

Consolidation Act concerning the Posting of Workers etc.ⁱ

This is an unofficial translation for informational purposes only. In case of discrepancy, the Danish text prevails

The following is a consolidation of the Act concerning the Posting of Workers etc., i.e. Consolidation Act No. 342 of 3 April 2014 with the amendments following from section 1 of Act No. 175 of 24 February 2015, section 1 of Act No. 626 of 8 June 2016 and section 3 of Act No. 1717 of 27 December 2016.

Part 1

Scope of the Act

1.-(1) Sections 2 – 6a, section 7a(1) and (4) – (7) and sections 7b – 7e of this Act shall apply to situations where undertakings post workers to Denmark in the framework of their provision of services.

(2) Section 7a(3) and sections 7b – 7e shall apply to situations where undertakings provide services while carrying out work in Denmark without fulfilling the conditions for the posting of workers, see section 4 below.

(3) Section 7 shall apply to situations where persons are or have been posted to another country that has implemented 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.

(4) Section 7a(2) and (4) – (7) and sections 7b – 7e shall apply to situations where a service is provided in the performance of work in Denmark by a foreign independent undertaking that does not post workers to Denmark.

(5) This Act shall not apply to merchant navy undertakings as regards their seagoing personnel.

2. This Act shall be without prejudice to the application of ILO Convention No. 94 of 1949 concerning Labour Clauses in Public Contracts.

Part 2

Posting to Denmark

3. A worker posted to Denmark shall mean a worker who normally carries out his work in another country than Denmark and who, for a limited period, carries out work in Denmark.

4. - (1) An undertaking shall be considered to have posted workers to Denmark in the following cases:

- 1) Where an undertaking posts a worker on its own account and under its own direction in connection with the performance of services for a recipient of the services in Denmark,
- 2) Where an undertaking posts a worker to a place of business, to an undertaking within the same group or to an undertaking which is in a similar way related to the undertaking that makes the posting,
- 3) Where, in its capacity of a temporary employment agency or other undertaking which hires out workers, an undertaking posts a worker to a user undertaking.

(2) A requirement for making a posting subject to subsection (1) above is that there is an employment relationship between the worker and the undertaking that makes the posting or another undertaking that has hired out the worker to the undertaking making the posting.

(3) A requirement for making a posting subject to subsection (1) is moreover that the undertaking that posted the worker is genuinely established in the country of its establishment and thus has other substantial activities in the country of its establishment than purely internal management or administrative activities.

4a. The Working Environment Authority may investigate whether an undertaking meets the requirements for being subject to the rules on the posting of workers, including the requirement of genuine establishment in its country of establishment as referred to in 4(3).

4b.-(1) The Working Environment Authority may correct an undertaking's notification to the Register of Foreign Service Providers, see section 7a, if based on an overall assessment it is determined that the undertaking does not meet the requirements for being covered by the posting rules, including the requirement of genuine establishment in the country of its establishment, see section 4(3). In such cases, the Working Environment Authority must report the correction to the competent authorities of the country of establishment and the relevant Danish authorities.

(2) Where a notification to the Register of Foreign Service Providers is corrected on the basis of a request from a trade union, see section 4d, the Working Environment Authority will report the correction to the trade union in question.

4c. For the purpose of an investigation according to section 4a, the Working Environment Authority may obtain information from the authorities of the country of establishment concerning a posting undertaking and its activities in its country of establishment. In addition, the Working Environment Authority may obtain information that can illustrate the temporary character of a posting situation.

4d. A trade union that has entered into a collective agreement with a foreign undertaking, may when an industrial disputes procedure has been commenced concerning the interpretation of or a breach of the collective agreement for the purpose if this procedure ask the Working Environment Authority to investigate the foreign undertaking and its activities in its country of establishment. In such cases, the Working Environment Authority must obtain the information and check out whether the undertaking is genuinely established in its country of establishment. In addition, the Working Environment Authority may obtain information that can illustrate the temporary nature of a posting situation.

4e. The Minister for Employment shall lay down more detailed rules on the Working Environment Authority's investigation, the access to obtain information and access to correct an undertaking's notification to the Register of Foreign Service Providers and on the possibility available to trade unions of asking the Working Environment Authority to investigate a foreign undertaking and its activities in the country of its establishment, see sections 4a – 4d above.

5. When an undertaking posts a worker to Denmark, the following rules shall be applicable, no matter which country's law regulates the employment relationship in other respects:

1) The Danish Working Environment Act, the Offshore Safety Act and Part 4A of the Civil Aviation Act,

TRANSLATION

- 2) The Act on Equal Treatment of Men and Women as regards Employment and Childbirth Leave, etc. except from the provisions of Part 3 of this Act which regulate the right to absence from work for other persons than pregnant women or women who have recently given birth,
- 3) The Equal Pay Act,
- 4) Section 7 of the Legal Relationship (Employers and Salaried Employees) Act, provided that the worker concerned meets the requirements of section 1 of the Act,
- 5) The Act on Prohibition against Discrimination on the Labour Market etc.,
- 6) The Act on the Implementation of parts of the Working Time Directive,
- 7) The Act on the Legal Rights of Temporary Workers upon Assignment by a Temporary-work Agency.

5a. Repealed

5b. Repealed

5b. Repealed

6.-(1) If the legislation which is otherwise applicable to the employment relationship is less favourable for the worker with regard to the duration of holidays and holiday pay than the rules laid down in sections 7, 23 and 24 of the Holidays with Pay Act, the employer must secure supplementary holidays and holiday pay for the worker, so that the worker's position will be as favourable as under the above-mentioned provisions.

(2) A condition for the right to supplementary holidays according to subsection (1) is that the duration of the posting exceeds eight days. However, this shall not apply in the case of posting under section 4 para. 3) unless it is a case of posting of a specialist or qualified worker from a supplying undertaking to carry out the work of initial assembly or installation of goods that form an integral part of a contract for the supply of goods, which is necessary for the commissioning of the goods supplied.

(3) In the calculation of the duration of the posting according to subsection (2), account shall be taken of all periods within the past 12 months during which the worker has been posted to Denmark. Furthermore, all periods during which another worker has been posted to perform the work concerned shall be included.

Part 2a

Use of industrial action, pay, etc.

6a.-(1) To ensure that posted workers will receive wages that are equal to the rates which Danish employers are obliged to pay for the execution of corresponding work, workers may resort to industrial action against foreign providers of services in the same manner as against Danish employers in support of a demand for the conclusion of a collective agreement. See subsection (2), however.

(2) A condition for the initiation of industrial action as described in subsection (1), is that the foreign provider of services has in advance been presented with provisions in the collective agreements that are concluded by the most representative social partners in Denmark and cover the entire Danish area. These collective agreements must indicate with the necessary clarity the rate of pay that is payable under the collective agreements.

Part 3

Posting from Denmark to other EU and EEA Member States

7. A worker who is or has been posted to an EU Member State or another country in the European Economic Area (EEA) and been covered during the posting to that country by rules which implement 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 may decide, when bringing an action in this country concerning a legal dispute that has arisen in connection with the posting, that the case has to be settled according to these rules, even if Danish law is otherwise applicable.

Part 3a

The Register of Foreign Service Providers

7a. - A foreign undertaking posting workers to Denmark in the framework of its provision of services must notify the following information to the Danish Business Authority:

- 1) The name, business address and contact information of the undertaking
- 2) Dates of the commencement and completion of the service
- 3) The location of the performance of the service
- 4) A contact person for the undertaking. The contact person must be appointed by the undertaking among the individuals who are posted to Denmark in connection with the performance of the service
- 5) The undertaking's industry code
- 6) The identity of workers posted by the undertaking and the duration of the period of posting
- 7) Information about any VAT registration in the home country
- 8) Information about social security positions for the workers, which the undertaking has notified according to para. 6) above
- 9) Information about the Danish assignor in connection with the performance of the service if the assignor is not a private person.

(2) A foreign undertaking that provides services while carrying out work in Denmark without employing any workers or without posting workers to Denmark must notify the following information for registration with the Danish Business Authority:

- 1) The name, business address and contact information of the undertaking
- 2) Dates of commencement and completion of the service
- 3) The location of the performance of the service
- 4) The undertaking's industry code
- 5) Information about any VAT registration in the home country
- 6) Information about social security position in the home country
- 7) Information about the Danish assignor in connection with the performance of the service if the assignor is not a private individual.

(3) A foreign undertaking that provides services while carrying out work in Denmark without the requirements for posting being met as set out in section 4 must notify the following information to the Danish Business Authority:

- 1) The name, business address and contact information of the undertaking
- 2) Dates of the commencement and completion of the service
- 3) The location of the performance of the service

TRANSLATION

- 4) A contact person for the undertaking. The contact person must be appointed by the undertaking among the individuals who work in Denmark in connection with the performance of the service
- 5) The undertaking's industry code
- 6) The identity of the workers who perform the service in question and the duration of their employment
- 7) Information about any VAT registration in the home county
- 8) Information about social security positions in the home country for the workers who have been notified according to para. 6) above
- 9) Information about the Danish assignor in connection with the performance of the service, if the assignor is not a private person.

(4) The notification according to subsections (1) – (3) must be filed according to the Act on the Procedure for Notification of certain Information etc. to the Danish Business Authority.

(5) Information that has been notified according to subsections (1) - (3) may solely be used for:

- 1) Control by Danish authorities of whether undertakings comply with current legislation related to work in Denmark
- 2) Control by Danish authorities of the compliance with the requirements for posting workers to Denmark
- 3) Case processing work at the Danish Labour Market Fund for Posted Workers
- 4) Statistics on foreign undertakings and posted workers.

(6) The information required according to subsections (1) – (3) must be notified no later than at the same time as the performance of the service in Denmark is commenced. Changes in the information must be notified no later than on the first weekday after the change.

(7) The Danish Business Authority may lay down rules on the notification of information according to subsections (1) – (6), including rules on the conditions which notifying parties may or must register in the Authority's computer system and the use of this system.

7b.-(1) An undertaking shall not notify information according to section 7a if

- 1) The duration of the performance of the service does not exceed eight days,
- 2) the service is performed as part of the delivery of a technical plant or a technical installation and
- 3) the worker or the independent undertaking, see section 7a(2) is tasked with and a specialist in or qualified for fitting, installing, inspecting, repairing or providing information about a technical plant or a technical installation in Denmark.

(2) The Minister for Employment may lay down rules according to which certain short-term provisions of services are exempted from the notification obligation set out in section 7a.

7c-(1) The information referred to in section 7a(1) para. 1) – 5) and para. 7, subsection (2) para. 1) – 5) and subsection (3) para. 1) – 5) and 7) above may be made available to the public. Information about the number of posted workers who are employed at a work site may furthermore be made available to the public.

(2) A trade union which has entered into a collective agreement with a foreign undertaking may when an industrial disputes procedure on the interpretation of or a breach of the agreement has been commenced obtain access to the information notified according to section 7a(1) para. 6) and 9) and subsection (3) para. 6) and 9) for the purpose of this procedure and to information on how many of the notified workers have been notified as covered by social security in their home country under

TRANSLATION

section 7a(1) para. 8). Where an employers' association is a party to the collective agreement, that association will equally have access to the information referred to in the 1st sentence above.

(3) The Danish Business Authority may lay down specific rules regarding access for trade unions and employers' associations to information according to subsection (2).

(4) The Danish Business Authority may lay down rules regarding payment for information that is disclosed according to subsection (1). To the extent that the information has been retrieved from the Central Business Register (CVR) the payment for and disclosure of information must be in compliance with the rules of the Act on the Central Business Register (CVR).

7d.-(1) The service provider is obliged to give the assignor documentation no later than upon the commencement of the performance of the service, showing that information has been notified according to section 7a(1) – (3), in case the service involves building and construction, agriculture, forestry and market gardening.

(2) An assignor who receives a service from an undertaking obliged to notify information within the industries referred to in subsection (1) above must, no later than three days after the performance of the service has commenced, approach the Danish Working Environment Authority, if the assignor has not received documentation proving that the undertaking has notified information to the Danish Business Authority, or if the information regarding the location of the performance of the service or the dates of the commencement and conclusion of the service is incomplete or wrong.

(3) The Minister for Employment may lay down rules according to which the obligation for service providers and assignors, see subsections (1) and (2), is extended to comprise other industries than those referred to in subsection (1) above.

7e.-(1) The supervision of the compliance with the obligation to notify information according to section 7a shall be carried out by the Working Environment Authority.

(2) Any service provider who is subject to the obligation to notify information under the provisions of this Act and the provider's contact person as set out in section 7a(1) para. 4) or section 7a(3) para. 4) must upon request give the Working Environment Authority information that may serve to identify the undertaking, posted workers and the location where work is performed, see section 7a(1) – (3).

(3) Anyone who carries out work in Denmark must upon request from the Working Environment Authority disclose his/her own name and the name of the undertaking for which the worker carries out work, to be used in the Working Environment Authority's supervision of foreign undertakings' compliance with their obligation to notify information according to section 7a(1) and (3).

(4) The Minister for Employment may upon negotiation with the relevant minister lay down rules according to which the supervision of the obligation to notify information under section 7a must be handled in certain sectors by the authority that supervises the compliance with working environment regulations in other respects in the sector in question.

Part 4

Information and administrative cooperation with EU and EEA Member States

8.-(1) The Working Environment Authority is the Danish liaison office in accordance with Article 4 of 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.

(2) The Working Environment Authority shall in this connection coordinate activities to provide information to foreign employers and workers, etc., about the rules which apply while workers are

posted to Denmark. The Working Environment Authority shall cooperate with the liaison offices of other countries in connection with any problems which may arise in connection with postings to and from Denmark.

8a. A competent authority shall mean any authority that has been appointed to or vested with the competence to handle tasks in accordance with Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU of 15 May 2014 on the enforcement of directive 96/71 concerning the posting of workers in the framework of the provision of services and amending Regulation 1024/2012 on administrative cooperation through the Internal Market Information System (IMI Regulation).

8b.-(1) The competent authorities of Denmark will upon request from competent authorities in the other EU and EEA Member States forward information through the Internal Market Information System to be used in the enforcement of the rules on the posting of workers. Information may moreover be forwarded in connection with bilateral administrative cooperation and mutual assistance.

(2) The competent authorities of Denmark will solicit information through the Internal Market Information System from competent authorities of the other EU and EEA Member States to be used in the enforcement of the rules on the posting of workers. Information may moreover be obtained in connection with bilateral administrative cooperation and mutual assistance.

(3) The Minister for Employment will lay down specific rules on how to carry through the administrative cooperation under subsections (1) and (2) above.

Part 5

Legal venue, enforcement of rights and protection from unfavourable treatment

9.-(1) A worker who is or has been posted to Denmark may institute legal proceedings in this country concerning the statutes mentioned in section 5 and concerning section 6. In addition, such a worker may institute legal proceedings in this country concerned with rights held by the posted worker in question as a consequence of the contract relationship between the employer and the posted worker according to the same rules as those applying to other workers who carry out work in Denmark.

(2) Legal proceedings may be brought before the court or one of the courts within whose jurisdiction the worker has performed the work concerned. If the employment conditions of the posted worker are covered by a collective agreement, a dispute may be considered in the industrial disputes resolution system in conformity with the rules in force for this system.

9a.-(1) Workers who are given notice to quit or exposed to other unfavourable treatment while being posted to Denmark, because they have raised an issue concerning pay and working conditions as dealt with in sections 5 and 6 or a possible Danish collective agreement, by which they may be covered may be awarded compensation.

(2) Workers who are given notice to quit or exposed to other unfavourable treatment after having been posted from Denmark to another EU or EEA Member State because they have raised an issue concerning the pay and working conditions to which they have been entitled according to the legislation or collective agreements of the host country that implement Article 3 of the Posting Directive during their posting to the country to which they are or have been posted may be awarded compensation.

Part 6
Penalty provisions

10. An employer who fails to grant holidays and holiday pay under section 6 despite a demand and without reasonable cause shall be liable to a fine.

10a- (1) Any person who fails to comply with the provisions of this Act in a manner described below shall be liable to a fine:

- 1) Fails to notify information in due time or gives incorrect or incomplete information according to subsection 7a(1) – (3),
- 2) Fails to provide documentation to the assignor according to section 7d(1)
- 3) Fails to contact the Working Environment Authority according to section 7d(2).

(2) However, violations according to subsection (1) para. 2) and 3) shall not be punished in case the employer has notified information correctly under section 7a.

(3) When the penalty is determined according to subsection (1), it shall be considered an aggravating circumstance if the violation was committed intentionally or with gross negligence, or if the violation has meant or was intended to mean a financial advantage to the person in question or to others or if the violation was of a more serious nature otherwise.

10b. In regulations issued in pursuance of the Act, a penalty in the form of a fine may be prescribed for violation of provisions of the regulations.

10c. Companies etc. (legal persons) may incur criminal liability according to the rules of Part 5 of the Criminal Code.

10d.-(1) The Minister for Employment may upon negotiation with the Minister of Justice lay down rules according to which, in specific cases concerned with violation of this Act and regulations issued in pursuance of this Act which are not assessed to lead to a penalty more severe than a fine, the Working Environment Authority may indicate in a fixed penalty notice that the matter may be resolved without court action in case the party who has committed the violation admits being guilty of the violation and declares readiness to pay a fine as indicated in the fixed penalty notice within a specified time limit.

(2) The rules of section 834(1) para. 2) and 3) and subsection (2) of the Administration of Justice Act on the requirements relating to the content of an indictment and the rules of the same Act stipulating that a suspect has the right to remain silent shall *mutatis mutandis* apply to fixed penalty notices.

(3) If the fixed penalty is accepted, further proceedings will be dropped. The acceptance will have the same effects as a judgment.

Part 7
Review

11. A proposal to review this Act shall be presented to Folketinget (the Danish Parliament) on 1 January 2019 at the latest.

Part 8

Commencement, etc.

12. This Act shall enter into force on 17 December 1999.

13. This Act shall not extend to the Faroe Islands and Greenland

Act no. 263 of 23 April 2008 (obligation to notify information in connection with the posting of workers)ⁱⁱ contains the following commencement provision:

2

This act shall enter into force on 1 May 2008.

Act no. 1394 of 27 December 2008 (Implementation of the recommendation from the examination work on the Laval ruling and extension of the time limit for a review)ⁱⁱⁱ contains the following commencement provision:

2

This Act shall enter into force on 1 January 2009.

Act no. 509 of 19 May 2010 (Extension of the obligation of foreign service providers to notify information and the obligation of the assignor to contribute to ensuring that the Register of Foreign Service Providers receives notification)⁴ includes the following commencement provision:

2

Subsection 1. This Act shall enter into force on 1 June 2010, but see subsection (2).

Subsection 2. The Minister for Employment will fix the time of commencement of section 1(3), section 7a(2), section 7d, section 10a(1) para. 2) – 4)) and section 10a(2) of the Act on the Posting of Workers as worded by section 1 para. 3), 5) and 10) of this Act.

TRANSLATION

Act no. 121 of 23 February 2011 (Extension of the time limit for review)⁵ includes the following commencement provision:

2

This Act shall enter into force on 1 March 2011.

Act No. 611 of 12 June 2013 (Additional information in the Register of Foreign Service Providers (RUT) and change of the time limit for notifying alterations in such information, authority to apply administrative fixed penalty notices, etc.)⁶ includes the following commencement provision:

2

Subsection (1) This Act shall enter into force on 1 July 2013.

Subsection (2) Section 1 para. 5) shall apply solely to public access to information on the dates of the commencement and conclusion of the service and on the undertaking's VAT registration number in its home country registered after the Act has entered into force.

Act No. 175 of 24 February 2015 (Higher penalty for violation of a more serious nature of the obligation to notify information to the Register of Foreign Service Providers)⁷ includes the following commencement provision:

2

This Act shall enter into force on 1 March 2015.

Act No. 626 of 8 June 2016 (Implementation of the Enforcement Directive)⁸ includes the following commencement provision:

2

Subsection (1) This Act shall enter into force on 18 June 2016, but see subsection (2).

Subsection (2) The Minister for Employment will fix the date when section 4b of the Posting of Workers Act as worded by section 1 para. 6) of this Act and section 1 para. 2) – 4), 8) – 20), 27) and 28) of this Act will enter into force.

Act No. 1717 of 27 December 2016 (Change of the organisation and funding of the working environment initiatives of the social partners etc.)⁹ includes the following commencement provision:

Subsection (1) This Act shall enter into force on 1 January 2017.
Subsections (2) – (3) (to be left out).

Ministry of Employment, 12 April 2017

TROELS LUND POULSEN

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- 1) This Act includes provisions that implement Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services , Journal of the European Communities 1997 L 18 p. 1 and parts of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/97/EC on 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 2014 no. L 159, page 11.
 - 2) The amendment is concerned with sections 5a, 5b, 5c and 10 of the Act.
 - 3) The amendment is concerned with sections 1 and 11 and Part 2a of the Act.
 - 4) The amendment is concerned with the title of the Act, sections 1, 8, and 10, Part 3a, sections 10a, 10b and 10c of the Act.
 - 5) The amendment is concerned with section 11 of the Act.
 - 6) The amendment is concerned with section 10a(3) of the Act.
 - 7) The amendment is concerned with the footnote of the Act, sections 1, 4, 4a, 4b, 4c, 4d, 4e, 5, 7a, 7c, 7d, 7e, the title of Part 4, sections 8a, 8b, the title of Part 5, sections 9, 9a, 10a and 11 of the Act.
 - 8) The amendment is concerned with the footnote of the Act, sections 1, 4, 4a, 4b, 4c, 4d, 4e, 5, 7a, 7c, 7d, 7e, the title of Part 4, sections 8a, 8b, the title of Part 5, sections 9, 9a, 10a and 11 of the Act.
 - 9) The amendment is concerned with sections 1, 7a and 7b of the Act.