

WORKERS WITHOUT BORDERS

Commission(s) in charge of the Session/Workshop:

Labour Law and Immigration Commission

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National Report of Norway

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BIBLIOGRAPHY

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- Doe, John B. *Conceptual Planning: A Guide to a Better Planet*, 3d ed. Reading, MA: SmithJones, 1996.
- Doe, John B. *Conceptual Testing*, 2d ed. Reading, MA: SmithJones, 1997

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INTRODUCTION

Global mobility is on the rise. More and more companies increasingly operate on a cross-border scale. However, companies assigning their employees to another or multiple countries are often confronted with an increase of formalities and requirements affecting the cross-border employment. At first glance, only the work place of the employee temporarily changes. However, many other legal issues come into play and employees must comply with the rules and regulations governing immigration, employment and labour and social security law of each of those countries.

The aim of the present questionnaire is to outlining the legal aspects and issues affecting the temporary assignments of employees within and outside the European Economic Area (EEA).

1. Immigration

The first question employers should consider is whether the employee needs an authorization to work and reside in the country to which he/she is (temporarily) assigned.

Within the European Union, freedom of movement of persons is one of the main fundamental principles, guaranteeing EEA nationals the right to live and work freely in another EEA member state.

Non-EEA nationals in principle need an authorisation to work within the EEA. Does this obligation also apply to EEA nationals assigned by their employer outside the EEA?

2. Labour and employment law

Secondly, assuming the employee is allowed to work and reside in the relevant country, it is important knowing which law is governing the employment relationship during the assignment period. Is it the law of the employer (home country) or the law of the country where the employee will be assigned (host country)?

Within the European Union, the Rome Convention and the Rome I EC Regulation are the two sources dealing with this matter. Does these sources also apply when a non-EEA national is assigned to an EEA country and when an EEA employee is assigned outside the EEA? Can the employer and employee choose the law applicable to their employment relationship? Which law applies in case no law has been chosen? Can the employee also invoke the protection of statutory provisions of the country where he/she will be assigned?

The labour and employment law part of this questionnaire also includes a part on the strict rules on the 'lease of personnel' in assignment situations. Finally, we will look into (the content of) the assignment letter and the early termination of the assignment and employment relationship.

3. Social Security

The third part of this questionnaire deals with the social security aspects linked to assignments, as it is relevant and important to know in which country the social security must be paid during the assignment.

4. Other obligations and formalities

We will look into possible other obligations and formalities to be complied with in your countries in case of assignments of employees to your countries (e.g., prior notifications, drafting and keeping of social documents, etc.).

5. Social inspection

The last part of this questionnaire is based on whether or not cross-border assignments are a priority for the social inspectorate.

QUESTIONNAIRE

1. IMMIGRATION

1.1. Who needs a work permit to work in your country? Are there types of employees exempted (e.g., based on their nationality or type of work performed (business trips, etc.)?)

1.2. Are there different types of work permits in your legal system? Are there work permits for highly educated/qualified employees? If so, what are the conditions and what is the procedure to be followed? Who needs to file for the application and where? Which information and documents are to be provided to the competent authorities? What is the timing? What is the duration of the work permit? Can it be renewed? Is it possible to apply for permanent status after a certain period of time under the work permit?

1.3. Is a separate residence permit required/ granted via the work permit? Please explain.

1.4. Who can be sanctioned in case of illegal employment in your country (e.g., the employer, the employee, the host company, etc.)? What are the sanctions (civil and/or criminal) in case of illegal employment?

1.5. Did your country implement the European Blue Card Directive 2009/50/EC? If so, please explain the scope, conditions, application process and validity of the blue card?

1.6. Did your country implement the European Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer? If so, please briefly describe and explain importance and impact?

2. LABOUR AND EMPLOYMENT LAW

2.1. In your country, how is the applicable law governing the employment contract during the assignment period determined?

Norway has implemented Directive 91/533/EEC in Section 14-7 in the Working Environment Act, stating that

"(1) If an employee is to work abroad for a period exceeding one month, a written contract of employment shall be entered into prior to departure. In addition to information as referred to in section 14-6, the agreement must at least regulate the following:

- a) the duration of the work to be performed abroad*
- b) the currency in which remuneration is to be paid*
- c) any cash benefits or benefits in kind that are associated with the work abroad,*
- d) any conditions relating to the employee's return journey.*

(2) Information as referred to in the first paragraph (b) and (c) may be provided in the form of reference to Acts, regulations and/or collective pay agreements that regulate these matters. "

2.2. Which local employment laws of your country are determined as mandatory minimum laws/ minimum hardcore protective rules and working conditions? Please explain. Is there relevant case law?

Norway has implemented Directive 96/71/EEC in Section 1-7 of the Working Environment Act and Regulation 2005-12-16-1566 on posted employees.

According to the Regulation, the following mandatory laws shall apply for posted workers regardless of which country's law that apply for employment, unless the law that applies for the employment provides the expat with better conditions than Norwegian law would:

- All HES provisions in Chapter 4 of the Norwegian Working Environment Act
- Working time provisions
- All non-discrimination rules of the Working Environment Act (political views, membership in political organization, age and fixed term employment)
- The posted worker will also be entitled to leave of absence in certain situations determined by law, for instance maternity/paternity leave up to 12 months (up to three years if the leave of absence is taken as a part-time leave of absence).
- The employment contract entered into between the posted worker and the foreign company must fulfill the requirements laid down by Norwegian law for employment contracts
- The Norwegian rules on hiring of personnel from temp agencies and from other companies also apply for the posted worker. In a worst case scenario, this rule can imply that the posted worker is considered to be a permanent employee of the Norwegian company.
- The posted worker will also be entitled to holiday and holiday pay according to the Norwegian Holiday Act.

- Certain provisions of the Norwegian Gender Equality Act will apply for the expat, for instance the general rule that men and women cannot be treated differently.
- If the employment is within the scope of any regulations making collective agreements universally applicable, those provisions that have been made universally applicable governing pay or working conditions shall apply for the employment. In practice, this implies minimum pay for certain categories of work; currently in the following areas: Bus transport, freight traffic, certain work by electricians, work in the ship and yard industry, work in the fish processing industry, cleaning work, work on construction sites and work within the agriculture and gardening industry.

2.3. Does your country foresee specific rules on the ‘lease of personnel’? Is there a principle prohibition of ‘lease of personnel’? Please explain and provide examples. What are the sanctions and penalties? Is there a possibility to reduce the risk? Please explain. Is there relevant case law dealing with this matter?

Norwegian law distinguishes between the lease of personnel from temporary work agencies and lease of personnel from other companies.

Lease of personnel from temporary work agencies are only allowed in those circumstances where the company could have employed the leased worker directly on a fixed term basis, cf. Section 14-12 of the Working Environment Act. The two practical situations where lease of personnel is allowed is where the leased worker temps for an absent or several absent employees, or where the leased worker shall perform work of a temporary nature. If the requirements for leasing a worker are not met, the consequence is that the leased worker can claim permanent employment directly with the user undertaking. To reduce the risk of having a leased worker claim permanent employment it is important that the user undertaking carefully analyses the legal situation before actually leasing a worker from a temporary work agency.

In addition, Norway has implemented Directive 2008/104/EEC and has provision on equal treatment of temporary agency workers.

Lease of personnel from other companies than temporary agencies is not subject to the same strict requirements as lease of personnel from temporary work agencies. Lease of personnel from other companies than temporary agencies is allowed if the employee is permanently employed with the company that leases him or her out, provided that the lease takes place within the main areas of activity of the company leasing out and not more than 50 per cent of the permanent employees of the company that leases out must be engaged in the leasing activity. If more than 50 per cent of the permanent employees are leased out (or in some cases even fewer than 50 per cent; see below) or if the company

leases out outside its main areas of activity, the company will be considered to be a temporary work agency, and the requirements described above will apply. If these are not met, the leased employee can claim permanent employment with the user undertaking. If the requirement of the leased employee being a permanent employee of the company leasing out is not met, there are in practise no sanctions.

As a consequence of the differences between the rules applicable for temporary work agencies and other agencies, the question of when a company must in fact be regarded to be a temporary work agency despite its own definition of itself will often arise in Norway

This was for instance the case in a 2013 Supreme Court ruling. In this case, the Supreme Court ruled in a case where the main question was whether a company was to be regarded as a temporary work agency or not. An employee had been hired out from company A to company B. If company A was a temporary work agency, the employee was entitled to permanent employment with company B according to section 14-12 cf section 14-9 of the Norwegian Working Environment Act. If company A was not a temporary work agency, the employee was not entitled to permanent employment with company B, cf. section 14-13 of the Working Environment Act. The Supreme Court placed significant emphasis on the fact that the employee in this particular case had been employed with company A solely for the purpose of being hired out to company B, and that he had never performed any work internally in company A. Against this background the Supreme Court found that the hiring out of the employee could not have its basis in section 14-13 and thus that company A must be considered to be a temporary work agency. Consequently, the employee was deemed to be permanently employed in company B.

2.4. If you were asked by one of your clients to draft an assignment letter (secondment agreement between the original employer in the home country and the employee), which clauses would you include? What should the assignment letter cover? Is this foreseen by a specific law or based on case law? Please explain.

In addition to the clauses mentioned in section 2.1 above that are mandatory, the following typical provisions would be included in an assignment letter:

- Details on salary and any benefits (including insurances, housing allowance, moving costs, repatriation costs etc)
- Employment status, including who pays salary and who has the authority to discipline the employee and terminate the employment
- Working time
- Vacation
- Tax and social security status, including whether company offers tax equalization

- Data protection
- Position upon return
- Confidentiality provisions
- Application of work place policies
- Work permits

2.5. Please explain the applicable and most relevant rules of your country in case the employer wishes (1) to early terminate the assignment and (2) to terminate the employment relationship (e.g., is there a right to return? Should the assignment allowances be included in the calculation of the notice indemnity? Etc.). Is there relevant case law?

In the following, I will first assume that a Norwegian company has assigned an employee normally working in Norway to work on a temporary basis in a company outside of Norway. In this situation, although not bound by the Rome Convention and the Rome I EC Regulation, choice of law principles would as a point of departure imply that Norwegian law would govern the right to (1) early terminate the assignment and (2) terminate the employment. This would as a point of departure apply regardless of any choice of law provisions.

The right to early terminate the assignment is not governed by mandatory law and would simply be a question of interpreting the assignment contract. The right to terminate the employment as such would be subject to the same rules as in Norway, i.e the termination would have to be "warranted"/for cause; which is a high threshold. The employee would be entitled to payment during notice period and – if the termination is disputed – until a court has finally settled the case. As a point of departure, the employee would be entitled to assignment allowances during the same period. However, the employer would in practise terminate the assignment and require the employee to work in Norway, which would be possible under the assignment contract (cf. above). In this scenario, the employee is not entitled to the assignment allowance.

I will secondly assume that a foreign company has assigned an employee to Norway to work in Norway on a temporary basis. Again, although not bound by the Rome Convention and the Rome I EC Regulation, choice of law principles would as a point of departure imply that host country legislation would govern the right to (1) early terminate the assignment and (2) terminate the employment.

3. SOCIAL SECURITY

3.1. Provide a short overview of the level of social security charges in your country. What are the employer social security contributions? What are the employee social security contributions? Is there a cap/ maximum? Please briefly explain.

Employer social security charges are:

- Holiday pay (10,2 per cent if salary by law; 12 per cent as a practical main rule)
- Pension (minimum 2 per cent of salary)
- Employer's liability (14,1 per cent of salary, holiday pay and pension. Less percentage in Northern part of Norway)

3.2. In case of assignments from outside the EEA to your country or from your country to non-EEA countries, with what countries has your country signed a social security agreement?

- All Nordic countries
- Belgium
- Bosnia and Hercegovina
- Canada
- Chile
- France
- Greece
- India
- Israel
- Italy
- Croatia
- Luxembourg
- Montenegro

- Netherland
- Portugal
- Quebec
- Serbia
- Slovenia
- Great Britain and Northern Ireland
- Switzerland
- Turkey
- Hungary
- USA
- Austria

4. OTHER OBLIGATIONS AND FORMALITIES

4.1. Are there other relevant formalities and obligations in your country in case of assignments to your country (e.g., prior notification to the authorities, drafting and keeping social documents, etc.)?

N/A

4.2. What are the penalties and sanctions in case these formalities and obligations are not complied with? Who can be sanctioned? Is there relevant case law?

N/A

5. SOCIAL INSPECTION

5.1. Are cross-border assignments a priority in your country for the social inspection? Please explain.

Yes, in areas where low-income employees are seconded to Norway, cross-border assignments are a priority for the social inspection. In particular, social inspection has a special focus on construction sites, including frequent inspections to ensure that foreign employees have valid employment contracts and receive the minimum pay they are entitled to.