

FRANCE

I. Legal notice

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/EC 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

The references to the transposing instruments are as follows:

- Article 36 of the Five-Year Act on Employment (*Loi quinquennale*) No 93-313 of 20 December 1993, subsequently Article L.341-5 of the Labour Code
Officially published: *Journal officiel de la République Française (J.O.)* No 295, 21 December 1993, page 17769
- Decree No 94-573 of 11 July 1994, supplemented by Decree No 2000-861 of 4 September 2000
Officially published: J.O. No 160, 12 July 1994, page 10041, and J.O. No 206, 6 September 2000, page 13893
- Act No 2005-882 of 2 August 2005 (J.O. of 3 August 2005) and Decree No 2007-1739 of 11 December 2007 incorporate into the Labour Code a new chapter specifically on cross-border employment.
- Act No 2014-790 of 10 July 2014 on efforts to combat unfair social competition.
- Decree No 2005-364 of 30 March 2015 on efforts to combat the fraudulent posting of workers and illegal employment.

These provisions are enshrined in articles L.1261-1 to L.1265-1 and R.1261-1 to R.1264-3 of the Labour Code.

Internet link: www.legifrance.gouv.fr under *Les codes* and then *Code du travail*.

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 by the administrations of the other Member States at the following address:

Direction générale du travail
Groupe national de veille, d'appui et de contrôle

39-43, quai André Citroën
75739 Paris cedex 15
Tel.: + 33 / 1 44 38 25 80
www.travail-emploi.gouv.fr
bureau.liaison@dgt.travail.gouv.fr

Information for the general public may be obtained as follows:

- By consulting the legislation and regulations applying and the collective agreements posted on the website www.legifrance.gouv.fr.
- By consulting the website www.travail-emploi.gouv.fr, under *fiches pratiques, détachement de salariés*.
- By sending a question by e-mail via the Ministry of Employment website, www.travail-emploi.gouv.fr, under *nous contacter*.
- By calling the national telephone outreach service (0 821 347 347) from within France; replies are given in French.
- By sending a letter to the ministry when a particularly complex point of law is involved.
- The undertaking's representatives in France may also contact the local public information service or visit the *direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi* (contact details of DIRECCTE may be found on the website www.direccte.gouv.fr).

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

Groupe national de veille, d'appui et de contrôle
39-43, quai André Citroën
75739 Paris cedex 15
Tel.: + 33 / 1 44 38 25 80
www.travail-emploi.gouv.fr

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

Articles L.1262-1 *et seq.* of the Labour Code apply to undertakings not established in France which provide services on French territory and temporarily post employees to do this work.

Articles L.1262-1 and L.1262-2 of the Labour Code introduce three categories of posting:

Article L.1262-1:

An employer established outside France may post workers temporarily to French territory, provided there is an employment contract between this employer and the employee and their employment relationship continues throughout the duration of the posting.

Posting may take place:

1. on behalf of the employer and under his direction, under a contract concluded between the employer and a customer established or operating in France or;

2. between establishments belonging to the same undertaking or undertakings belonging to the same group or;
3. on behalf of the employer without the employer having a contract with a customer.

Article L.1262-2:

A temporary work agency which is established outside French territory may post workers temporarily to an undertaking established or operating on French territory, provided there is an employment contract between the foreign agency and the employee and their employment relationship continues throughout the duration of the posting.

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 practice, a worker is regarded as a posted worker if he is employed by a duly established undertaking operating outside France, normally works for this undertaking and performs services temporarily on French territory at the request of this undertaking. (Article L.1261-3 of the Labour Code.)

In France, a person is regarded as an employee if he performs *paid work* and is linked to his employer in a *subordinate relationship*, irrespective of that person's title in the country of origin. The definition of an employee derives from the case law. The subordinate relationship implies that the employee is subject to the employer's authority but does not exclude a degree of autonomy.

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 France can no longer be considered as being exercised temporarily, but is stable and continuous, all the binding rules and regulations in force in France apply.

In addition to the provisions of the Labour Code, which are summarised below in sections VII to XV, it is also necessary to comply with the rules of the collective agreements which are "extended", i.e. given generally binding force, and supplement the pertinent labour law in the various sectors of activity. These agreements may be consulted at the website www.legifrance.gouv.fr under *Les conventions collectives*.

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

Statutory working hours

Overtime hours are hours worked in excess of statutory working hours (35 hours per week). They are calculated by calendar week, starting on Monday at 00.00 hours and ending on Sunday at 24.00 hours.

The working of overtime hours cannot have the effect of extending working hours beyond the limits laid down by law, i.e.:

- 10 hours per day (except by way of derogation granted by the labour inspector or by an extended collective labour agreement);
- 44 hours on average over a period of 12 consecutive weeks (except by way of derogation in accordance with applicable legislation, up to 46 hours);
- 48 hours per week (absolute maximum duration, except by way of derogation in accordance with applicable legislation, up to 60 hours).

The annual quota of overtime hours is limited by law to 220 hours or established by a collective agreement (for information contact DIRECCTE, cf. section III).

Workers are entitled to a compulsory corresponding period of rest for each hour of overtime completed beyond the annual quota. This provision only concerns workers posted for a period longer than a year.

Rest periods

Daily rest period

The employer must allow every employee a daily rest period of at least 11 consecutive hours. Exceptions to this rule are possible:

- by collective labour agreement, the rest period being not less than 9 hours;
- if authorised by the labour inspector, after consulting the staff representatives.

Employees are also entitled to breaks in the course of the working day. They may thus not work for six hours in any one day without a break of at least 20 minutes.

Weekly rest period

The same employee may not be employed for more than six days per week. Every employee is thus entitled to at least 24 hours' uninterrupted rest, to which is added the daily rest period of 11 hours, giving a minimum total weekly rest period of 35 consecutive hours.

The weekly rest period must be given on Sunday. However, the Act provides for two types of exception:

- permanent exceptions granted as a matter of right to certain sectors (e.g. bakers);
- temporary exceptions granted by administrative authorisation.

Night work

Night work must be exceptional and

- have due regard for workers' safety and health;
- be justified by the need to maintain continuity of the economic activity or public utility services.

Night work is regarded as any work performed between 9 p.m. and 6 a.m. A different 9-hour continuous period between 9 p.m. and 7 a.m. may be stipulated by collective labour agreement, but must in any event include the hours between midnight and 5 a.m.

Night workers are regarded as any employees who

- in their normal working pattern, work at least three of their daily working hours, at least twice per week, or
- work 270 night hours per year (the collective agreement may make provision for a different period)

between 9 p.m. and 6 a.m. (or the period fixed by agreement).

The daily working time of a night worker may not, except in special cases, exceed eight consecutive hours.

The weekly working time of a night worker may not exceed 40 hours, calculated over a period of 12 consecutive weeks, or 44 hours by collective agreement when justified by the nature of the work.

Night work must:

- be exceptional;
- take into account the need to protect the safety and health of workers;
- be justified by the need to maintain continuity of the economic activity or public utility services.

Reimbursement in the form of compensatory rest or compensatory remuneration must be provided for by a general collective agreement or a collective agreement applicable to the user undertaking.

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

Paid holidays

All employees are entitled to paid holidays amounting to 2.5 working days per month of actual work, i.e. 30 working days for a full year's work.

Paid holiday for family events

Article L.226-1 of the Labour Code entitles employees to be absent from work or work shorter hours to deal with certain family obligations such as birth, death, illness of a child or close relative or adoption abroad (four days for the employee's own wedding, three days for every birth in the household or the arrival of a child placed for adoption, two days for the death of a spouse or child, one day for a child's wedding and one day for death of the father, mother, father-in-law, mother-in-law, brother or sister).

Days of absence for family events do not bring about a reduction in remuneration. They are considered equivalent to days of actual work for determining the duration of annual leave.

Public holidays

There are eleven statutory public holidays. Unless more favourable terms are stipulated by collective agreement, the public holidays other than 1 May are not compulsory days of rest. When a public holiday is worked, employees' pay may be increased if the collective agreement so provides.

In principle, apprentices and young workers under the age of 18 may not work on statutory holidays.

For all workers, 1 May is a public holiday and is not worked, except in establishments and services which cannot interrupt work, such as transport, continuously fired plant, hospitals and hotels. No pay is lost for not working on 1 May. Employees who work on 1 May receive double pay.

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

The remuneration received in France by a worker posted by an undertaking which is not established on national territory must be at least equivalent to the gross amount:

- of the statutory minimum wage (called "salaire minimum de croissance" or SMIC). Workers who are aged at least 18 years of age and of normal physical capacity are entitled to the SMIC. It applies irrespective of the basis of remuneration, e.g. to piece workers, those paid by the task and those on commission;
- or, if it is more favourable, of the minimum wage provided for by the collective agreement applicable to undertakings in the same sector: the provider undertakings are required to apply the collective agreements which correspond to the job actually performed in France. The position of posted salaried workers in the classification grid of the collective agreement depends on their specific working conditions in France for performing the service with regard to the criteria established by this grid.

Overtime

Hours worked in excess of the statutory working hours carry an entitlement to extra pay, or alternatively time off in lieu. In some cases, they may have to be notified to or authorised by the labour inspector.

Extra pay for overtime is fixed at a rate of 25% for the first eight extra hours and 50% beyond that, where there is no collective agreement.

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]

Temporary work agencies

Undertakings posting a worker for temporary work must provide a financial surety covering e.g. pay and associated payments, indemnities and compulsory contributions, unless they discharge an equivalent obligation in their country of origin.

The posting of temporary workers to France must be declared to the labour inspectorate. This declaration replaces all the declarations to be made by French temporary work agencies.

The requirements applying to the hiring-out of workers by a temporary work agency are the same as for agencies established within France. More specifically:

- A hiring-out contract must be concluded between the temporary work agency and the user. This must be in writing and include certain mandatory particulars (such as the reason for using the temporary worker, the duration of the assignment, the nature of the job).
- An assignment contract must be concluded between the temporary worker and the temporary work agency and given to the worker within forty-eight hours of his assignment. This must be in writing and include the same mandatory particulars, plus those laid down in Article L.1251-16 of the Labour Code (e.g. any trial period, repatriation clause).
- The user must produce evidence that one of the reasons for using a temporary worker specified in Article L.1251-6 applies (replacement of an employee, temporary increase in activity, tasks which by their nature are temporary).
- Agency workers may not be used in the cases specified by Articles L.1251-9 and 1251-10 (replacement of an employee whose contract has been suspended following a collective labour dispute, particularly dangerous work, replacement of an occupational physician).

Agency workers

As for any employee of a temporary work agency hired out to a user, the working conditions applying to a posted agency worker, as specified by legislation, regulation or collective agreement, are those for the workplace. The only such conditions are those for working hours, night work, weekly rest and public holidays, health and safety, employment of women, children and young workers.

The same conditions apply to posted agency workers as to the employees of temporary work agencies established in France.

In principle, posted agency workers are entitled to equal treatment, e.g. as regards pay and access to the host undertaking's staff facilities (transport, canteens, etc.), with the other salaried workers employed in the same user undertaking. Article L.1251-32 of the Labour Code also requires a job insecurity allowance amounting to 10% of total gross earnings to be paid at the end of the temporary worker's assignment. This allowance is not due when the posted worker has an open-ended employment contract with the temporary work agency.

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

An undertaking established outside French territory which posts workers to France must comply with the rules on the health and safety of workers. Employers are subject to all the rules in Part IV of the Labour Code.

General prevention principles impose a duty to ensure safety which implies assessing occupational risks, taking preventive, information and training measures and putting in place suitable arrangements and resources.

In this context, the service provider on French territory must ensure that workplaces are safe for the workers while taking into account the occupational risks to which they may be exposed while employed in France (protection against atmospheric conditions, wearing a helmet, protection if working at a height, etc.).

When faced with a serious and imminent danger, posted workers have a right to warn the employer and put themselves out of danger.

With regard to rules on safety, the following apply in particular:

- safety rules applicable to work carried out in an establishment by an external undertaking (*Articles R.4511-1 et seq. of the Labour Code*): prior inspection of the workplace by the head of the user undertaking and the head of the external undertaking, joint risk assessment, risk prevention plan, asbestos removal plan, etc.,
- the technical provisions concerning building sites and civil engineering operations, such as rules concerning work on buildings, the coordination of safety on building sites (*Articles L.4531-1 et seq. of the Labour Code*), etc.

With regard to rules on the use of work equipment, the following apply in particular:

- European rules on the putting into circulation of equipment;
- rules on the verification of work equipment which must be carried out by competent persons within the meaning of rules or practices in France.

With regard to rules on the training of workers, the following requirements apply:

- qualification requirements for certain activities, as evidenced by a certificate, e.g. for carrying out hyperbaric work or work involving industrial radiology,
- adequate training which must be provided to certain types of workers (e.g. training for maintenance or repairs) and to users of work equipment (e.g. machine operators).

Reference legislation:

- *Articles L.4111-1 to L.4531-1 of the Labour Code*
- *Articles L.4621-1 to L.4741-14 of the Labour Code*
- *Articles L.4743-1 to L.4745-1 of the Labour Code*
- *Articles R.1262-9 to R.1262-15 of the Labour Code*

The competent occupational health department is that of the host undertaking.

The host undertaking is required to ensure that posted workers receive services from its occupational health department (medical examinations and preventative action in the workplace (*Article R. 1262-11 of the Labour Code*)).

The host undertaking must provide the occupational health department with the following information:

- the contact details of the foreign undertaking and relevant information for the occupational physician: location of service, period, type of work, risks, etc.
- the names of the posted workers indicating, where possible, whether they receive equivalent health monitoring in their country of origin.

The possible added cost for the user undertaking caused by the presence of posted workers may be borne by the foreign undertaking in the context of commercial relations between the two undertakings. Action at the workplace is taken on the initiative of the occupational health department of the host undertaking and the documents (reports, observations, etc.) which are usually sent to the employer are also sent to the host undertaking (*Article R. 1262-15 of the Labour Code*).

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]

Maternity

All pregnant women are covered by maternity safeguards, and in particular are entitled to maternity leave, of at least 16 weeks in most cases, which may be extended to as much as 46 weeks in special circumstances.

For one year after giving birth, employees are entitled to one hour per day for breast-feeding. The period of maternity leave is treated as equivalent to a period of actual work.

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

The remuneration of young workers who are between 17 and 18 years of age must not be less than 90% of the SMIC, 80% for those under 17.

The general rule for the employment of young people is that those under the age of 16 may not work. However, exceptions are provided for in the Labour Code.

Employment of young people between the ages of 16 and 18 is not subject to any particular formalities. They do, however, benefit from special protection: special medical supervision, maximum working hours limited to 35 hours per week and seven hours per day (subject to exceptions); breaks of at least 30 consecutive minutes per daily work period exceeding 4.5 hours; weekly rest period of at least two consecutive days.

Young workers under the age of 18 are not permitted to work on national holidays.

Subject to exceptions, young people between the ages of 16 and 18 may not work between 10 p.m. and 6 a.m.; those under 16 may not work between 8 p.m. and 6 a.m.

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

No one may be punished, dismissed or subjected to a directly or indirectly discriminatory measure or to acts of sexual or moral harassment on grounds of origin, sex, morals or sexual orientation, age, family circumstances, genetic characteristics, membership of an ethnic group, nation or race, political opinions, activities in trade unions or mutual associations,

religious beliefs, physical appearance, family name or state of health or disability, unless incapacity for work is attested by the occupational physician.

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

A pay statement must be issued at the time when the wage or salary is paid for all postings which last for more than one month. For postings which last for less than one month, the employer must provide the worker with a document attesting to the remuneration paid.

Unless subject to equivalent obligations in their countries of origin, undertakings in the construction and public works sector must contribute to a paid holiday fund and a bad weather pay scheme.

All occupational accidents must be reported to the labour inspector within 48 hours.

XVI. Procedural and administrative requirements

Any undertaking posting an employee to France is required, on pain of an administrative fine, to make a prior declaration of posting, provided for in Article L.1262-2-1 of the Labour Code. This applies equally to Community and foreign undertakings.

This declaration replaces various formalities to be completed by French undertakings, which for their part are required to:

- make a prior declaration of all recruitment, irrespective of the nature of the employment contract (Article L.1221-10 of the Labour Code);
- declare all work sites or other working places where at least 10 employees work for more than a week (Article R.8113-1 of the Labour Code);
- declare the working hours applying in all workshops, departments or work teams (Article D.3171-4 of the Labour code).

Further compulsory formalities, where applicable, are declarations of accommodation and work permits for workers from countries outside the European Union.

XVII. Mediation mechanisms in case of conflict

The industrial tribunals settle individual disputes by conciliation and do not give rulings unless the attempt to reach an agreed settlement fails. Each tribunal consists of a conciliation board and an arbitration board, and the attempt at conciliation is the first, compulsory, stage of the process.

XVIII. Information on judicial enforcement procedures

Article R.1412-5 of the Labour Code provides that posted workers may have recourse to the industrial tribunal within whose jurisdiction the work is being or has been performed.

The addresses of the industrial tribunals are available at the Ministry of Justice website: www.justice.gouv.fr.

Article L.1265-1 of the Labour Code permits trade unions which represent workers to engage in legal action on behalf of a posted worker without having received authorisation from the person concerned provided that he or she has not stated that they oppose such action.

Further information on legal remedies in France may be obtained from:

"Info emploi" telephone service: 0821 347 347

"Allô services publics": 39 39

www.travail.gouv.fr under *Conseils des prud'hommes*