

Regulations of 16 December 2005 No. 1566 concerning posted workers

Laid down by Royal Decree of 16 December 2005 pursuant to § 11, second subsection, of the Act of 16 June 1972 No. 43 relating to holidays for fishermen, § 2, fourth subsection, of the Act of 9 June 1978 No. 45 relating to Gender Equality (Gender Equality Act), § 2 (6) of the Act of 29 April 1988 No. 21 relating to Holidays, § 1-2 (1) of the Act of 4 June 1993 No. 58 relating to general application of wage agreements, etc., § 2, fourth subsection, of the Act of 10 December 2004 No. 76 relating to labour market services (Labour Market Act) and § 1-7, fourth subsection, of the Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act). Submitted by the Ministry of Labour and Social Affairs. Cf. EEA Agreement, annex XVIII No. 30 (Directive 96/71/EC).

§ 1. Scope and extent

The Regulations apply in cases where foreign undertakings post workers to Norway in connection with provision of services provided that there is an employment relationship between the foreign undertaking and the posted worker during the period of posting.

The Regulations do not apply to Svalbard.

§ 2. Terms and conditions of employment

Regardless of which country's law otherwise regulates the employment relationship, the following provisions concerning terms and conditions of employment shall apply to posted employees:

- a) Chapters 4, 10, 11, and 13, §§ 12-1 to 12-9, § 14-5, § 14-6, § 14-8, §§ 14-12 to 14-14 and § 15-9 of the Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act)
- b) Act of 29 April 1988 No. 21 relating to Holidays (Holidays Act)
- c) § 2, §§ 4 to 6, § 9 and § 10 of the Act of 16 June 1972 No. 43 relating to holidays for fishermen
- d) § 27 of the Act of 10 December 2004 No. 76 relating to Labour Market Services (Labour Market Act)
- e) §§ 3 to 6 of the Act of 9 June 1978 No. 45 relating to Gender Equality (Gender Equality Act).

If the employment relationship of a posted worker falls under the scope of a decision pursuant to the Act of 4 June 1993 No. 58 relating to general application of wage agreements, etc., the provisions that have been given general application and concern terms of wages and employment pursuant to the first subsection shall apply to the employment relationship.

The provisions of the first and second subsections shall only apply if the posted worker is not subject to more favourable terms and conditions of employment by agreement or pursuant to that country's law that otherwise applies to the employment relationship.

If the period of posting for a posted worker who is a skilled or specialist worker does not exceed eight days, the provisions laid down in the Holidays Act and § 10-6 (11) of the Working Environment Act and the provisions referred to in the second subsection concerning holidays, holiday pay and pay, including overtime pay, shall not apply when:

- the work carried out involves initial assembly or installation subject to a contract for the supply of goods, and
- the work is necessary for taking the goods supplied into use.

If during the last 12 months the undertaking has posted other workers to perform the same work, such periods shall be taken into account when calculating whether the period of posting exceeds eight days.

This exception shall not apply for a posted worker who carries out work within the construction sector involving construction, repairs, maintenance, alteration or demolition of buildings.

§ 3. Information

The Norwegian Labour Inspection Authority shall, in the capacity of liaison office, provide information on the terms and conditions of employment that shall apply to the posted worker. The Labour Inspection Authority can also refer to employers' and employees' organisations in cases where the provisions of a collective agreement given general application are applicable, cf. § 2, second subsection. The Labour Inspection Authority shall cooperate with corresponding liaison offices in the other EEA countries.

§ 4. Jurisdiction

In order to claim the right to terms and conditions of employment pursuant to § 2, a posted worker may institute legal proceedings in Norway. The legal proceedings may be instituted in the judicial district to which the worker has been posted.

§ 5. Posting from Norway

When a Norwegian undertaking posts a worker to another country within the EEA area, the employer shall ensure that the posted worker is covered by the host country's provisions concerning terms and conditions of employment provided in implementation of Council Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This does not apply when the worker is covered by more favourable terms and conditions of employment laid down in an agreement or pursuant to the national law that otherwise regulates the employment relationship.

§ 6. Penal provisions

Violation of the legal provisions that shall apply pursuant to § 2, first subsection, shall be punishable pursuant to the penal provisions that apply to violations of these provisions.

§ 7. Entry into force

The Regulations enter into force on 1 January 2006.