

Identifying the remuneration and working conditions applicable to posted workers: a step-by-step approach

Identification of sources

1. Laws, regulations and/or administrative provisions in the host State constitute the **‘legislation of the host State’**. They are applicable to posted workers inasmuch as they contain provisions concerning terms and conditions of employment included in Article 3(1) of the Posting of Workers Directive.
2. **‘Applicable collective agreements’** are collective agreements which are either universally or generally applicable in the host State, or have been concluded by the most representative trade unions and employers’ organisations at national level in the host State. They are applicable to posting undertakings and posted workers who fall into their scope of application.
3. If the posting is done by a **temporary employment undertaking or agency**, then the user undertaking must inform that undertaking or agency of the terms and conditions of employment that it applies regarding the working conditions and remuneration. *Go to point 5.*
4. If the posting is **not** performed by a temporary employment undertaking or agency, *go to point 6.*

Temporary work agencies

5. The posting employer must apply to workers posted by a temporary employment undertaking or agency working conditions and remuneration which are at least the same that would apply **if they had been recruited directly by the user undertaking** to perform the same job, unless national law provides for an exception.

Remuneration

6. Check the remuneration applicable to posted workers under the legislation of the host State (**legal minimum wage**). If this is higher than the remuneration applicable to the employee on the basis of his/her employment contract, then the remuneration must be increased to match the legal minimum wage for the whole duration of the posting.
7. Check the remuneration applicable to posted workers under the applicable collective agreements. This includes the **general minimum level of remuneration** and/or the **minimum remuneration for the specific functions and seniority** of the posted worker. If it is higher than the remuneration applicable to the employee on the basis of his/her employment contract, or higher than the remuneration applicable under *point 6*, then the remuneration must be increased to match the level set by the applicable collective agreement for the whole duration of the posting.

Other elements of remuneration

8. Check other elements of remuneration applicable to posted workers under the legislation of the host State.
9. Check other elements of remuneration applicable to posted workers under the applicable collective agreements. These can be elements which are specific to certain functions and/or categories of workers identified by the collective agreements.
10. The **total amount of remuneration** (gross) to be paid to the posted worker is equal to the sum of a) the highest amount resulting from *points 6 and 7* + b) the highest amount resulting from *points 8 and 9*. If this (gross) amount is higher than the total amount of remuneration (gross) paid to the employee on the basis of their employment contract, then the total amount of remuneration (gross) must be increased to at least match the amount resulting from the present point for the whole duration of the posting.

Maximum work periods and minimum rest periods

11. Check the maximum work periods under the legislation of the host State.
12. Check the maximum work periods under the applicable collective agreements.
13. The **maximum work periods** of posted workers during their posting must be limited to the lowest ceiling resulting from *points 11 and 12*.
14. Check the minimum rest periods under the legislation of the host State.
15. Check the minimum rest periods under the applicable collective agreements.
16. The **minimum rest periods** to be recognised to posted workers during their posting must be at least equal to the highest level resulting from *points 14 and 15*.

Minimum paid annual leave

17. Check the minimum amount of paid annual leave under the legislation of the host State.
18. Check the minimum amount of paid annual leave under the applicable collective agreements.
19. The **minimum amount of paid annual leave** to be recognised to posted workers during their posting must be at least equal to the highest amount resulting from *points 17 and 18*. If the period of posting is shorter than one year, the amount of paid annual leave should be reduced accordingly.

Allowances or reimbursement of expenditure

20. Check the allowances or reimbursement of expenditure under the legislation of the host State. These are applicable to posted workers in the same way as they apply to local ones.
21. Check the allowances or reimbursement of expenditure under the applicable collective agreements. These are applicable to posted workers in the same way as they apply to local workers.
22. The **minimum amount of each specific allowance or reimbursement of expenditure** to be recognised to posted workers must be set at least at the same level as the highest ones resulting from *points 21 and 22* if the posted workers satisfy the same criteria for their application as the ones applicable to local workers.

Conditions for accommodation

- 23.** Check the existence of an obligation for the employer to provide accommodation for its workers under the legislation of the host State. These obligations are applicable to the posting employer in the same way as they apply to local employers.
- 24.** Check the existence of an obligation of the employer to provide accommodation for its workers under the applicable collective agreements. These obligations are applicable to the posting employer in the same way as they apply to local employers.
- 25.** The posting employer must provide **accommodation** for posted workers if such an obligation results from either *point 23 or 24*. Conditions for accommodation must be at least the same as those applicable to local employers and workers.

Health, safety and hygiene at work

- 26.** Check the obligations of the employer to ensure the health and safety of its workers under the legislation of the host State. These include specific protective measures concerning the employment of pregnant women or women who have recently given birth, as well as the employment of children and of young people.
- 27.** Check the obligations of the employer to ensure the health and safety of its workers under the applicable collective agreements. These include specific protective measures concerning the employment of pregnant women or women who have recently given birth, as well as the employment of children and of young people.
- 28.** The obligations of the posting employer concerning the protection of the health and safety of its workers, including the entitlement of posted workers to training in matters related to these subjects, are equal to the most specific ones resulting from *points 26 and 27*.

Equality of treatment

- 29.** Check the conditions related to equal treatment between men and women and other provisions on non-discrimination under the legislation of the host State.
- 30.** Check the conditions related to equal treatment between men and women and other provisions on non-discrimination under the applicable collective agreements.
- 31.** The posting employer must ensure the application of conditions resulting from both *points 29 and 30*.