

Act on the Labour Market Fund for Posted Workers¹⁾

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby Make Known:
The Parliament (Folketinget) has passed and we have granted our Royal Assent to the following Act:

Object

1. The Labour Market Fund for Posted Workers shall be established as an independent, proprietary institution whose object is to secure outstanding wage owed to posted workers in connection with their performance of services in Denmark.

Cover of outstanding wage claims

2.-(1) The Fund will cover outstanding wage claims that have been confirmed through industrial disputes procedures where

- 1) the worker is posted to Denmark from another EU or EEA Member State in connection with the performance of services,
- 2) the employer has failed to pay the wage despite a demand from the worker or the worker's trade union and
- 3) the wage claim is not time barred.

(2) The decision or settlement reached by the industrial disputes procedure as referred to in subsection (1) must have been certified by the Industrial Court, if this is a prior requirement for the enforceability of the claim in EU and EEA Member States.

(3) Where the worker assigns an outstanding wage claim as referred to in subsection (1) the eligibility for receiving disbursement from the Fund will be revoked, unless the assignment is to the worker's trade union.

(4) If the requirements for disbursement are fulfilled, see subsection (1), the Fund will provide an amount that covers the wage outstanding once the Fund has filed a notice to the employer demanding payment as referred to in section 5(1) and the time for payment has expired.

(5) Where incorrect information has been provided by the worker or the trade union or where the worker or the trade union has failed to provide information of importance for disbursement from the Fund, the Fund may decide to cancel the disbursement fully or partly and the Fund may demand repayment of money that has been disbursed without any justification.

(6) The Minister for Employment lays down rules on the notification of claims to the Fund, including rules on documentation of the wage outstanding and a possible penalty payment, on identification of the worker and on disbursements to be made from the Fund.

Ordinary contributions

3.-(1) Employers must pay an ordinary contribution to the Fund to cover the Fund's expenses.

(2) The collection of ordinary contributions from employers who pay labour market supplementary pension contributions (ATP) for their employees to the Labour Market Supplementary Pension Fund will take place jointly with the other contributions which the Labour Market Supplementary Pension Fund collects from employers according to current legislation. Arrears of payment may be included in the joint collection.

(3) The collection of ordinary contributions from employers who provide services in Denmark on a temporary basis and do not pay labour market supplementary pension contributions for their employees will be based on their notification to the Register of Foreign Service Providers.

(4) The Minister for Employment lays down rules on contribution rates upon a recommendation from the Board of the Fund. In addition, the Minister lays down rules on the calculation of contributions and specific rules on how the contributions must be collected.

(5) The Minister for Employment may lay down rules to the effect that employers may become exempted from paying contributions for special categories of workers.

Extraordinary contributions

4.-(1) The Fund will order the employer to pay an extraordinary contribution to cover the Fund's expenses, when the Fund has disbursed money according to section 2(4) above.

(2) The Fund will order a commercial assignor to pay an extraordinary contribution to cover the Fund's expenses when

- 1) that assignor is the first Danish assignor in connection with the provision of services in Denmark, but see subsection (5),
- 2) the employer who has provided the service in question has caused disbursement from the Fund as referred to in section 2(4), and
- 3) the employer does not pay an extraordinary contribution imposed as set out in subsection (1).

(3) An extraordinary contribution amounts to 25 per cent of the total outstanding wage claim confirmed by an industrial disputes procedure. Where an employer makes disbursement from the Fund necessary several times within a total period of 36 months, the extraordinary contribution must be raised to 40 per cent of the total wage claim the second time, and 50 per cent of the total wage claim the following times. Extraordinary contributions will only be raised in the case of the assignor when, at the time when the service was agreed upon, the assignor knew or ought to know that the employer had caused the Fund to disburse money within the past 36 months.

(4) The Fund will determine who is the first Danish assignor in connection with the provision of a service, see subsection (2) para. 1).

(5) Where the first Danish assignor has gone into bankruptcy or ceased operation, the Fund will impose an extraordinary contribution on the parent company of the assignor. See sections 6 and 7 of the Companies Act.

(6) The assignor, see subsection (2) para. 1), may make objections against an extraordinary contribution, if the assignor provides documentation which shows that, according to a special protocol, the assignor has paid a penalty for the foreign employer's failure to comply with a collective agreement. In such cases the extraordinary contribution may be reduced by the amount of the penalty.

(7) Extraordinary contributions imposed on the employer will be cancelled fully or partly if the assignor pays an imposed extraordinary contribution. The same will apply to extraordinary contributions imposed on the assignor in case the employer pays an imposed extraordinary contribution.

(8) The Minister for Employment will lay down specific rules on the imposition, collection and recovery of extraordinary contributions.

Recovery

5.-(1) When an outstanding wage claim has been filed to the Fund for registration in accordance with rules issued according to section 2(6), the Fund will become a party to the claim against the employer and forward a demand for payment.

(2) If a penalty has been awarded by the industrial disputes procedure along with an outstanding wage claim, the Fund will upon a request from the trade union recover the penalty as well as any other unpaid arrears payable to the Fund.

(3) The Minister for Employment will lay down specific rules on the Fund's recovery of wage outstanding according to subsections (1) and (2).

Publication

6. The Fund makes a list available to the public, stating information about the employers who have caused the Fund to disburse money to workers as set out in section 2(4).

Administration etc.

7.-(1) The Fund will be administered by the Labour Market Supplementary Pension Fund according to Part 7 of the Act on the Labour Market Supplementary Pension Fund.

(2) An administration agreement must be entered into between the Fund and the Labour Market Supplementary Pension Fund.

8.-(1) The Labour Market Supplementary Pension Fund may, on behalf of the Fund, obtain the information from tax authorities and other public authorities about employers, workers and clients that is necessary to carry through disbursements from the Fund and handle the collection and recovery of wage outstanding to workers as well as penalties, contributions, interest and processing fees.

(2) The Labour Market Supplementary Pension Fund will to the extent necessary pass on information from its registers to the Fund to be used in the calculation, collection and processing of contributions.

(3) Employers, workers, assignors and trade unions must upon request provide the Fund with all information that is necessary for payments to and disbursements from the Fund.

9. The Fund may exchange information with representatives to parties, public authorities and courts in other EU and EEA Member States and the guarantee institutions of such states about decisions concerned with collection, disbursement and recovery.

10. The Minister for Employment may lay down specific rules on the administration of the Fund, including supervision of payments to and disbursements from the Fund.

11.-(1) The Labour Market Supplementary Pension Fund may grant additional time for payment of amounts owed to the Fund and waive claims for contributions and interest on them. However, the Labour Market Supplementary Pension Fund may only allow extra time for payment of a penalty upon agreement with the relevant trade union according to section 5(2).

(2) Where the payment of ordinary contributions is not made in due time, the employer must pay interest on the contribution at the rate of 1½ per cent for each commenced month reckoned from the due date. In case other arrears to the Fund are not paid when due, interest must be paid on the arrears in accordance with the Interest on Overdue Payments Act.

(3) The Labour Market Supplementary Pension Fund has a lien on the Fund's claims according to sections 3 – 5. The same applies to interest owed, see subsection (2), and processing fees.

12. The Fund may raise loans from a bank or similar institution in order to cover a temporary cash deficit in the course of a year. The amount must be included with addition of interest in the contributions for the next few years, in case this may be necessary to protect the Fund's general cash position.

Complaints

13. Decisions made according to this Act may within a period of four weeks from the day when the decision was notified to the recipient of the decision, be brought before the Board of Appeal appointed by the Minister for Employment in accordance with section 28 of the Labour Market Supplementary Pensions Act.

Entry into force, etc.

14.-(1) This Act shall enter into force on 18 June 2016, but see subsections (2), (4) and (5).

(2) The Minister for Employment shall determine the date when section 3(1) – (3) of this Act shall enter into force.

(3) The rate of the ordinary contribution for 2016 as referred to in section 3(1) shall be determined upon a recommendation from the Labour Market Supplementary Pension Fund.

(4) This Act shall solely apply to outstanding wage for work performed after the Act entered into force.

(5) Claims concerning outstanding wage may be filed to the Fund as from 1 October 2016.

15. This Act does not extend to the Faroe Islands and Greenland.

Done at Christiansborg Palace, 8th June 2016

Under Our Royal Hand and Seal

MARGRETHE R.

/ Jørn Neergaard Larsen

Notes:

- 1) This Act includes provisions that implement parts of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 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'), Official Journal of the European Union 2010 no. L 159, page 11.
- 2) This Act puts the Executive Order on the entry into force of section 3(1) – (3) of the Act on the Labour Market Fund for Posted Workers into force.