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Working Conditions of Employees Posted to Estonia Act¹

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RT I 2004, 19, 134
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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
27.10.2021	RT I, 12.11.2021, 2	22.11.2021
09.03.2022	RT I, 22.03.2022, 2	01.04.2022, in part 21.08.2023
20.04.2022	RT I, 30.04.2022, 1	01.08.2022
21.09.2022	RT I, 05.10.2022, 1	15.10.2022

§ 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 3 of subsection 1 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 3 of subsection 1.

[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) [Repealed – RT I, 22.03.2022, 2 – entry into force 01.04.2022]

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

§ 2¹. Specifications of application of Act as to posting of driver

(1) This Act applies to employees in the road transport sector (hereinafter *driver*). If the posting of a driver meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act, this Act applies to them if so provided by this Act.

(2) This Act does not apply to a driver, including a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act, who:

1) performs bilateral carriage of goods or bilateral carriage of passengers;

2) transits through the territory of a state without loading or unloading freight and without picking up or setting down passengers;

3) in addition to performing bilateral carriage of goods, performs one activity of loading and unloading in the European Union Member States (hereinafter *Member State*) or states not in the European Union (hereinafter *third country*) that the driver crosses, provided that goods are not loaded and unloaded in the same Member State if the driver uses a vehicle fitted with a smart tachograph as provided in Articles 8, 9 and 10 of Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.02.2014, pp 1–33) (hereinafter *vehicle fitted with a smart tachograph*); [RT I, 22.03.2022, 2 – entry into force 21.08.2023]

4) in addition to bilateral carriage of goods starting from the Member State of establishment of the transport operator (hereinafter *Member State of establishment*) during which the driver performs no additional activity of loading or unloading on the way to the country of destination, performs up to two additional activities of loading and unloading in Member States or third countries crossed in bilateral carriage to the Member State of establishment, provided that goods are not loaded and unloaded in the same Member State if the driver uses a vehicle fitted with a smart tachograph;

[RT I, 22.03.2022, 2 – entry into force 21.08.2023]

5) picks up passengers in states crossed in bilateral carriage of passengers and sets them down once in states crossed, provided that the driver does not offer passenger transport service within a Member State crossed if the driver uses a vehicle fitted with a smart tachograph.

[RT I, 22.03.2022, 2 – entry into force 21.08.2023]

(3) For the purposes of this Act, a bilateral carriage of goods means the movement of goods, based on a transport contract, from the Member State of establishment to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment, including road leg of combined transport according to subsection 1 of § 33 of the Road Transport Act.

(4) For the purposes of this Act, bilateral carriage of passengers means international occasional or regular carriage of passengers when a driver performs the following operation:

1) picks up passengers in the Member State of establishment and sets them down in another country;

2) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment;

3) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009 of the European Parliament and of the Council on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, pp 88–105).

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

§ 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 is 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 in subsection 1 of § 4² of the Collective Agreements Act must be guaranteed for a posted employee.

[RT I, 12.11.2021, 2 – entry into force 22.11.2021]

(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 in § 5 of this Act, the provision that is more favourable to the employee is applied.

§ 5. Applicable working conditions

(1) Employers are to 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) [Repealed – RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(1²) Employers are to advise a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act in considering the specifications of posting of a driver arising from this Act.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(1³) A shipper, freight forwarder, and main contractor or subcontractor taking part in commissioning carriage of goods are to ensure that the execution of the commissioned transport service follows the requirements provided in §§ 2¹ and 5¹ of this Act that concern a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(1⁴) Where the posting of an employee lasts for longer than one month, the employer must provide the employee with the following information in writing:

- 1) the duration of the posting period in Estonia;
- 2) the wage and the currency in which it is paid;
- 3) the benefits related to the posting and the procedure for reimbursing expenditure on travel, board and lodging;
- 4) the conditions governing repatriation from the country;
- 5) a link to the official website of the Labour Inspectorate where information about the working conditions of an employee posted to Estonia, the applicable law, the applicable collective agreements and other important information is available.

[RT I, 30.04.2022, 1 – entry into force 01.08.2022]

(1⁵) A posted employee is to be informed of a change in the information specified in subsection 1⁴ of this section in writing no later than on the day the change takes effect.

[RT I, 30.04.2022, 1 – entry into force 01.08.2022]

(2) In addition to the working conditions specified in subsection 1 of this section, the Occupational Health and Safety Act is to be applied to a posted employee. The Occupational Health and Safety Act is to 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 clause 1 of subsection 1 of § 2 of this Act or a person specified in clauses 2 or 3 of subsection 1 of § 2 of this Act for whom the posted employee works in Estonia must agree upon which of them is to 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 is to 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 are to be applied to the contracting entity or contracting authority specified in clause 1 of subsection 1 of § 2 of this Act or a person specified in clauses 2 or 3 of subsection 1 of § 2 of this Act.
[RT I, 07.12.2016, 1 – entry into force 17.12.2016]

(3) The working conditions provided in clauses 3 and 4 of subsection 1 of this section are not 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, 12.11.2021, 2 – entry into force 22.11.2021]

(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 are 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 is not applied if the work done by the posted employee is related to the construction work related to the construction, repair, upkeep, alteration or demolition of buildings, including excavation work, earthmoving work, actual construction work, or the assembly and dismantling, connection and installation, alteration, renovation, repair, disassembly, demolition, maintenance, painting, cleaning or repair of prefabricated components.

(6) In the application of clause 3 of subsection 1 of this section, monetary compensation in connection with the posting is 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 clause 3 of subsection 1 of § 2 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 must 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]

(8) Employers may not treat a posted employee unfavourably for the reason that the employee relies on their rights, including has commenced court proceedings against their employer or has had recourse to an administrative authority.
[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

§ 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 is to 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 clause 1 of

subsection 1 of § 2 of this Act or a person specified in clauses 2 or 3 of subsection 1 of § 2 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 clause 1 of subsection 1 of § 2 of this Act or a person specified in clauses 2 or 3 of subsection 1 of § 2 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.

(1¹) The employer of a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act is to provide the Labour Inspectorate with a declaration of posting through the Internal Market Information System according to Regulation (EU) No 1024/2012 of the European Parliament and of the Council on administrative co-operation 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 *Internal Market Information System*), which is to include the following data:

1) the name and address of the employer of the driver and the number of the Community activity licence, if any;

2) the contact details of the transport manager of the employer of the driver or of a person representing the employer;

3) the driver's name and date of birth, address of residence and driver's licence number;

4) the commencement date of the driver's employment contract and applicable law;

5) the expected start and end date of the posting;

6) the motor vehicle registration number;

7) whether the transport service is carriage of goods, carriage of passengers, international carriage or cabotage operations.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(1²) The employer is to give to a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act a copy of the declaration of posting specified in subsection 1¹ of this section.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(2) The person responsible for the provision of the data specified in subsection 1 of this section is to provide the Labour Inspectorate with such data in a form reproducible in writing before the posted employee commences the performance of work in Estonia, and is to notify of changes in the data before they take effect.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(2¹) The person responsible for the provision of the data specified in subsection 1¹ of this section is to enter the data in the Internal Market Information System before the posted employee commences the performance of work in Estonia.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

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

(3¹) At the request of the Labour Inspectorate, the employer of a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act is to provide the documents specified in subsection 4¹ of this section through the Internal Market Information System within eight weeks as of the receipt of the request.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(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]

(4¹) A document requested under subsection 3¹ of this section may be:

1) a copy of a transport document according to subsection 3 of § 29 of the Road Transport Act;

2) a copy of recording equipment data according to the requirements for registration and keeping record as provided by Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.04.2006, pp 1–14), and Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.02.2014, pp 1–33);

- 3) an employment contract;
- 4) a working time schedule;
- 5) a payslip.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(5) The employer of a posted employee is to 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 discloses the data specified in subsections 1 and 1¹ of this section to the Tax and Customs Board for ensuring performance of duties imposed by tax laws.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

§ 5². Liability of person who has commissioned subcontracting from employer of posted employee

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

(1) If an employee posted to Estonia performs work specified in subsection 5 of § 5 of this Act and the employer does not pay the employee wages, the person who has commissioned subcontracting is liable for the employer's obligation to pay wages as a surety under the provisions of the Law of Obligations Act governing suretyship.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

(1¹) A person who has commissioned subcontracting means a person who, for the performance of their obligations related to construction work, orders work specified in subsection 5 of § 5 of this Act from another person.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

(2) The obligation provided in subsection 1 of this section must be fulfilled by the person who has commissioned subcontracting from the employee's employer if it is not possible to collect the wages from the employer within four months after the commencement of enforcement proceedings.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

(3) The obligation of the person who has commissioned subcontracting specified in subsection 1 of this section is limited to the minimum monthly wage established under subsection 5 of § 29 of the Employment Contracts Act per calendar month.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

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

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

(5) A person who has commissioned subcontracting has exercised due diligence for the purposes of subsection 4 of this section if they have done a background check on their transaction partner and have had reason to consider the partner reliable, which is expressed, above all, in no payment defaults and in payment of employees' social tax.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

§ 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 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 clause 1 of subsection 1 of § 2 of this Act or a person referred to in clauses 2 and 3 of subsection 1 of § 2 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 are added up.

(3¹) The posting of a driver posted to Estonia who meets the conditions provided in clause 1 of subsection 1 of § 2 of this Act ends when the driver leaves the territory of Estonia in the course of international carriage of goods or carriage of passengers. Posting periods of a driver are not added up.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(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 must 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 must inform an employer referred to in clause 3 of subsection 1 of § 2 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 co-operation

[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 co-operation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.05.2014, pp 11–31).

(2) The Labour Inspectorate co-operates with competent authorities of foreign states. Said co-operation also includes sending and delivery of documents.

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

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

(4) The Labour Inspectorate replies 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 replies 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 are 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 informs 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 is 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 is 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 is to take place through the Internal Market Information System on the basis of a uniform instrument.

[RT I, 22.03.2022, 2 – entry into force 01.04.2022]

(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 notifies 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 notifies 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 immediately sends 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, is deemed to be an enforcement instrument on the basis of clause 5¹ of subsection 1 of § 2 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 submits 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 submits 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 in this Act are exercised by the Labour Inspectorate.

(2) For the exercise of the state supervision provided in this Act, the Labour Inspectorate may apply the special state supervision measures provided 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 assesses 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 immediately presents 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 is 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 in clauses 1–3 of subsection 1 of § 5 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, 22.03.2022, 2 – entry into force 01.04.2022]

§ 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 in subsections 1–2 of § 5¹ 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, 22.03.2022, 2 – entry into force 01.04.2022]

(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. Failure to perform obligations by shipper, freight forwarder, and main contractor and subcontractor

(1) Failure to comply with the requirements provided in subsection 1³ of § 5 of this Act by a shipper, freight forwarder, or main contractor or subcontractor taking part in commissioning carriage of goods, their management board member or another representative to whom the performance of the obligation to commission carriage of goods was delegated is punishable 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, 22.03.2022, 2 – entry into force 01.04.2022]

§ 9⁵. Proceedings

[RT I, 22.03.2022, 2 – entry into force 01.04.2022 – section number 9.4 changed to 9.5]

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

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

§ 9⁶. Implementation of § 5³ of this Act

[RT I, 22.03.2022, 2 – entry into force 01.04.2022 – section number 9.5 changed to 9.6]

For posted employees who are in Estonia at the moment § 5³ of this Act enters into force, the period of time provided in subsections 1 and 3 of § 5³ 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]

§ 9⁷. Provision of information to posted employee

If at the moment of entry into force of subsection 1⁴ of § 5 of this Act a posted employee is in Estonia, they may request written presentation of the information provided in subsection 1⁴ of § 5 according to the rules of this Act that took effect on 1 August 2022.

[RT I, 30.04.2022, 1 – entry into force 01.08.2022]

§ 9⁸. Application of § 5² of this Act

(1) The liability of a person who has commissioned subcontracting as a surety under the provisions of the Law of Obligations Act governing suretyship, as provided in § 5² of this Act, is applied to contracts entered into between the person who has commissioned subcontracting and the employer of an employee after the entry into force of this section.

(2) Contracts entered into before the entry into force of this section are subject to the four-month time limit provided in subsection 2 of § 5² of this Act as the time limit for collection.

[RT I, 05.10.2022, 1 – entry into force 15.10.2022]

§ 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 co-operation through the Internal Market Information (OJ L 159, 28.05.2014, pp 11–31); Directive (EU) 2020/1057 of the European Parliament and of the Council laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (ELT L 249, 31.07.2020, pp 49–65); Directive (EU) 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (OJ L 186, 11.07.2019, pp 105–121). [RT I, 30.04.2022, 1 – entry into force 01.08.2022]