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Working Conditions of Employees Posted to Estonia Act¹

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, in part 14.07.2017
13.06.2018	RT I, 29.06.2018, 4	15.07.2018
17.06.2020	RT I, 09.07.2020, 1	30.07.2020

§ 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 or contracting authority operating in Estonia;

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

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.

(1¹) This Act is also applied to an employee posted to work in Estonia by their employer specified in clause (1) 3) of this section in the following cases:

1) working on the basis of a contract concluded between a user undertaking and a contracting entity or contracting authority operating in Estonia;

2) working in a user undertaking's branch or in a company that belongs to the same group as the user undertaking;

3) the user undertaking is a legal person or sole proprietor that intermediates temporary workforce.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(1²) In the cases referred to in subsection (1¹) of this section the person who posted is deemed to be the employer set out in clause (1) 3).

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(2) This Act does not apply to crew members of merchant navy undertakings.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(2¹) The provisions of § 2 (1¹) and (1²), § 5 (1) 3) and 7) and § 5 (6¹) through (6³), § 5³ and § 8 (6) of this Act are not applied to the road transport sector.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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) wage and compensation for overtime work;
[RT I, 09.07.2020, 1 – entry into force 30.07.2020]
- 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];
- 7) compensation for costs related to business trips.
[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(1¹) Employers shall ensure that a posted employee in the road transport sector is subject to the minimum wage applicable in Estonia.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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]

(2¹) 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]

(6¹) If the working conditions applied to an employment relationship do not specify whether or not compensation is paid for posting or if it is paid it has not been determined which part of it is paid as compensation for actual expenses arising from the posting and which part is wages, it is deemed that the entire compensation in connection with the posting is paid to cover the actual expenses arising from the posting.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(6²) If a user undertaking posts an employee of an employer referred to in § 2 (1) 3) of this Act from Estonia to work in a foreign state for the provision of a service, the employee is deemed to have been posted to the foreign state by the employer. The user undertaking shall inform the employer of such a posting a reasonable period of time in advance.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(6³) Provision of a service for the purposes of subsection (6²) of this section is deemed to be provision of a service:

1) on the basis of a contract concluded between the user undertaking and a contracting entity or contracting authority operating in a foreign state;

2) in the user undertaking's foreign branch or in a foreign company that belongs to the same group as the user undertaking;

3) if the user undertaking is a legal person or sole proprietor that intermediates temporary workforce and posts the employee from Estonia to a foreign state.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

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

§ 5¹. Provision of data and documents and disclosure of data

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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 and numbers of their identity documents;

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

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 person responsible for the provision of data shall provide the Labour Inspectorate with the data specified in subsection (1) of this section in a format that can be reproduced in writing before the posted employee commences the performance of work in Estonia, and shall notify of changes in the data before they take effect.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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, an attestation issued under Article 19 (2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, pp. 1–42), a working time schedule, a payslip or another document on the basis of which it is possible to prove compliance with the working conditions applicable to posted employees.
[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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 three years after the end of the employee's posting period.
[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(6) The Labour Inspectorate shall disclose the data specified in subsection (1) of this section to the Tax and Customs Board for ensuring performance of duties imposed by tax laws.
[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 5². 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]

§ 5³. Long-term posting

(1) If an employee's actual posting lasts longer than 12 months, the employer is required to ensure the employee the working conditions applicable in Estonia, except for:

- 1) the rights and obligations related to entry into and cancellation of an employment contract, including a non-compete clause applicable after the end of the employment relationship;
- 2) occupational pension schemes.

(2) If the employer files with the Labour Inspectorate a reasoned notice in a format that can be reproduced in writing before the expiry of the 12 months, the period of time provided for in subsection (1) of this section may be extended to 18 months. By agreement with the employer a reasoned notice may also be filed by a contracting entity or contracting authority referred to in § 2 (1) 1) of this Act or a person referred to in § 2 (1) 2) and 3) for whom the posted employee works in Estonia.

(3) If the employer replaces a posted employee with another posted employee performing the same duties at the same place, the durations of their postings shall be added up.

(4) In order to determine whether a situation constitutes performance of the same duties at the same place for the purposes of subsection (3) of this section, regard shall be had, among others, to the nature of the service provided or work performed and, where relevant, the address of the place of performance of work.

(5) A user undertaking shall inform an employer referred to in § 2 (1) 3) of this Act of working conditions applicable to employees posted long-term.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 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. Said cooperation also includes sending and delivery of documents.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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.

§ 7¹. 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 non-compliance levy 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]

§ 7². 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 an enforcement agent. 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 an enforcement agent for collection, shall be deemed to be an enforcement instrument on the basis of § 2 (1) 5¹) 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 enforcement agent 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]

§ 7³. Cross-border notification of non-compliance levy 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 non-compliance levy.

(2) The Labour Inspectorate may submit a request for submission for enforcement of a non-compliance levy after the period of time for contesting the decision has lapsed.

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

(4) If a decision on imposing a non-compliance levy 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]

(6) If information about the working conditions applicable to posted employees has not been disclosed in an easily accessible manner, this shall be taken into account in proceedings to ensure the proportionality of the punishment to the necessary extent.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 8¹. Body conducting proceedings pertaining to misdemeanours

[Repealed – RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 9. Procedure for challenging precept

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

§ 9¹. Failure to apply working conditions

(1) Failure to perform the obligations provided for in § 5 (1) 1) through 3) of this Act by an employer or an employer's management board member or another representative to whom the performance of these obligations was delegated is punishable by a fine of up to 300 fine units.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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]

§ 9². Proceedings

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

§ 9³. Failure to provide data

(1) Failure to perform the obligations provided for in § 5¹(1) and (2) of this Act by an employer or an employer's management board member or another representative to whom the performance of these obligations was delegated is punishable by a fine of up to 300 fine units.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

(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]

§ 9⁴. Proceedings

The extra-judicial body conducting proceedings in matters of misdemeanours provided for in this Act is the Labour Inspectorate.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 9⁵. Application of § 5³ of this Act

For posted employees who are in Estonia at the moment § 5³ of this Act enters into force, the period of time provided for in § 5³(1) and (3) is calculated from the day following the entry into force of this Act.

[RT I, 09.07.2020, 1 – entry into force 30.07.2020]

§ 10. Amendment of previous Acts

[Omitted from this text.]

§ 11. Entry into force of Act

This Act enters into force on 1 May 2004.

¹Directive 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), as amended by Directive (EU) 2018/957 (OJ L 173, 09.07.2018, pp. 16–24); 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, 09.07.2020, 1 – entry into force 30.07.2020]