



[In this issue:](#)

The law for amending and supplementing Law no. 16/2017 on posting the employees in the framework of the transnational provision of services, as well as the decree for its promulgation, was published in the Official Gazette

The amendment of this Law was published in the Official Gazette no. 736 from August 13, 2020.

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The most important amendments concern the following:

- The amendment of the **definition of the employee posted from the Romanian territory**, as the employee of an employer in Romania, who performs activities on the territory of another Member State/Swiss Confederation, for a period of maximum 24 months;
- Imposing employers the **obligation to pay** posted workers on/from the Romanian territory the **remuneration** (and not only the minimum wage), including the payment of overtime, regulated **in the host Member State** under both legal and administrative acts, as well as, if any, by collective agreements or arbitral awards which have been declared to be of general application. Also, the changes include the following:
 - The term **remuneration applicable on the territory of a Member State other than Romania or the Swiss Confederation** is the one established by the national law/national practices of the host Member State and includes all constituent elements of remuneration that are mandatory under laws and other normative acts, as well as, if any, in accordance with collective agreements or arbitral awards which have been declared of general application;
 - The term **remuneration applicable in Romania** includes the minimum wage, the increment for overtime work, the increment for work on weekly rest days, the increment for work performed during the night, other increments and allowances that are mandatory according to the national legislation, as well as those provided in the collective labor agreements with general applicability;
 - With respect to **assignment-specific allowances**, these will be considered part of the remuneration as long as they are not granted as reimbursement of expenses actually incurred for the assignment (i.e., transport, accommodation and meals);
 - Also, the tax treatment applicable to the allowance specific to the transnational posting is clarified, being taxable the part that exceeds the threshold established by the Government Decision no. 582/2015, multiplied by 2.5.
- Companies will be obliged **to present to the audit authorities documents** attesting the amount of remuneration applicable on the Romanian territory, the expenses incurred during the assignment and reimbursement method, supporting documents for verification. Companies will also be obliged to inform the employee in writing, in case the posting is longer than 7 consecutive days, about: the constituent elements and the amount of the remuneration, expenses generated by the posting, the link to the site created by the host Member State on Directive 96/71/EC;
- The establishment of the rule according to which the **level of reimbursement of transport, accommodation and assignment expenses**, respectively of assignment allowances for workers posted on/from the territory of Romania which are temporarily sent from their usual place of work in the host Member State to another place of employment will be the one **established by the legislation of the host Member State**;
- The introduction of the **principle of equal treatment** between temporary workers posted by a temporary work agent on/from the territory of Romania and workers directly recruited by the user enterprise located on the territory of the host Member State. Thus, temporary agency workers are required, during the period of posting, to guarantee to posted workers the working conditions applicable on the host Member States' territory;
- The obligation for employers, in case the posting on/from the territory of Romania exceeds 12 months (18 months, as an exception), **to observe**, in the relation with the posted workers, **all the employment conditions applicable in the host Member State**, except for the provisions related to (i) the procedures, formalities and conditions for the conclusion and termination of employment contracts, including non-compete clauses, and (ii) occupational pension schemes;

- If the conditions regarding the transnational posting on the Romanian territory are not met, the **competent inspectors and related authorities** acknowledge **and notify the authorities from the home state of the service provider**, and the employees in such a situation will benefit from all the rights of the posted employees. Also, in this case, the competent authorities will be able to apply a fine for undeclared work to the beneficiary of the provision of services;
- The notification regarding the start of the assignment/activities will have to be submitted **at the latest before the start of the activity** of the posted employees;
- In order to improve the access to information, the Labor Inspectorate will frequently update on their website the terms and conditions of work, the applicable minimum wage and the specific elements of remuneration;
- New contraventions are introduced, as well as new values of contravention fines.

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