

Until 18 September 2016, employers which have posted employees to Poland already by 18 June 2016, i.e. on the day the Act of 10 June 2016 on the posting of employees in the framework of the provision of services entered into force ("**Act**") are required to: (i) deliver to the State Labour Inspectorate ("**SLI**") a statement containing specific data concerning the posting; and (ii) keep certain documents concerning posted employees stored in the territory of Poland on paper or in an electronic form.

**The Act mostly concerns foreign employers posting employees to perform work in Poland on a temporary basis: (i) in relation to performance of a contract with an entity carrying out its activity in Poland, (ii) in a branch or an entity belonging to a group to which the employer belongs, carrying out its activity in Poland, (iii) as a temporary work agency, and, in certain aspects, Polish employers posting their employees temporarily abroad.**

#### STATUTORY PRINCIPLES OF POSTING EMPLOYEES

The Act introduces requirements concerning posting of employees, related information obligations on the part of the employers, principles of auditing compliance with the provisions on the posting of employees, as well as the establishment of rules on the cooperation between competent authorities in other EU Member States in the scope of posting of employees.

In particular, a posted employee should be provided with employment conditions in Poland no less favourable than those applicable under the Labour Code and other legislation governing the rights and obligations of employees (Article 4 of the Act) concerning, i.a.: working time norms, amount of holiday leave, minimum wage, health and safety at work, and in the case of the temporary work agency - temporary workers' statutory rights.

**SK&S' COMMENTS:** Analogous regulations were already in the Labour Code (Article 67(1) and following), but were repealed as a consequence of their moving to the Act. The Act regulates the practical aspects of posting employees to another country more comprehensively than the earlier provisions, including notifications and updating obligations of the employers to SLI (which were previously non-existent).

#### NEW OBLIGATIONS OF EMPLOYERS

The new obligations imposed on all foreign employers posting their employees to Poland under the Act include, in particular:

- the obligation to designate a person who resides in Poland during the period of posting who will be responsible for liaising with the SLI and for sending and receiving notifications or documents (Article 24 Sec.1 of the Act);
- the obligation to provide the SLI (no later than the date on which service commenced) with a statement containing specific data concerning the posting (Article 24 Sec. 3 of the Act); as well as to inform the SLI of any changes within 7 days from the day on which such change has occurred; and
- the requirement to keep certain documents concerning employment relationships of posted employees (on paper or in an electronic form) in Poland. Employers are required to make this documentation with its translation into Polish available to the SLI upon request (also up to 2 years after the end of posting) (Article 25 of the Act).

Failure to comply with the abovementioned obligations may be penalized with a fine between PLN 1,000 and PLN 30,000 (Article 27 Sec. 1 of the Act).

**SK&S' COMMENTS:** The submission of such statement enables the SLI to carry out audits and to gather data concerning posted employees. It can be assumed that inspections re: posting conditions will be more frequent.

## NEW ENTITLEMENTS OF THE SLI

The SLI cooperates with competent authorities in other Member States in respect of monitoring compliance with regulations concerning posting employees (including assisting in penalizing an employer) (Article 9 Sec. 2 point 4 of the Act), and is entitled to carry out pertinent compliance audits (Article 14 of the Act). The SLI may demand information concerning an employer's activities from the employer in question, necessary for posting assessment.

**SK&S' COMMENTS:** The Act imposes an obligation on the SLI to verify in particular whether the employee may be considered as an posted employee (there is a "posting test" established) as well as to inspect the working conditions of the employees posted to Poland.

Should you have any doubts or questions regarding the above, please do not hesitate to contact us.

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