

BELGIUM

I. Legal notice – disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning terms and conditions of employment to be respected in accordance with the legislation transposing Directive 96/71/CE concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all information relevant in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, who have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directive 96/71/EC concerning the posting of workers:

Legal references

Act of 5 March 2002 implementing 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 and establishing a simplified system of social documentation for undertakings posting workers to Belgium (hereafter "Posted Workers and Social Documentation Act", published in the *Moniteur belge*, 13 March 2002) . A consolidated version of the text can be found via the following links : in French language <http://www.ejustice.just.fgov.be/loi/loi.htm> : choose "loi" in "Nature juridique" and "2002-03-05" in "date de promulgation" or in Dutch language : <http://www.ejustice.just.fgov.be/wet/wet.htm> choose "wet" in "Juridische aard" and "2002-03-05" in "afkondigingsdatum".

Royal Decree of 1 April 2007 laying down arrangements for implementing the simplified establishment and social documentation system for undertakings posting workers to Belgium and defining the activities in the construction industry mentioned in Article 6, § 2, of the Posted Workers and Social Documentation Act (published in the *Moniteur belge*, 17 April 2002) . A consolidated version of the text can be found via the following links : in French language <http://www.ejustice.just.fgov.be/loi/loi.htm> : choose "Arrêté royal" in "Nature juridique" and "2007-04-01" in "date de promulgation" or in Dutch language : <http://www.ejustice.just.fgov.be/wet/wet.htm> choose "Koninklijk Besluit" in "Juridische aard" and "2007-04-01" in "afkondigingsdatum".

<http://www.ejustice.just.fgov.be/cgi/welcome.pl>

<http://www.employment.belgium.be>, click on Posting of workers.

III. Information on legislation applicable in accordance with the Directive

- Information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the Belgian liaison office:

In French:

SPF Emploi, Travail et Concertation sociale
Direction générale des Relations individuelles du Travail
Rue Ernest Blerot, 1
1070 Bruxelles
Tel.: +32 (0)2/ 233 48 22
Fax: +32 (0)2/ 233 48 21
E-mail: rit@emploi.belgique.be

In Dutch :

FOD Werk, Arbeid and Sociaal Overleg
Algemene Directie van de Individuele Arbeidsbetrekkingen
Ernest Blerotstraat 1
1070 Brussel
Tel.: +32 (0)2/ 233 48 22
Fax: +32 (0)2/ 233 48 21
E-mail: iab@werk.belgie.be

- Information can also be obtained at the following addresses:
 - Wellbeing at work (occupational safety, health and hygiene aspect)

In French :

SPF Emploi, Travail et Concertation sociale
Direction générale Humanisation du travail
rue Ernest Blerot 1
1070 Bruxelles
Tel.: +32 (0)2/ 233 42 07
Fax : +32 (0) 2 233 46 39
E-mail: hut@emploi.belgique.be

In Dutch :

FOD Werk, Arbeid and Sociaal Overleg
Algemene Directie Humanisering van de Arbeid
Ernest Blerotstraat 1
1070 Brussel
Tel.: +32 (0)2/ 233 42/07
Fax : +32 (0)2 233 46 39
E-mail: hua@werk.belgie.be

- Annual holidays

SPF Sécurité Sociale
DG Politique sociale
Centre Administratif Botanique
Finance Tower
Boulevard du Jardin Botanique 50, boîte 115
1000 Brussels
Tel. : +32 (0)2/528.60.00
E-mail: dg-soc@minsoc.fed.be

– Other working conditions (minimum pay rates, working hours, etc.)

In French :
SPF Emploi, Travail et Concertation sociale
Direction générale Contrôle des lois sociales
Rue Ernest Blerot 1
1070 Bruxelles
Tel.: +32 (0)2/ 233 41 11
Fax: +32 (0)2/ 233 48 27
E-mail: cls@emploi.belgique.be

In Dutch :

FOD Werk, Arbeid and Sociaal Overleg
Algemene Directie Toezicht op de Sociale Wetten
Ernest Blerotlaan 1
1070 Brussel
Tel.: +32 (0)2/ 233 41 11
Fax: +32 (0)2/ 23548 29
E-mail: tsw@werk.belgie.be

IV. Failure to comply with the prescribed terms and conditions of employment

Cases of failure to comply with the prescribed terms and conditions of employment in Belgium and possible cases of illegal transnational activities can be reported to the following addresses:

- Wellbeing at work

In French :

SPF Emploi, Travail et Concertation sociale
Direction générale Contrôle du bien-être au travail
Rue Ernest Blerot
1070 Bruxelles
Tel.: +32 (0)2 233 45 11
Fax: +32 (0)2 233 42 31

E-mail: cbe@emploi.belgique.be

In Dutch :

FOD Werk, Arbeid and Sociaal Overleg
Algemene Directie Toezicht op het Welzijn op het Werk
Ernest Blerotlaan 1
1070 Brussel
Tel.: +32 (0)2 233 45 11
Fax: +32 (0)2 233 42 31
E-mail: tw@werk.belgie.be

- Annual holidays

SPF Sécurité Sociale
Direction générale Inspection sociale
Centre administratif Botanique
Boulevard du Jardin botanique 50 boîte 1101000 Brussels
Tel: 02/528.65.46 or 02/528.65.47

E-mail : sis_dg_fr@minsoc.fed.be

- Other working conditions (minimum pay rates, working hours, etc.)

In French :

SPF Emploi, Travail et Concertation sociale
Direction générale Contrôle des lois sociales
Rue Ernest Blerot 1
1070 Brussels
Tel.: +32 (0)2/ 233 41 11
Fax: 02/ 233 48 27
E-mail: cls@emploi.belgique.be

In Dutch :

FOD Werk, Arbeid and Sociaal Overleg
Algemene Directie Toezicht op de Sociale Wetten
Ernest Blerotlaan 1
1070 Brussel
Tel.: +32 (0)2/ 233 41 11
Fax: +32 (0)2/ 23548 29

E-mail: tsw@werk.belgie.be

V. Situations constituting a posting [Article 1 of the Directive]

The Posted Workers and Social Documentation Act applies to undertakings which employ a posted worker in Belgium.

This Act thus applies to employers and posted workers. It does not apply to seagoing personnel of the merchant navy and their employers.

VI. Posted workers [Article 2 of the Directive]

Directive 96/71/EC applies to workers who, for a limited period of time, carry out their work on the territory of a Member State other than the State in which they normally work.

In Belgium, a worker is understood to be any person who, on the basis of a contract, performs work against payment under the authority of another person.

In Belgium, a posted worker is understood to be any person who performs work in Belgium as part of a job normally performed in a country other than Belgium or under an agreement concluded in a country other than Belgium but executed directly on Belgian territory, irrespective of that person's title in the country of origin.

According to the case law of the Court of Justice of the European Union, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly but should be judged on a case-by-case basis, depending on the duration and frequency and whether it is periodic or continuous.

It should be noted that if an occupational activity in Belgium can no longer be considered as being exercised temporarily, taking account of the above-mentioned criteria, but is stable and continuous, all the binding rules and regulations in force in Belgium apply (without prejudice to the rules to be applied in accordance with the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 or with Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)).

VII. Work periods and rest periods [Article 3(1)(a) of the Directive]

Legal references

- Labour Act of 16 March 1971
- Public Holidays Act of 4 January 1974
- The industry-wide labour agreements given binding force by Royal Decree

Overview

Belgian legislation on work and rest periods is based on five main principles:

- Restrictions on individual working hours (not more than eight hours per day and 38 hours per week). However, the law provides for the normal limits to be exceeded in certain cases. When the limits are exceeded, this sometimes gives rise to compensatory rest days and/or extra pay.
- A ban on working or having work performed outside the working hours specified in the labour regulations (apart from exceptions laid down by law)

- A ban on Sunday work (apart from exceptions laid down by law)
- A ban on work on public holidays (apart from exceptions laid down by law)
- A ban on night work (work which is performed between 8 p.m and 6 a.m.) (apart from exceptions laid down by law)
- For further details, see www.employment.belgium.be, click on *Posting of workers*, then on *Legal rules applicable to posting*, on *Legal provisions to be complied with by an employer posting workers to Belgium* and finally on *Working hours and rest periods*.

VIII. Paid annual holidays [Article 3(1)(b) of the Directive]

Legal references

Articles 3–8 and 17bis of the Coordinated Acts of 28 June 1971 on annual holidays for employees

Articles 35, 36, 60 and 61 of the Royal Decree of 30 March 1967 laying down the general arrangements for implementation of the Acts on annual holidays for employees

Overview

According to these provisions, holiday entitlement depends on the time for which the worker worked in the course of the holiday year (i.e. the calendar year preceding that in which the holidays are to be granted). Holiday entitlement must be at least 24 days for 12 months' work, including the non-working days declared by Royal Decree to be equivalent to normal working days. In addition, collective labour agreements concluded within a joint body and given binding force by Royal Decree may provide for extra holidays. The social partners have made extensive use of this possibility.

The workers who start an activity in Belgium or those who continue an activity after a complete or partial suspension of the employment contract and who have pursued an activity during a minimum period of 3 months (or 90 calendar days) in a calendar year are entitled to additional holidays, on top of the normal legal holidays, which enables them to be entitled to 4 weeks of holidays.

IX. Pay [Article 3(1)(c) of the Directive]

Legal references

Cross-industry (national) and industry-wide labour collective agreements setting minimum pay rates

Overview

Minimum pay rates are generally set by industry-wide collective agreements adopted by the competent joint committees. When no such rates have been set, the employer is required to comply with the minimum monthly pay set by cross-industry agreement (i.e. at national level).

For further details, see www.employment.belgium.be, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, Remuneration

X. Rules concerning hiring-out of workers and terms and conditions which apply to temporary workers [Articles 3(1)(d) and 3(9) of the Directive]

Legal references

Act of 24 July 1987 on temporary work, agency work and hiring-out of workers
Collective labour agreements No 36 and 108 concluded within the National Labour Council

Overview

Temporary agency contracts may be concluded in four specific cases (replacement of a worker whose contract has ended, performance of an exceptional task, etc.). There are also time restrictions on the use of agency work and special authorisation is needed in some cases.

For further details, see www.employment.belgium.be, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, Temporary employment.

Hiring out of workers is forbidden in Belgium (except for agency temping) whenever the employer's authority is transferred to the user. However, even in case of prohibited hiring out of workers within the meaning of the Act of 24 July 1987, there are two legal derogations to such a prohibition.

1. On basis of the preliminary information of the Social Legislation Inspectorate (in French language or in Dutch language): in case of collaboration between two undertakings of the same economic and financial entity, or in case of temporary performance of specialized tasks requiring a specific professional qualification, or

2. in other cases, on basis of consent of the Labour Inspectorate
For further details, see www.employment.belgium.be, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, Hiring out of workers.

XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]

Legal references

The Well-being at Work Code, comprising the Act of 4 August 1996 on the well-being of workers at work and a set of implementing Royal Decrees

The General Health and Safety Regulations (*règlement général pour la protection au travail* – *RGPT*) (older, will disappear when the new royal decrees enter into force).

Overview

In Belgian legislation, occupational health, safety and hygiene are subsumed under a broader concept: well-being at work. The legislation addresses not only safety and health but also the quality of working conditions. The Act of 4 August 1996 lists the general obligations of employers and workers. Employers are required to take the necessary measures to promote workers' well-being. To this end, they must apply a set of principles for preventive action. For their part, workers must take care for their safety and health. The employer must set up a prevention and protection service to help him discharge his duties. The same Act requires committees to be set up in undertakings with 50 workers or more. Their main function is to give their opinion on or consent to measures affecting workers' well-being. In addition to the royal decrees putting into effect the principles described above, the Well-being at Work Code includes royal decrees on chemical, carcinogenic, mutagenic and biological agents at work, decrees on personal equipment and decrees concerning particular situations or categories of worker (young people, trainees, temporary agency work, etc.). Finally, the RGPT includes provisions on occupational health, safety and hygiene as such and other provisions on certain industries or machines, etc.

For further details, see <http://www.employment.belgium.be>, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, The well-being of workers.

XII. Rules concerning terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]

Legal references

Labour Act of 16 March 1971

Royal Decree of 2 May 1995 on protection of maternity

Overview

Pregnant workers are entitled to 15 weeks' maternity leave.

It consists of two periods:

- pre-natal leave of 6 weeks
- post-natal leave of 9 weeks

Pre-natal leave

At the pregnant worker's request, this leave starts at the earliest six weeks before the expected date of delivery. This date should be substantiated in the medical certificate which the woman concerned should submit to her employer no later than seven weeks before that date.

This pre-natal leave comprises the following:

- an optional period of rest during the first five weeks. This may be taken up, at the worker's choice, either in full before the one-week obligatory pre-natal rest (see below) or

after the nine-week obligatory post-natal rest, or partly before the obligatory pre-natal rest and partly after the obligatory post-natal rest;

- one-week's obligatory rest before delivery. It is prohibited for an employer to employ a pregnant woman from the seventh calendar day preceding the expected date of delivery.

Post-natal leave

Post-natal leave comprises the following:

- nine weeks obligatory leave immediately after delivery. In no case may an employer employ the woman concerned during this period, even if she asks for it or agrees to it;
- and, where appropriate, following this obligatory post-natal leave, the whole or part of the period of five weeks optional pre-natal leave. This leave can be transferred only on condition that the woman resumed her work from the sixth week preceding the actual date of delivery.

As soon as the employer is informed of the pregnancy, the pregnant worker is covered by certain safeguards (right to be absent from work for the time needed to attend the prenatal medical examinations, protection against dismissal, ban on overtime and night work).

The employer is required, in collaboration with the occupational physician, to assess the risks for all members of his workforce and must immediately inform the occupational physician of the pregnancy. If the assessment reveals a risk to health or the woman is employed in night work, her job is regarded as entailing a risk. The employer must then take preventive measures proposed by the occupational physician (temporary adjustment of working conditions or working hours, a change of job, suspension of the employment contract).

For further details, see <http://www.employment.belgium.be>, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium and then on Protective measures for pregnant women,

XIII. Rules concerning terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]

Legal references

Labour Act of 16 March 1971

Royal Decree of 11 March 1993 regarding child labour

Overview

There is a general ban on employing children (minors under the age of 15 or still subject to compulsory full-time education) or allowing them to work. However, activities forming part of children's education or training and activities for which a special exemption is granted by the social legislation enforcement authority are permitted (e.g. a child's participation as an actor, extra or singer at a cultural event or as a model at a fashion show). Special working

conditions then apply as regards the duration and frequency of these activities and the rest periods.

Young workers are minors aged 15 or over who are no longer subject to compulsory education (up to the age of 18). Working conditions for young people are strictly regulated (ban on exceeding the normal limits on working hours and on working on public holidays, on Sundays or at night).

For further details, see <http://www.employment.belgium.be>, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, Child labour and young workers

XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive]

Legal references

Act of 10 May 2007 aimed at combating discrimination between women and men.

Act of 10 May 2007 aimed at combating certain discriminations.

Act of 10 May 2007 modifying the Act 30 July 1981 criminalizing certain acts inspired by racism and xenophobia.

For further details, see <http://www.employment.belgium.be>, click on Posting of workers, Legal rules applicable to posting, Legal provisions to be complied with by an employer posting workers to Belgium, Non-discrimination.

XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]

- Pay (Protection) Act of 12 April 1965:

The Act forbids employers to impose any restriction whatsoever on workers' freedom to dispose of their pay. Payment must also be made in accordance with certain rules (regularity, pay statement, etc.).

- Certain social documents where the posting is for more than twelve months, or where the employer has not served a Limosa notification or has not delivered to the inspections services a copy of the equivalent foreign social documents regarding the remuneration (whether the inspection services have required such social documents) (see XVI below)

XVI. Procedural and administrative requirements

Legal references

Posted Workers and Social Documentation Act of 5 March 2002

Program Act of 27 December 2006, art. 137 et sq.

Royal Decree of 20 March 2007 implementing the Program Act of 27 December 2006.

Overview

1° Administrative requirement

A foreign employer posting gainfully employed workers to Belgium, or his authorised representative, must notify the authorities via the website www.limoso.be before the employment of the workers in Belgium. A receipt LIMOSA-1 is issued immediately.

Particular information should be indicated in the notification about the worker and the employer (place of employment, duration of posting, etc.).

However, some categories of persons are exempt from this LIMOSA notification because of the nature or short duration of the activities carried out in Belgium (e.g.: artists, international transport sector, diplomats, participation in a scientific congress, etc.).

2° Exemption from the obligation to maintain particular social records

- Terms and conditions of employment and staff register by means of a LIMOSA notification

An employer who has served a LIMOSA notification or who enjoys dispensation in this regard is exempt for a period of 12 months from the obligation to draw up terms and conditions of employment and maintain a staff register.

Under the same conditions, the employer is also exempted from the obligation to comply with the provisions regarding checks on part-time workers.

- As regards remuneration : the individual account and the wage/salary statement by means of equivalent documents from the country of origin

Employers posting workers to Belgium are exempt from the obligation to draw up and keep up to date the individual account and the wage/salary statement for a period of 12 months provided that they keep equivalent foreign documents from the country of origin at the disposal of the inspection services, whether those inspection services request it.

However, particular categories are exempted by law from the obligation to draw up and maintain the individual account and wage/salary statement without having to submit equivalent foreign documents (e.g.: artists, diplomats, etc.).

For further details, see [http:// www.employment.belgium.be](http://www.employment.belgium.be), click on Posting of workers, General, Which formalities have to be fulfilled and Exemption from the obligation to maintain particular social records.

XVII. Mediation mechanisms in case of conflict

See contact details of the various enforcement authorities mentioned in section IV.

Where the employer commits an infringement, he is often given notice to comply before the prosecution report is drawn up.

XVIII. Information on judicial enforcement procedures

Information on possible judicial remedies in Belgium can be obtained from the following address:

Contact details:

In French :

Service Public Fédéral Justice
Boulevard de Waterloo, 115
1000 Bruxelles
Tel.: +32 (0)2/542 65 11
E-mail:info@just.fgov.be
Web site:<http://www.just.fgov.be>

In Dutch :

Federale Overheidsdienst Justitie
Boulevard de Waterloo, 115/Waterloolaan 115
1000 Brussel
Tel.: +32 (0)2/542 65 11
E-mail:info@just.fgov.be
Web site: <http://www.just.fgov.be>