

## Executive Order on the Danish Labour Market Fund for Posted Workers

In accordance with section 2(6), section 3(5), section 4(8), section 5(3) and section 10 of Act No. 613 of 8 June 2016 on the Danish Labour Market Fund for Posted Workers, this Executive Order lays down the following provisions

**1.**-(1) According to section 3(1) of the Act on the Danish Labour Market Fund for Posted Workers, employers must pay an ordinary contribution to the Fund to cover the Fund's expenses.

(2) Employers are, however, exempted from paying ordinary contributions for workers for whom labour market supplementary pension contributions are not paid according to the Act on the Labour Market Supplementary Pension Fund, and about whom information should not be notified to the Register of Foreign Service Providers.

**2.**-(1) The ordinary contribution represents an amount in Danish Kroner per full-time employed worker in the undertaking, but see subsection (2).

(2) For employers with an obligation to register with the Register of Foreign Service Providers according to section 7a of the Act on the Posting of Workers etc., the ordinary contribution represents an amount in Danish Kroner per full-time employed worker who works on the service provided. The worker is considered to be full-time employed through the duration of the period of employment.

(3) The ordinary contribution is fixed annually in the Executive Order on the Rates of Ordinary Contributions to the Labour Market Fund for Posted Workers.

**3.** In accordance with section 3(2) of the Act on the Danish Labour Market Fund for Posted Workers, ordinary contributions from employers who pay labour market supplementary pension contributions (ATP) for their employees to the Labour Market Supplementary Pension Fund will be collected jointly with other contributions which the Labour Market Supplementary Pension Fund collects from employers, see the Executive Order on Joint Collection of Certain Contributions from Employers, etc.

**4.**-(1) Ordinary contributions will be collected digitally from employers registered with the Register of Foreign Service Providers. If digital transmission of the collection notice is not possible, the notice of collection will be sent by post to the employer's business address in the home country.

(2) Ordinary contributions as referred to in subsection (1), will be collected four times a year.

(3) If the last due day for payment according to subsection (2) is a public holiday or a Saturday, the time limit is extended to the next working day. The Labour Market Supplementary Pension Fund may upon a prior request from an employer grant additional time for the payment, if special circumstances are involved.

(4) Payment must be made via the website of the Danish Business Authority or via a bank transfer to a bank account directed by the Fund. The payment of contributions to the Fund must be in Danish Kroner.

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(5) Where the employer has paid excess ordinary contributions, these will be set off against the following collection or refunded upon request. When contributions are refunded, an administration fee of DKK 150 will be deducted.

(6) If the employer is able to document that an ordinary contribution has been collected for a period during which the employer has not provided any services in Denmark, the contribution may be refunded upon a written request to the Fund.

**5.** The Fund may write off unpaid ordinary contribution claims if special circumstances so advise.

**6.** The employer cannot demand a separate receipt from the Fund for the payment of ordinary contributions.

### *Notification of claims for outstanding wages to posted workers*

**7.**-(1) A claim for wages outstanding may be notified to the Fund where the worker or the trade union which is a party to the industrial dispute in question has forwarded a written demand for payment according to the decision of the disputes procedure to the employer's business address in the country in which the employer is established and the time limit for payment has expired.

(2) The trade union or the worker must moreover have forwarded a copy of the letter of demand to the employer's contact person in Denmark notified to the Register of Foreign Service Providers as provided by the Act on the Posting of Workers etc.

(3) Notifications must be filed to the Fund within a time limit of four months. The time limit has to be reckoned from the date when the claim was established by a judgment or a settlement of the Industrial Court or the decision or settlement reached by the industrial disputes procedure has been endorsed by the Industrial Court, if this is a requirement for rendering the claim enforceable in EU and EEA Member States.

(4) The Fund may grant an exemption from the time limit set out in subsection (3) where special circumstances are involved.

**8.**-(1) Where a trade union wants the Fund to recover a penalty awarded by an industrial disputes procedure according to section 5(2) of the Act on the Labour Market Fund for Posted Workers, the trade union must submit a request to this effect at the same time as the wages outstanding are notified to the Fund. In case the wages outstanding and the imposed penalty have been reviewed separately the request for the recovery of the penalty may, however, be submitted until four months after the date when the penalty was established by an industrial disputes procedure.

(2) The Fund may derogate from the time limit set out in subsection (1) above when special circumstances are involved.

**9.**-(1) A notification to the Fund of a claim for wages outstanding as set out in section 7 must be transmitted by a digital notice filed at the website of the Fund.

(2) The notification must include the following information, which must be documented in connection with the decision of the industrial disputes procedure, see subsection (3)(1):

1) The wages outstanding calculated as a total amount in Danish kroner and identified to a specific worker,

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- 2) the identity of the worker (see para. 1) above) including the worker's civil reg. no (CPR number) if any,
- 3) The employer's name, business address, national registration number and contact details,
- 4) Information about any partial payment by the employer according to the decision of the industrial disputes procedure,
- 5) The name and address of the trade union that has been a party to the industrial disputes procedure.

(3) The notification must include the following documentation:

- 1) The industrial disputes decision or settlement endorsed in accordance with section 34a of the Industrial Court Act, in case this is a requirement to make the claim enforceable in EU or EEA Member States;
- 2) A certificate issued by the Industrial Court under the Brussels I Regulation;
- 3) Documentation showing that a demand for payment has been transmitted to the employer;
- 4) A copy of the worker's passport in case no civil registration number has been disclosed;
- 5) A power of attorney from the worker in case the disbursement has to be made to the trade union;
- 6) A tax exemption certificate in case the worker is exempt from paying tax in Denmark.

(4) When notifying a claim the notifying party must give banking details to be used for the disbursement of the wages claim.

**10.**-(1) A request from a trade union to the Fund for recovery of a penalty as referred to in section 8 must be made by a digital notice filed at the Fund's website.

(2) The request must include the following information:

- 1) The name and address of the trade union which is a party to the industrial disputes procedure;
- 2) The amount of the penalty;
- 3) Information about any partial payment by the employer according to the industrial disputes decision.

(3) The request must include the following documentation:

- 1) The industrial disputes decision or settlement endorsed in accordance with section 34a of the Industrial Court Act if this is a requirement to make the claim enforceable in EU and EEA Member States;
- 2) A certificate issued by the Industrial Court under the Brussels I Regulation;
- 3) Documentation showing that a demand for payment has been transmitted to the employer.

**11.**-(1) The Fund may demand further information and documentation which is estimated to be required for the consideration of the case, including documentation showing that the claim is recoverable abroad.

(2) The Fund will pay the expenditure of a certified translation of any documentation of the wage claim if required, the decision of the industrial disputes procedure, employment contracts, etc. unless special circumstances are involved.

(3) The Fund may make exceptions from the use of digital notification where special circumstances so advise.

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**12.** Where the notification has not been duly completed or if the Fund's request for supplementary information or further documentation is not complied with within the time limit stipulated by the Fund, the Fund may refuse to consider the complaint.

**13.**-(1) Where the Fund has recognised a claim as entitled to cover from the Fund, the Fund shall accede to the claim against the employer and take over the recovery of the claim, whereupon the employer may solely pay with discharging effect to the Fund.

(2) After notification to the Fund of a claim for wages outstanding or a penalty, the notifying party relinquishes his own right to deal with the claim, including any decision to take legal action in connection with the recovery of the claim for wages outstanding.

**14.**-(1) When the Fund has taken over the recovery of a claim for unpaid salary or a penalty, the Fund will transmit a demand with a time limit for payment of the notified amount to the undertaking that has been indicated as the employer in the industrial disputes decision on which the notification is based.

(2) The collection according to subsection (1) will be made by digital means. Where it is not possible to transmit the notice of collection digitally, the notice of collection must be forwarded by post to the employer's business address in the home country.

### *Disbursement*

**15.**-(1) The Fund will disburse an amount covering a claim for wages outstanding that meets the requirements set out in section 2(1) para. 1) – 3) of the Act on the Danish Labour Market Fund for Posted Workers and has been notified to the Fund in accordance with sections 7 – 9 and 11 – 12 above. The amount will be disbursed in Danish kroner.

(2) The Fund will ensure disbursement as soon as possible after the employer's time limit for payment to the Fund according to section 14 has expired.

(3) Claims for wages outstanding of less than DKK 150 gross will not be disbursed.

**16.**-(1) Disbursements from the Fund will be made after any tax payable has been withheld. The amount will be transferred to the wage account of the posted worker in question unless the claim has been assigned to the trade union.

(2) The Fund will obtain tax cards from the E-Income service as of the date of disbursement. In case the worker is exempt from tax in Denmark, a copy of the notice of tax exemption must be submitted together with the notification of the claim, see section 9(3)(6).

(3) After the Fund has made a disbursement, the Fund does not make any corrections in the payment or the declaration of tax due to altered tax details.

**17.**-(1) The Fund may not transfer a possible penalty to the trade union until the time limit for notification set out in section 7(3) has expired, at the earliest.

(2) Where the employer's payment to the Fund covers only part of the amount owed, the Fund's disbursements of wages outstanding and of the penalty which the Fund has sought to recover on behalf of the trade union will be covered proportionately.

### *Danish assignor*

**18.**-(1) When the Fund has recognised a claim as eligible for cover by the Fund, the Fund makes the decision as to who was the first Danish assignor when the service was

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provided as set out in section 4(4) of the Act on the Danish Labour Market Fund for Posted Workers.

(2) When making a decision according to subsection (1) the Fund may take account of information about the Danish assignor from the Register of Foreign Service Providers, unless as a consequence of other information available in the case the Fund must establish that another undertaking is the actual assignor.

(3) The Fund will immediately thereafter inform the Danish assignor as set out in subsection (1) that a claim for wages outstanding has been notified to the Fund and indicate the amount of a possible forthcoming extraordinary contribution, which the assignor may be ordered to pay.

### *Extraordinary contributions*

**19.**-(1) According to section 4(1) and (2) of the Act on the Danish Labour Market Fund for Posted Workers, the Fund may impose an extraordinary contribution to the Fund on the employer and the Danish assignor.

(2) An extraordinary contribution to the Fund may be imposed on the employer, if the Fund has sent a demand for payment according to section 14 and the employer fails to pay within the time limit fixed by the Fund.

(3) An extraordinary contribution will be imposed on the Danish assignor in case the employer fails to pay an extraordinary contribution imposed according to subsection (2) within the time for payment fixed by the Fund.

(4) Extraordinary contributions are collected by digital means by the transmission of an invoice to the undertaking's eBox or e-mail address. Where digital transmission of the collection notice is not possible it must be sent by post to the undertaking's business address in the home country.

### *Recovery abroad*

**20.**-(1) The Fund becomes a party to the claim against the employer when the Fund has received notification of a claim for wages outstanding and submitted a demand for payment. When the time limit for the employer's payment to the Fund has expired, the Fund may seek recovery abroad of the amount owed and of a penalty, an extraordinary contribution and arrears outstanding, if any, in accordance with the provisions of the Brussels I Regulation, which applies to Denmark according to Act No. 1563 of 20 December 2006 on the Brussels I Regulation as amended by Act No. 518 of 28 May 2013.

(2) Where the employer has gone bankrupt, the Fund will file a claim for all unpaid amounts against the bankrupt estate according to the laws of the country in question.

(3) Upon a specific assessment of the resources required in a certain recovery case, compared to the prospects of being able to recover the amount, the Fund may exceptionally decide to shelve the recovery proceedings.

(4) The Fund may upon a specific assessment and according to agreement with the entitled trade union agree to a settlement or grant the employer additional time for payment of a penalty that has been awarded to the trade union. In case the trade union does not wish to accept a settlement or grant additional time for payment of the penalty, the Fund may let the recovery of the penalty revert to the trade union. In case the Fund

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decides to give up the recovery of a penalty, the Fund may likewise decide to let the recovery revert to the trade union.

**21.** The Fund may solicit legal assistance for recovery of a claim abroad. The Fund will pay the expenses involved in the recovery of a claim abroad, including legal costs and expenses required for necessary translation of correspondence with the legal advisor, foreign authorities, etc.

**22.** Funds which the Fund procures through recovery abroad shall accrue to the Fund. This shall not apply, however, to the extent that the Fund recovers a penalty on behalf of a trade union. To the extent that it has been possible to recover the penalty the amount recovered has to be paid to the trade union.

### *Limitation of time*

**23.** The Fund's claims in respect of contributions and interest shall become time barred according to the rules of the Act on the Time Barring of Claims.  
*Entry into force, etc.*

**24.** This Executive Order shall enter into force on 1 July 2016.

*Ministry of Employment, 29 June 2016*

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/ Andrew Crichton