.

(2) Regardless of the choice of the law to be applied to an employment contract, the application of the working conditions listed in § 5 of this Act in accordance with Estonian law, other legislation and extended collective agreements provided for in § 4 (4) of the Collective Agreements Act must be guaranteed for a posted employee.

(3) If the provisions of the laws of a foreign state that apply to an employment contract are more favourable to a posted employee than the Estonian national law provisions as to the working conditions provided for in § 5 of this Act, the provision that is more favourable to the employee shall be applied.

## **§ 5. Applicable working conditions**

(1) Employers shall ensure that the following working conditions established in Estonia are applied to a posted employee:

- 1) working time;
- 2) rest time;
- 3) minimum wage and compensation for overtime work;
- 4) duration of annual holiday;
- 5) equal treatment and equal opportunities;
- 6) conditions of temporary agency work.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(2) In addition to the working conditions specified in subsection (1) of this section, the Occupational Health and Safety Act shall be applied to a posted employee. The Occupational Health and Safety Act shall be applied to a posted employee even when it is less favourable to the posted employee than the provisions of a foreign law.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(2<sup>1</sup>) The employer of a posted employee and a contracting entity or contracting authority specified in § 2 (1) 1) of this Act or a person specified in § 2 (1) 2) or 3) of this Act for whom the posted employee works in Estonia shall agree upon which of them shall be liable for the compliance with the Occupational Health and Safety Act. If no agreement has been made, the contracting entity or contracting authority or a person for whom the posted employee works in Estonia shall be liable for the compliance with the Occupational Health and Safety Act. In the case of violation of the requirements of the Occupational Health and Safety Act, the provisions of the Occupational Health and Safety Act pertaining to liability shall be applied to the contracting entity or contracting authority specified in § 2 (1) 1) of this Act or a person specified in § 2 (1) 2) or 3) of this Act.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(3) The working conditions provided for in clauses (1) 4) and 5) of this section shall not be applied in the case of an up to eight-day posting if the posted employee is a skilled worker whose duty is the initial assembly or first installation of goods necessary for taking the ordered goods into use, if such work is an integral part of a subscription contract.

[RT I 2009, 5, 35 – entry into force 01.07.2009]

(4) The periods of time when another employee posted to Estonia by the same employer was performing the same work in the year leading up to the commencement of the posting shall be taken into consideration in the calculation of the up to eight-day posting period specified in subsection (3) of this section.

(5) The exception specified in subsection (3) of this section shall not be applied if the work done by the posted employee is connected with construction work involving the construction, renovation, maintenance, alteration or demolition of buildings, including excavation work, earthmoving work, actual construction work, or the assembly and demolition, connection and installation, modification, renovation, repair, disassembly, demolition, maintenance, painting, cleaning or repair of prefabricated components.

(6) In the application of clause (1) 3) of this section, monetary compensation in connection with the posting shall be considered to be part of wages, unless it is paid to cover travel, accommodation or meal expenditures incurred during the course of the posting.

[RT I, 04.07.2017, 3 - entry into force 14.07.2017]

(7) [Repealed – RT I 2009, 5, 35 – entry into force 01.07.2009]

## **§ 5<sup>1</sup>. Provision of data and documents**

(1) The employer of a posted employee shall provide the Labour Inspectorate with the following data concerning the posting:

- 1) the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the employer of the posted employee;
- 2) the name and details of the means of communication of the contact person who represents the employer of the posted employee;
- 3) the number of posted employees, their names and personal identification codes or dates of birth;
- 4) the expected duration of the posting and the scheduled start date and end date;
- 5) the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the contracting entity or contracting authority specified in § 2 (1) 1) of this Act or a person specified in § 2 (1) 2) or 3) of this Act for whom the posted employee works in Estonia;

6) the name and details of the means of communication of the contact person who represents the contracting entity or contracting authority specified in § 2 (1) 1) of this Act or a person specified in § 2 (1) 2) or 3) of this Act for whom the posted employee works in Estonia;

7) information regarding in which area of activity the posted employee will be working in Estonia, and the address of the place of performance of work of the posted employee.

(2) The employer of a posted employee shall provide the Labour Inspectorate with the data specified in subsection (1) of this section via e-mail before the posted employee commences the performance of work in Estonia.

[RT I, 29.06.2018, 4 - entry into force 15.07.2018]

(3) At the request of the Labour Inspectorate, the employer of a posted employee shall provide the Labour Inspectorate with documents necessary for the exercise of state or administrative supervision.

(4) Documents specified in subsection (3) of this section may be an employment contract, working time schedule, payslip or another document on the basis of which it is possible to prove the compliance with the working conditions applicable to posted employees.

(5) The employer of a posted employee shall provide the Labour Inspectorate with documents immediately. Documents specified in subsection (4) of this section may also be requested by the Labour Inspectorate within the period of time set out in § 12 (1) of the Accounting Act after the end of the employee's posting period.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

## **§ 5<sup>2</sup>. Liability of person who ordered service from employer of posted employee**

(1) If an employee posted to Estonia performs work specified in § 5 (5) of this Act and the employer does not pay the employee wages, the wages shall be paid by the person who ordered the service from the employer of the posted employee.

(2) The obligation provided for in subsection (1) of this section shall be fulfilled by the person who ordered the service from the employer of the posted employee if it is not possible to collect the wages from the employer within six months after the enforcement of the decision.

(3) The claim specified in subsection (1) of this section is limited to the minimum monthly wage established under § 29 (5) of the Employment Contracts Act.

(4) If in everyday economic activities the person who ordered a service from the employer of a posted employee has exercised due diligence in their relationship with the employer of the posted employee, the person does not have the obligation provided for in subsection (1) of this section before the employee.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

## **§ 6. Implementing authority and cooperation**

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(1) The Labour Inspectorate is the implementing authority regarding Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (OJ L 018, 21.01.1997, pp. 1–6) and Directive 2014/67/EU of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.05.2014, pp. 11–31).

(2) The Labour Inspectorate shall cooperate with competent authorities of foreign states.

(3) The Labour Inspectorate shall make information available and reply to reasoned requests for information concerning Acts, other legislation and extended collective agreements that apply to a posted employee.

(4) The Labour Inspectorate shall reply to reasoned requests from competent authorities of foreign states for information concerning sole proprietors and legal persons that serve as employment intermediaries regarding instances in which they have committed offences in connection with the posting of employees or engaged in illegal international activities.

(5) The Labour Inspectorate shall reply to requests for information specified in subsection (4) of this section within 25 working days as of the receipt of a request, unless a shorter period has been agreed upon. In the case of a reasoned request, data concerning registration as VAT payer shall be provided by the Labour Inspectorate within two working days as of the receipt of the request.

(6) When replying to a request for information from a competent authority of a foreign state or when exercising supervision or conducting an investigation there are impediments that do not allow the Labour Inspectorate to perform an act, the Labour Inspectorate shall inform the requesting authority thereof.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

## **§ 7. Dispute Resolution**

(1) A posted employee has the right of recourse to a labour dispute resolution body of the Republic of Estonia for the protection of the rights guaranteed by this Act. This does not limit their right to bring their claim to a labour dispute resolution body of a foreign state if such right arises from an international agreement.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(2) The limitation period for claims arising from this Act is four months, and in the case of wage claims three years, from the day following that on which the posted employee became aware or should have become aware of the violation of their rights.

### **§ 7<sup>1</sup>. Cross-border notification of financial administrative measure and submission for enforcement**

(1) When a financial administrative measure has been imposed for the failure to comply with the requirements applicable to the posting of employees, the Labour Inspectorate shall be the implementing authority for:

1) the cross-border notification of imposition of a financial administrative measure for the failure to comply with the requirements applicable to the posting of employees in the case of a request submitted to the Republic of Estonia by a foreign state;

2) the cross-border notification and submission for enforcement of a penalty payment imposed for the failure to comply with the requirements applicable to the posting of employees in the case of a request submitted by a foreign state.

(2) In the case of a request submitted to the Republic of Estonia by a foreign state, the Labour Inspectorate shall be the claimant upon the submission for enforcement of a decision to impose a financial administrative measure for the failure to comply with the requirements applicable to the posting of employees.

(3) The exchange of data related to cross-border notification of a financial administrative measure and submission for enforcement thereof shall take place through the Internal Market Information System governed by Regulation (EU) No 1024/2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, pp. 1–11) (hereinafter the *Internal Market Information System*) on the basis of a uniform instrument.

(4) The Labour Inspectorate may refuse to accept a request from a foreign state for the cross-border notification and submission for enforcement if:

1) the data in the uniform instrument is incomplete;

2) the request for notification does not set out the objective of or due date for notification;

3) the request for submission for enforcement does not set out the content or amount of the financial administrative measure, the date of making and entry into force of the decision, or other relevant circumstances of importance for the submission for enforcement of the financial administrative measure;

4) the data set out in the request for submission for enforcement contradicts the decision that serves as the basis for the request;

5) on the basis of the data set out in the request for submission for enforcement it is obvious that the expenses of claiming the financial administrative measure are not proportional to the amount claimed or that claiming the measure will be accompanied by substantial difficulties;

6) the total amount of the claims set out in the request for submission for enforcement falls below 350 euros.

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 7<sup>2</sup>. Proceedings concerning cross-border notification of financial administrative measure and request for submission for enforcement thereof to Republic of Estonia**

(1) The Labour Inspectorate shall notify the authority which submitted a request of the proceedings concerning the request or of the refusal to accept the request through the Internal Market Information System at the first possible opportunity.

(2) The Labour Inspectorate shall notify the person of a decision to impose a financial administrative measure and of documents pertaining to the decision as well as of the possibility of contesting the decision in the country where it was made at the first possible opportunity but no later than within one month as of the receipt of the request.

(3) The Labour Inspectorate shall immediately send the necessary documents pertaining to an accepted request for the submission for enforcement of a financial administrative measure to a bailiff. A decision made by a competent authority of a foreign state concerning the imposition of a financial administrative measure for the failure to comply with the requirements applicable to the posting of employees, which is submitted by the Labour Inspectorate to a bailiff for collection, shall be deemed to be an enforcement instrument on the basis of § 2 (1) 5<sup>1</sup>) of the Code of Enforcement Procedure.

(4) If the Labour Inspectorate is provided with information that the financial administrative measure has been contested in the country where it was imposed, the Labour Inspectorate shall submit to the bailiff an application for the suspension of the enforcement proceedings at the first possible opportunity.  
[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 7<sup>3</sup>. Cross-border notification of penalty payment imposed in Estonia and submission for enforcement thereof in foreign state**

(1) The Labour Inspectorate may submit to a foreign state a request for notification of a penalty payment.

(2) The Labour Inspectorate may submit a request for submission for enforcement of a penalty payment after the period of time for contesting the decision has lapsed.

(3) A request for submission for enforcement of a penalty payment may be submitted to a foreign state only if the enforcement thereof in Estonia is impossible.

(4) If a decision on imposing a penalty payment is contested, the Labour Inspectorate shall submit to the competent authority of a foreign state a request for the suspension of the enforcement proceedings.  
[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 8. Exercise of state and administrative supervision**

[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(1) State and administrative supervision over compliance with the requirements provided for in this Act shall be exercised by the Labour Inspectorate.

(2) For the exercise of the state supervision provided for in this Act, the Labour Inspectorate may apply the special state supervision measures provided for in §§ 30, 31, 32, 49, 50 and 51 of the Law Enforcement Act.

(3) In order to determine whether an employee is a posted employee, the Labour Inspectorate shall assess case by case all the circumstances pertaining to posting, which may be, above all, the circumstances set out in Article 4(2) and (3) of Directive 2014/67/EU of the European Parliament and of the Council. If one or several of the listed circumstances do not exist, it does not preclude the situation from being deemed as posting of an employee.

(4) If in the course of the exercise of supervision the Labour Inspectorate ascertains that there might be a violation of circumstances related to posting, the Labour Inspectorate shall immediately present to the relevant foreign state the relevant information known to the Labour Inspectorate.

(5) Evidence collected by the competent authority of a foreign state is also considered to be evidence when implementing liability under this Act.  
[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 8<sup>1</sup>. Body conducting proceedings pertaining to misdemeanours**

The body conducting extra-judicial proceedings pertaining to the misdemeanours provided for in this Act is the Labour Inspectorate.  
[RT I, 29.06.2018, 4 - entry into force 15.07.2018]

### **§ 9. Procedure for challenging precept**

[Repealed – RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 9<sup>1</sup>. Failure to apply working conditions**

(1) An employer who has failed to fulfil the obligations set out in § 5 (1) 1) through 3) of this Act is punished by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3200 euros.  
[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

### **§ 9<sup>2</sup>. Proceedings**

[Repealed -RT I, 29.06.2018, 4 - entry into force 15.07.2018]

### **§ 9<sup>3</sup>. Failure to provide data**

(1) A person who has failed to perform the obligations set out in § 51 (1) and (2) of this Act, – is punished by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, – is punishable by a fine of up to 32,000 euros.

[RT I, 29.06.2018, 4 - entry into force 15.07.2018]

### **§ 10. [Omitted from this text.]**

### **§ 11. Entry into force of Act**

This Act enters into force on 1 May 2004.

<sup>1</sup>Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (OJ L 018, 21.01.1997, pp. 1–6); Directive 2014/67/EU of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information (OJ L 159, 28.05.2014, pp. 11–31). [RT I, 07.12.2016, 1 – entry into force 17.12.2016]