

LUXEMBOURG

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

Law of 20 December 2002 on:

1. Transposition of Directive 96/71/EEC of the European Parliament and of the Council of 16 December 1996 on the posting of workers as part of the provision of services;
2. Rules on monitoring the application of labour law
(hereafter: "Posted Workers and Labour Law (Enforcement) Act")
Officially published: *Mémorial A* No 154 of 31 December 2002

Internet links:

www.legilux.lu

www.itm.public.lu/detachement/index.html

http://www.itm.public.lu/legislation/pdf/detachement/loi_detachement_en.pdf (in English)

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 following address:

Inspection du travail et des mines

3, rue des Primeurs

L-2361 Strassen

Correspondence address: BP 27 L-2010 Luxembourg

Tel.: +352 478 6288

Fax: +352 29 11 94 6288

E-mail: detachement@itm.etat.lu

Web: www.itm.public.lu/detachement/index.html

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 Luxembourg and possible cases of illegal transnational activities can be reported to the following address:

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3, rue des Primeurs
L-2361 Strassen
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V. Situations constituting a posting [Article 1 of the Directive]

The Posted Workers and Labour Law (Enforcement) Act applies to all undertakings, irrespective of economic sector, except for merchant navy seagoing personnel, which post workers to the territory of the Grand Duchy of Luxembourg as part of the transnational provision of services.

"Posting" means the following operations carried out by the undertakings concerned, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting:

- the posting of workers, albeit for a short or predetermined period, on the account of the undertakings making the posting and under their direction, to the territory of the Grand Duchy of Luxembourg under a contract concluded between the undertaking making the posting and the party established or operating in Luxembourg for whom the services are intended;
- the posting of workers, albeit for a short or predetermined period, to the territory of the Grand Duchy of Luxembourg to an establishment owned by the undertaking making the posting or to an undertaking owned by the group the undertaking making the posting forms part of;
- the posting, without prejudice to the application of the Act of 19 May 1994 governing temporary employment and the temporary hiring-out of employees, by a temporary employment undertaking or within the framework of the hiring-out of employees, of workers to a user undertaking established or operating in the territory of the Grand Duchy of Luxembourg, albeit for a short or predetermined period.

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 Luxembourg, a worker is understood to be any person who is covered by a written employment contract or any other document drawn up pursuant to Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, irrespective of that person's title in the country of origin.

This Directive was transposed into Luxembourg law by the amended Employment Contracts Act of 24 May 1989.

This Act may be consulted at the site www.legilux.lu under *Mémorial A*.

According to the case law of the Court of Justice of the European Communities, 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 Luxembourg 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 Luxembourg apply.

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

Amended Act of 9 December 1970 reducing and regulating the working hours of workers employed in the public and private sectors of the economy

Amended Act of 7 June 1937 revising the Act of 31 October 1919 regulating the contract for hiring-out of the services of private employees

These two Acts apply to postings in sectors not covered by collective agreements given generally binding force.

In the sectors covered by a collective labour agreement, the relevant provisions of that agreement apply unless it merely refers to the statutory provisions.

Sectors covered by collective agreements given generally binding force by Grand-Ducal Regulation:

- building and associated trades (plumbers, electricians, painters and glaziers, lift engineers, roofers, tilers, plasterers and façade finishers)
- transport, road haulage and road passenger transport
- cleaning of buildings
- security guarding
- brewing
- printing
- banking and insurance
- social sector and care
- temporary agency work.

The statutory instruments and these collective agreements may be consulted at the site www.legilux.lu under *Mémorial A*.

The statutory normal working time is eight hours per day and 40 hours per week. Overtime may be worked by special authorisation from the minister responsible for labour affairs, with a daily limit of 10 hours and a weekly limit of 48 hours.

If the working day exceeds 6 hours, the worker must be allowed a break, for which he may or may not be paid.

The statutory daily rest period is 11 consecutive hours for each period of 24 hours.

The statutory weekly rest period is 44 hours per week.

The collective agreements mentioned above may contain provisions more favourable to workers.

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

The amended Act of 22 April 1966 uniformly regulating the paid annual holidays of private-sector employees applies to the sectors not covered by collective agreements given generally binding force.

The Act provides for 25 working days of paid holiday per calendar year for all private-sector employees.

For each day of holiday, the employee is entitled to an allowance equal to the average daily pay in the three months preceding the start of the holiday.

The collective agreements mentioned above may contain provisions more favourable to workers.

Some collective agreements, such as that for the building and civil engineering sector, provide for an industry-wide summer and winter holiday.

During these periods, no undertaking working in the sector covered by this arrangement may work within the Grand Duchy.

The industry-wide holidays are published in the *Mémorial* (Official Journal) in the form of riders to the collective agreement concerned. See www.legilux.lu under *Mémorial A*.

In Luxembourg, there is no holiday fund in the building industry, nor in any other sector.

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

In Luxembourg, there is a statutory minimum wage, which is adjusted regularly to the consumer price index and every two years to the general movement of wages.

The current minimum wage may be found at the site www.mss.etat.lu/paramsoc/htm.

The collective agreements mentioned above contain provisions more favourable to workers in these sectors in their pay rate tables.

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]

Agency workers who are legally hired out to the undertaking making the posting on the territory of the country of origin by a temporary work agency legally established in that country are regarded in Luxembourg as normal workers of the undertaking making the posting.

However, on the basis of the Act of 19 May 1994 governing temporary employment and the temporary hiring out of employees, temporary work agencies that are not established or are illegally established in Luxembourg may not hire out agency workers to Luxembourg undertakings.

This Act may be consulted at the site www.legilux.lu under *Mémorial A*.

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

Occupational safety and health are regulated by the amended Act of 17 June 1994 on the safety and health of workers at work and the accident prevention rules of the Accident Insurance Association.

These rules may be consulted at the site www.aaa.lu under *Prévention* and then *Prescriptions*.

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]

Act of 1 August 2001 on the protection of workers during pregnancy, confinement and breast-feeding

This provides that pregnant women may not be employed in the eight weeks preceding the presumed date of confinement (antenatal leave) or the eight weeks following confinement (postnatal leave). Postnatal leave is extended to 12 weeks in the event of premature or multiple birth or for breast-feeding mothers.

To safeguard pregnant women, this Act also sets limits e.g. for overtime, night work and hazardous work.

The Act may be consulted at the site www.legilux.lu under *Mémorial A*.

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

Young Workers (Protection) Act of 23 March 2001

This Act provides that children (under the age of 15) may not be employed on any work whatsoever.

For adolescents (between the ages of 15 and 18), it in principle also prohibits work on Sundays and statutory public holidays, night work and overtime and lists types of work forbidden to young people (under the age of 18) because of the inherent health or ethical hazards.

The Act may be consulted at the site www.legilux.lu under *Mémorial A*.

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

Amended Act of 8 December 1981 on equal treatment for men and women

Grand-Ducal Regulation of 10 July 1974 on equal pay for men and women

The Equal Treatment Act provides that this principle applies to access to employment, promotion, guidance, training, refresher training and retraining, access to a liberal profession and conditions of employment.

Equal treatment as regards conditions of employment, including redundancy conditions, must be assured in regulatory, administrative and statutory provisions, collective agreements or

individual employment contracts, undertakings' internal rules and the statutes of liberal professions, and in practice.

The above Grand-Ducal Regulation requires all employers to ensure that men and women receive equal pay for the same work or work of equal value.

The two texts may be consulted at the site www.legilux.lu under *Mémorial A*.

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

Amended Act of 10 April 1976 reforming the regulation of statutory public holidays

In principle, and unless special circumstances at the undertaking make it impossible, statutory public holidays are not worked.

The statutory public holidays in Luxembourg are as follows: New Year's Day, Easter Monday, 1 May, Ascension, Whit Monday, 23 June (national holiday), Assumption, All Saints, Christmas Day and Boxing Day.

This Act may be consulted at the site www.legilux.lu under *Mémorial A*.

XVI. Procedural and administrative requirements

Articles 7 and 8 of the Posted Workers and Labour Law (Enforcement) Act of 20 December 2002 stipulate that, before the start of work, the undertaking making the posting must make available to the Labour and Mines Inspectorate as soon as possible upon the latter's request the essential information necessary for an inspection, particularly:

- the names, forenames, date and place of birth, civil status, nationality and occupation of workers;
- their exact qualifications;
- the capacity in which they are employed in the undertaking, and the occupation they are regularly assigned to therein;
- the domicile and, where applicable, habitual residence of the worker;
- where applicable, the residence or work permit;
- the workplace or workplaces in Luxembourg and the duration of the work;
- a copy of form E 101 or, where applicable, a specific indication of the social security bodies the workers are affiliated to during their stay in Luxembourg;
- a copy of the contract of employment or document established under Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Arrangements for implementing Article 7 may be specified by Grand-Ducal Regulation.

Moreover, any undertaking whatsoever, whether established and with its registered office abroad or which does not have a stable establishment in Luxembourg within the meaning of the law governing taxation, one or more employees of which work in Luxembourg in any capacity whatsoever, is required to keep the documents necessary for verifying their obligations under the above provisions in Luxembourg, in the possession of an *ad hoc* representative resident there.

Such documents must be presented to the Labour and Mines Inspectorate as soon as possible upon the latter's request. It is compulsory to inform the Labour and Mines Inspectorate beforehand of exactly where the documents are filed by means of a letter sent by recorded

delivery by the undertaking or the representative referred to in the preceding paragraph, before the paid activity envisaged is performed.

XVII. Mediation mechanisms in case of conflict

[Indicate, as appropriate, mediation procedures at the disposal of workers/service providers]

XVIII. Information on judicial enforcement procedures

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

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