

HOW TO POST WORKERS FROM A FOREIGN COMPANY IN FRANCE?

A company based abroad can temporarily post workers in France in order to perform a mission or provide specific services.

The posting of workers of the foreign company may take place in two cases:

- Within the framework of intragroup mobility, ie, the foreign company's workers are made available to a subsidiary or a branch of said company, established in France;
- Within the framework of a contracted provision of services, ie, the foreign company's workers are directly made available to the customer who receives the service provision from the foreign company.

In both cases, you must to proceed to:

1. A DECLARATION OF POSTED WORKERS PRIOR TO THEIR POSTING

This declaration is made to the "*Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi*" (DIRECCTE) of the French area where workers will be posted.

As part of this declaration, the foreign company must:

- Prove that **it was not created for the sole purpose of posting workers** to whom a less favorable labor law is applicable.

To this end, proof must be provided that the foreign company has a significant activity in its country of origin, justifying that it is regularly established in said country, and that its constitution and direction are in accordance with the laws of the same.

- Ensure that the **contractual link** between the foreign company and the posted worker existed prior to the posting and is maintained throughout.

- Appoint a **representative in France** who will be its spokesperson to the French administration during the runtime of the performance of the contract.

2. AN APPLICATION FOR THE WORK PERMITS REQUIRED TO WORK IN FRANCE.

Regarding this obligation, it is necessary to specify that only workers posted from a third-party state to the EU and non-EU nationals will need work permits to be posted to France.

Indeed, applying the principle of free movement of workers, both nationals of the European Union and third-party countries nationals, posted from a company legally established in a Member State of the European Union, may benefit from an exemption from work permit.

However, in the latter case, the work permit exemption will only be possible provided that the worker meets following criteria:

- Being a regular employee of the European company posting its workers;
- Owning a valid residence permit issued by the member state of the European Union from which the worker is posted (and that will not expire during the period of posting);
- Being posted to occupy the same position as in the country of origin.

The procedures for obtaining work permits will depend on the type of posting performed, ie, if it is an intragroup posting (a) or is a posting in the framework of a contracted provision of services (b).

a) Posting of workers in the context of intra-group mobility

In order to obtain work permits for workers, for a mission of more than three months, the following requirements must be met:

- The posted worker must have worked for the foreign company for at least three months prior to the permit request.
- The worker's mission in France must last at least three months.
- The worker must provide specific expertise to the French company where he will be posted.
- While in France, the worker must receive a gross remuneration that is at least equal to the French minimum wage (as provided by the applicable labour agreement in France) x 1.5.

In the case where these requirements are met, the company must submit the application for a work permit to the *Direccte* accompanied by several documents that include, among others:

- A letter explaining the worker's mission and the functions to be exercised in France;
- The worker's curriculum vitae or any other proof of their qualifications and professional experience;
- The initial work contract between the posted worker and the foreign company, or any equivalent document that can justify of the worker's seniority within the company;
- The « *Extrait k-bis* » (official document from the French Trade register) of the subsidiary or French branch that will receive workers;
- The proof of the links between the French subsidiary or branch with the foreign company.

In the event of a favourable response from the French government to the work permit application, the French consulate in the country where the foreign company is based, will send the employment contract endorsed by the immigration services, and a residence permit "*salarié en mission*" (employee in assignment) for a renewable 3 years period, to the worker.

Once in French territory, the posted worker must annually justify that the recruitment and remuneration conditions are still met. In the case that the requirements are no longer met, despite the initially authorized duration of 3 years, the immigration authorities may withdraw the worker's residence permit.

b) Posting of workers within the framework of a contracted provision of services

If the foreign company wants to post its workers to the premises of a French customer, in the context of the performance of a service contract, the following requirements must be met:

- The contractual relationship between the foreign company and the worker must exist prior to the posting and be maintained throughout. That is to say, the subordination relationship with the posted worker must be perpetuated throughout the execution of the service.
- The posted worker's salary must be equivalent to the salary of a French worker for the same job.

In the case where these requirements are met, the foreign company must submit the application for a work permit to the *Direccte* accompanied by several documents that must include, among others:

- A letter explaining the worker's mission and the functions to be exercised in France;
- A document justifying the price payed by the customer for the contracted service.

After examination, the French Consulate in the country where the foreign company is based delivers an employment contract endorsed by the immigration services and a long-term visa "*travailleur temporaire*" (temporary worker), to the worker.

This visa has a maximum duration of 12 months. However, when it expires, it is possible to apply for renewal for another 12 months period, the worker will then be granted a work permit "*travailleur temporaire*" (and not a simple visa). This permit may be renewed for 12 months periods, without limitation, throughout the mission of the posted worker.

May 2016

The purpose of the present note is merely informative and does not take into account the specificities that may arise in every case. For complete and tailored information specific to your particular case, a professional advice is recommended.

Our firm is at your disposal to advise and accompany you in your project developing of your activity in France.