

Consolidation Act concerning the Posting of Workers etc.

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

This notice promulgates the Act on the Posting of Workers etc., Consolidation Act No. 256 of 25 March 2011 as amended by Act No. 611 of 12 June 2013.

Part 1

Scope of the Act

1.-(1) Sections 2 - 6a, section 7a (1) and (3) – (6), and sections 7b – 7e of this Act shall apply where undertakings post workers to Denmark in the framework of the provision of services.

(2) Section 7 shall apply to situations where persons are or have been posted to the territory of a 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.

(3) Section 7a (2)-(6) and sections 7b-7e shall apply to situations in which a service is provided by execution of work in Denmark by a foreign independent undertaking which does not post workers to Denmark.

(4) This Act shall not apply to merchant navy undertakings as regards 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 is habitually performing his work in another country than Denmark and who is temporarily performing work in Denmark.

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

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

(2) The posting will only be covered by subsection (1) above if there is an employment relationship between the worker and the undertaking making the posting or the undertaking which has hired out the worker to the undertaking making the posting.

5. Where an undertaking posts a worker to Denmark, the following rules shall be applicable, irrespective of which other country's law otherwise regulates the employment relationship:

- 1) The Working Environment Act, the Offshore Safety Act and Part 4 of the Civil Aviation Act.
- 2) The Act on Equal Treatment of Men and Women as regards employment and maternity leave, etc. except for those provisions of part 3 of the 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 person concerned satisfies the conditions laid down in section 1 of the Act.
- 5) The Act prohibiting Discrimination on the Labour Market.
- 6) The Act on Implementation of Parts of the Working Time Directive

5a. Repealed

5b. Repealed

5c. 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 the annual holidays and holiday pay than the rules laid down in sections 7, 23 and 24 of the Holidays with Pay Act, the employer shall guarantee the worker supplementary holidays and holiday pay so that the person concerned will be treated at least as favourably as under the rules set out above.

(2) It is a condition for the right to supplementary holidays that the time frame of the posting exceeds 8 days. However, this shall not apply in the case of posting under section 4(1)(3), unless the posting is of a skilled or specialist worker from a supplying undertaking for the purpose of carrying out work with initial assembly or first installation of goods which form an integral part of a contract for the supply of goods and is necessary for taking the goods supplied into use.

(3) For the purpose of calculating the length of the posting referred to in subsection (2), account shall be taken of all periods within the past 12 months during which the worker has been posted to Denmark. Furthermore, account shall be taken of any periods during which another worker has been posted to perform the work concerned.

Part 2a

Application of industrial action, pay etc.

6a.-(1) In order to ensure that posted workers receive pay equalling the amount that a Danish employer is obligated to pay for the execution of similar work, workers may take up industrial action against a foreign provider of services in a manner similar to that of industrial action against a Danish employer in support of a demand for the conclusion of a collective agreement, see however subsection (2).

(2) It is a requirement for the initiation of industrial action as described in subsection (1) that the foreign provider of services has been presented with provisions in the collective agreements that have been contracted by the most representative social partners in Denmark and cover the entire Danish territory. These collective agreements must indicate with necessary clarity the rates of pay that must be paid according to the collective agreements.

Part 3

Posting from Denmark to other EU and EEA states

7. A person who is or has been posted to another EU country or another country within the European Economic Area (EEA) and while working in that country has been covered 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 – when bringing a lawsuit in this country concerning a dispute arisen in connection with the posting – decide that the case is to be settled according to these rules, irrespective of the fact that Danish law is otherwise applicable.

Part 3a

The Register of Foreign Service Providers (RUT)

7a.-(1) A foreign undertaking posting workers to Denmark in the framework of the provision of services must by registration with the Danish Business Authority disclose information about the following:

- 1) Name, business address and contact information of the company
- 2) Dates of commencement and completion of work task (service)
- 3) Location of work/service
- 4) Contact person for the company. The contact person must be appointed by the company among the individuals who are posted in Denmark in connection with the performance of the task (service)
- 5) The activity code of the company
- 6) The identity of the employees posted by the company and the time frame of the posting
- 7) Information about possible registration for VAT in the home state.

(2) A foreign undertaking doing work in Denmark in the framework of the provision of services without posting workers to Denmark must by registration with the Danish Business Authority disclose information about the following:

- 1) Name, business address and contact information of the company

- 2) Dates of commencement and completion of work task (service)
- 3) Location of work/service
- 4) The activity code of the company
- 5) Information about possible registration for VAT in the home state.

(3) The information to be disclosed according to subsections (1) and (2) must be provided in accordance with the Act on the procedure for disclosing certain information to the Danish Business Authority (lov om fremgangsmåden ved anmeldelse af visse oplysninger mv. hos Erhvervsstyrelsen).

(4) Information disclosed in accordance with subsections (1) and (2) may be used solely for:

- 1) Control by the Danish authorities to check whether undertakings comply with the legislation in connection with work in Denmark and;
- 2) statistics on foreign undertakings and posted workers

(5) Information according to subsections (1) and (2) must be disclosed no later than at the time of commencement of the service in Denmark. Changes to be registered concerning the information must be reported no later than the first weekday after the change has been introduced.

(6) The Business Authority may lay down rules for the registration of information according to subsections (1) – (5), including details concerning the conditions which the disclosing entities may or must register in the IT system of the Business Authority and the use of this system.

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

- 1) the duration of the work task/service does not exceed 8 days
- 2) the work task/service is part of the delivery of a technical plant or technical installation
- 3) The posted worker or the independent service provider cf. section 7a(2) is specialised or qualified to assemble, install, inspect, repair or give information about a technical plant or a technical installation in Denmark.

(2) The Minister for Employment may lay down rules excepting certain short-term forms of provision of services from the duty to report according to section 7a.

7c.-(1) The information referred to in section 7a(1) para. 1) – 5) and 7) and subsection (2) para. 1) – 5) may be made accessible to the public. In addition, information about the number of posted workers at a work site may be made accessible to the public.

(2) The Business Authority may lay down rules regarding pay for information provided according to subsection (1). To the extent that the information originates from the Central Business Register (CVR), the payment for and disclosure of the information must be in accordance with the rules laid down in the Act on the Central Business Register.

7d. The service provider is obliged, no later than upon the commencement of the provision of the service, to provide documentation to the assignor that registration has been made, cf. section 7a(1) and (2), if the work task concerns building, construction, forestry, farming or market gardening.

(2) An assignor receiving a service from an undertaking obliged to disclose information in the industries mentioned in subsection (1) must, no later than 3 days after the provision of the service has commenced, address the Danish Working Environment Authority, should the assignor not have received documentation that the undertaking has ensured disclosure to the Danish Business Authority, or if the information regarding the place of delivery of the service or the dates of the commencement and conclusion of the service is misrepresentative or faulty.

(3) The Minister for Employment may lay down rules on expansion of the duties of service providers and assignors, cf. subsections (1) and (2), to include other industries than those mentioned in subsection (1).

7e.-(1) The Working Environment Authority is responsible for supervising the compliance with the registration duty prescribed by section 7a.

(2) Any service provider who is subject to the duty to register information according to this Act and the service provider's contact person as provided by section 7a(1) para. 4) must upon request provide the Working Environment Authority with information that may serve to identify the undertaking, its posted workers and site of work, see section 7a(1) and (2).

(3) All workers who carry out work in Denmark must upon request from the Working Environment Authority give his/her own name, and the name of the undertaking for which he/she is carrying out work for the purpose of the Working Environment Authority's supervision of whether foreign undertakings comply with their duty to register information as set out in section 7a(1) above.

(4) The Minister for Employment may upon negotiation with the relevant Minister lay down rules to the effect that in certain industries the supervision of the duty to register information under section 7a must be carried out by the authority responsible for supervision of the compliance with the rules on health and safety at work in other respects in the industry in question.

Part 4 *Information*

8.-(1) The Danish Working Environment Authority shall be 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 Danish Working Environment Authority shall in this connection coordinate information activities in relation to foreign employers and workers, etc. concerning the rules that apply to the posting of workers in Denmark. The Danish Working Environment Authority shall cooperate with the liaison offices of other countries in connection with any problems that may arise in connection with postings to and from Denmark.

Part 5 *Legal venue*

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.

(2) Legal proceedings may be brought before the court or one of the courts within whose jurisdiction the worker has performed the work concerned.

Part 6

Penal sanctions

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

10a-(1) Any person who, in a manner described in the following, violates the provisions of this Act, shall be liable to a fine:

- 1) Fails to disclose information in due time or discloses fraudulent or incomplete information according to section 7a(1)
- 2) Fails to disclose information in due time or discloses fraudulent or incomplete information according to section 7a(2)
- 3) Fails to provide the assignor with documentation, cf. section 7d(1)
- 4) Fails to approach the Danish Working Environment Authority, cf. section 7d(2).

(2) Violations of subsections (1) para. 3) and para. 4) shall not be punishable, if appropriate disclosure has been made according to section 7a.

(3) Upon sentencing in accordance with subsection (1) it shall be considered an aggravating circumstance if the violation is intentional or caused by gross negligence, or if the violation has caused or was intended to cause a financial advantage for the person involved or others, or if the violation was otherwise of a more serious nature.

10b. Regulations issued in pursuance of this Act may prescribe a fine for violation of the provisions laid down in the regulations.

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

10d.-(1) The Minister for Employment may upon negotiation with the Minister of Justice, in specified cases of violation of this Act and regulations issued in pursuance of this Act that are not estimated to carry a higher penalty than a fine, lay down rules to the effect that the Working Environment Authority may indicate in a fixed penalty notice that the case may be settled without any court action if the entity that has committed the violation admits to being guilty of the violation and declares that it is ready to pay a fine within a specified time limit as indicated in the fixed penalty notice.

(2) The rules of section 834(1) para 2) and 3) and subsection (2) of the Administration of Justice Act on the requirements for the structure of an indictment and the rules of the same Act prescribing that an accused is not obliged to make statements shall apply *mutatis mutandis* to a fixed penalty notice.

(3) Where the fine imposed is accepted, any further prosecution will be withdrawn. The acceptance of a fixed penalty notice 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) by 1 January 2014 at the latest.

Part 8
Commencement, etc.

12. This Act shall come 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, which inserts sections 5a, 5b and 5c and amends section 10 of the Act contains the following provision on commencement:

2.

This Act shall come into force on 1 May 2008

Act no. 1394 of 27 December 2008, which amends sections 1 and 11 of the Act and inserts Part 2a, contains the following provisions on commencement:

2.

This Act shall come into force on 1 January 2009.

Act no. 509 of 19 May 2010, which amends the title of the Act, sections 1, 8, and 10 and inserts Part 3a and sections 10a, 10b and 10c, contains the following provisions on commencement:

2.

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

(2) The Minister for Employment will determine the time of commencement of section 1(3), section 7a(2), sections 7d and 10a(1) para. 2) – 4) and section 10a(2) of the Act on the Posting of Workers as worded in section 1 para. 3) - 5) and 10) of this Act¹.

Act no. 121 of 23 February 2011, which amends section 11 of the Act, contains the following provision on commencement:

2.

¹ The provisions of section 1(3), section 7a(2), 7d, 10a(1) para. 2) – 4) and section 10a(2) of this Act have been put into force on 1 January 2011 by Executive Order No. 1441 of 16 December 2010 on the Commencement of Parts of the Act on the Posting of Workers, etc.

This Act shall come into force on 1 March 2011.

Act No. 611 of 12 June 2013 to amend sections 5, 7a, 7c and 7e and insert section 10d of this Act contains the following commencement provision:

2.

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

(2) Section 1 para. 5) shall apply exclusively to public access to information about the dates of commencement and conclusion of the service and the VAT registration number of the undertaking in its home state, which is registered after the Act has entered into force.

Ministry of Employment, 3 April 2014
Mette Frederiksen

/ Søren Kryhmand