La Kanzlei

Secondment: simplification of the procedure - tightening of sanctions and liability of main contractors

Arbeitsrecht



Emilie Wider



Emilie Vienne



a. **Significant simplification of formalities**

- No more formalities in the event of a Secondment "on your own account":

  Companies that have already completed the complex registration procedure via the electronic reporting portal SIPSI will appreciate the fact that, if the secondment is made on their own account, the obligation to report the secondment to the labour inspectorate before the beginning of the mission will no longer apply as of 7 September 2018.

  In the same way, it is no longer necessary to appoint a representative for the company in France.

  A secondment for own account is when the activity of the posted employee does not serve to fulfil a contract for another company, but corresponds to a task carried out solely for the employer, for example in the following cases : development of the French market, participation in work meetings, etc.

NB: In the event of an accident at work suffered by the posted worker, the posting employer must report himself the accident to the labour inspectorate.

- Soon a simpler notification procedure for recurrent postings employers, who post workers to France, not on their own account but on a repeated basis, can benefit from a simplification of their formalities for one year - this period can be extended on request - after submitting a request to the DIRECCTE, thus avoiding the burden of recurrent declarations. It will still be necessary to respect the core rights of posted workers (i.e. individual and collective freedom, right to strike, non-discrimination, maternity protection, minimum wage, working time, paid leave, health and safety, etc.). The DIRECCTE may subsequently request documents from the employer for verification purposes. A decree is yet to be issued to determine what the simplifications will look like in practice, where the request will be made and how quickly it will be processed. Until then, the legal situation will remain as it is at present.

- Soon no more preregistrations for certain short secondments

  Pre-registration and the appointment of a representative in France will no longer be required for certain work in France in the context of short-term performance.

  The list of activities concerned has yet to be established by decree, so this amendment is not yet applicable.

b. **Tightening of sanctions**

The reform is not only beneficial: In the event of a non-compliance with the formalities in cases of posting which are not affected by the abolition of prior notification, or if an accident at work is not reported, the possible fines are increased from €2,000 to €4,000 per posted employee (and from €4,000 to €8,000 in the case of repetition), and the period within which the upper limit of the fine is doubled in the case of repetition is increased from one to two years.

Finally, the Labour Inspectorate can order the suspension of activities if previous fines have not been paid.

c. **Liability for subcontractors**

The reform also means that the main contractor must not only check with his subcontractors whether the relevant formalities have been completed in connection with a posting of workers to France, but also whether any previous fines are still outstanding.

2018-10-02

Qivive
Rechtsanwalts GmbH

qivive.com

Köln[D]
Konrad-Adenauer-Ufer 71
D – 50668 Köln
T + 49 (0) 221 139 96 96 - 0
F + 49 (0) 221 139 96 96 - 69
koeln@qivive.com

Paris[F]
50 avenue Marceau
F – 75008 Paris
T + 33 (0) 1 81 51 65 58
F + 33 (0) 1 81 51 65 59
paris@qivive.com

Lyon[F]
4 Pl. Amédée Bonnet
F – 69002 Lyon
T + 33 (0) 4 27 46 51 50
F + 33 (0) 4 27 46 51 51
lyon@qivive.com

Strasbourg[F]
10 Pl. Gutenberg
F – 67000 Straßburg
T + 33 (0) 3 92 12 02 20
F + 33 (0) 3 92 12 02 21
strasbourg@qivive.com