
Employment conditions of workers posted to Spain in the framework of a transnational provision of services

Royal Decree-Law 7/2021, transposing the posting of workers Directive (EU) 2018/957 into Spanish law

Labor Law Legal Flash

April 2021

Spain has finally adopted the Directive (*Directive (EU) 2018/957*) of the European Parliament and of the Council of June 28, 2018, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, with the aim of fostering equal treatment for workers posted to the territory of another Member State. The transposition deadline was July 30, 2020.

The amendments to Spanish law, regulations and administrative provisions came into force on April 29, 2021 and will entail an extra effort for companies rendering transnational services and managing workers who are temporary posted to Spain.

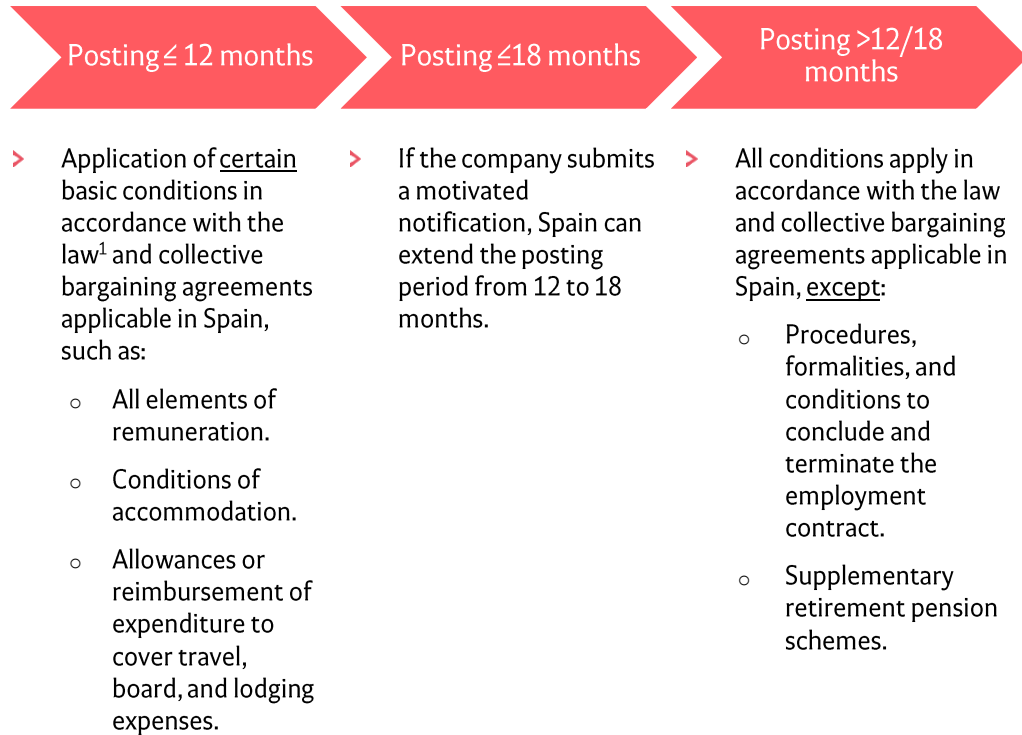


Main new developments

- > The aim of the law is to ensure that workers posted to Spain are effectively integrated into the Spanish labor market after a given period, to avoid social dumping and unfair competition practices between companies.
- > The company must guarantee that posted workers are granted with all the basic labor conditions applicable in Spain, including elements of remuneration, conditions of accommodation, allowances, and reimbursement of expenditure to cover travel expenses.
- > Where posting lasts for more than 12 months, workers must be guaranteed all employment conditions applicable in Spain, whether by law or under a collective bargaining agreement, with certain exceptions.
- > Spanish law also guarantees the same employment conditions in the case of workers hired out by a temporary employment agency of a Member State to provide services in Spain.
- > It also tightens control on fraud and imposes new penalties to ensure compliance with these provisions.



Employment conditions applicable to posted workers



Duration of the posting

- > As the regulation refers to the “**effective duration**” of the posting, it is reasonable to interpret that all applicable conditions of employment must be guaranteed after the first 12 months, regardless of the initially intended duration of the posting.
- > For workers already **posted in Spain on April 29, 2021**, the maximum period of 12 months will apply once 6 months have elapsed from that date, starting the calculation of the maximum period of displacement from the date on which it took place.
- > The calculation of the effective duration of the posting **will not be interrupted** by paid annual vacation, or by rest periods or paid annual leaves.
- > If a company replaces a posted worker for another worker **performing the same task at the same place of work**, the duration of the posting will, for these purposes, be the cumulative duration of the posting periods of the individual posted workers concerned. Therefore, it is essential to carefully analyze any potential situation where a worker is replaced or continues to provide services beyond the limits established in the regulation.

¹ Act 45/1999, on posting of workers in the framework of transnational provision of services, already recognized the application of basic labor conditions referred to working time, remuneration, equal treatment, prevention of health and safety risks, among others.



Posted temporary agency workers

Temporary employment agencies based on the EU/EEA posting workers to Spain must ensure that their employment conditions are the same as those of temporary agency workers in Spain. This guarantees the **principle of equal treatment and equal pay** between (i) posted temporary agency workers; and (ii) workers of the user company undertaking in Spain, except if the country of posting has more favorable employment conditions in its provisions transposing the Directive.

Anti-fraud regulation

- > Spanish law includes measures strengthening administrative cooperation to prevent fraud and abuse by agencies and companies.
- > If an overall assessment shows that a company is unduly or fraudulently creating the impression that a posted worker is covered by Act 45/1999, the worker will be entitled to the application of Spain's employment and social security legislation.

Penalties

- > Communicating false or misleading statements to justify extensions in the transnational posting of workers is now considered a very serious infringement under the Spanish Labor Infringement and Sanctions Act. The fine ranges between €626 and €6,250.
- > There are conducts by EU/EEA temporary employment agencies and user undertakings based in Spain that will now qualify as new infringements. Also, in case of repeated serious infringements, temporary employment agencies may be banned from hiring out workers to user undertakings based or operating in Spain. The ban can last one year or be permanent (in case of two infringements).

Exclusion of the road transport sector

- > These new provisions on the transnational posting of workers do not apply to the posting of drivers in the road transport sector.
- > Until the entry into force of Directive 2020/1057 as transposed into Spanish law, the road transport sector will remain subject to the posting of workers' regulation as applicable before April 29, 2021.

For additional information, please contact Cuatrecasas.

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