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## Germany/EU: Legal transposition of EU Posted Workers Directive in effect 30 July 2020

Effective 30 July 2020, Germany has legally transposed the [EU Posted Workers Directive \(2018/957\)](#) by way of the [amended Posted Workers Act \(Arbeitnehmer-Entsendegesetz, AEntG\)](#), which was adopted in the Bundestag (Lower House) in a final reading on 18 June 2020 and approved by the Bundesrat (Upper House) on 3 July 2020. The amended AEntG will improve the remuneration levels and the employment conditions of EU posted employees working in Germany's services sector for a limited timeframe, particularly in construction and manufacturing. The amendments will entitle EU posted employees at German worksites to the same legal and administrative rights as their German counterparts, including equal pay for equal work. At the same time, lawmakers have included provisions to shield domestic employers from unfair competition and wage dumping. The goal is to harmonize employment conditions and promote greater mobility within the services sector of the EU.

### **Affected employers and employees**

The legal transposition of the EU Posted Workers Directive (2018/957) will affect EU employers who send employees to work in Germany for a limited time in order to execute a contract. It also affects the wage levels and employment conditions of EU foreign nationals posted in Germany (entsandte Arbeitnehmer).

### **Legal transposition of EU Posted Workers Directive**

Effective 30 July 2020, the amendments to the Posted Workers Act (AEntG) have legally transposed EU Directive 2018/957 in Germany. The guiding principle is based on equal pay for the same work (Prinzip der gleichen Entlohnung). Companies in other EU states that send employees to Germany on short-term contracts of under 12 months will now be bound by the remuneration policies applicable to local employees.

The amendments to the AEntG seek to consolidate the fair mobility provisions in the EU Directive and are mainly targeted at employees from eastern and central EU member states. They will serve to create a more level playing field within the EU, including the adjustment of wage differentials between local and posted employees.

In the future, posted employees will be entitled to the full range of remuneration components granted to domestic employees:

- basic wages
- salary components related to work duties and professional qualifications
- special allowances and in-kind benefits



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The legal transposition ensures that EU foreign nationals posted in the services sector in Germany, especially in construction and manufacturing, are entitled to the same legal and administrative rights as their German co-workers. The road transportation sector will remain an exception, however.

In principle, the amendments to the AEntG will guarantee the same conditions for posted employees based on German labor legislation and generally binding collective bargaining agreements (CBAs), including those in a given state or region. The compliance requirements will only be triggered if the company falls within the scope of a generally binding CBA.

Because the posted employees will be subject to generally binding CBAs, their employers will need to ensure that their posted employees are granted overtime rates, special allowances (for hazardous or unsanitary conditions) and other types of in-kind benefits. In addition, remuneration will depend on qualifications and professional experience.

The amendments to the AEntG will also help prevent EU-based employers from deducting allowances for travel, meals, or accommodation from employee wages. In the future, employers of posted employees will no longer be allowed to offset the reimbursement of such expenses from basic wages.

Simultaneously, the legal transposition of EU Directive 2018/957 seeks to ensure that German employers are protected from wage dumping practices (Lohndumping) and unfair competition (unfaire Konkurrenz) by employers based in other EU states. Customs authorities will monitor compliance by beefing up staff with an additional 1,000 inspectors in an attempt to prevent non-compliance.

Previously, EU foreign nationals posted in Germany by employers based in other EU states were only guaranteed the minimum wage. The employees were not entitled to the full range of remuneration types that exist in Germany, including overtime pay.

### **Employment conditions**

Article 2 of the amended AEntG has amended the terms and conditions that apply to EU foreign nationals posted in Germany on a short-term contract. The regulations that apply to German employers will now be extended to EU-based employers who send their employees to Germany, including:

- overtime rates (Überstundensätze)
- minimum paid annual leave (bezahlter Mindestjahresurlaub)
- maximum working hours (Höchstarbeitszeiten)
- minimum rest periods (Mindestruhezeiten)
- workplace health, safety and hygiene standards
- protective measures for pregnant women, adolescents, and children



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- gender equality policies
- reimbursement for travel, accommodation, and subsistence costs

## Remuneration

In Article 2a of the amended AEntG, the term minimum wage levels (Mindestlohnsätze) has been replaced by the broader concept of remuneration (Entlohnung), which covers not only basic wages, but all forms of wage components: special allowances, bad weather allowances, Christmas bonuses, and overtime rates.

According to a provision added to Article 2b of the AEntG, employers will not be allowed to impose the costs of relocation, accommodation, travel, or meals on their employees. Any posting-related costs incurred by the employer cannot be used to offset the basic wages of a posted employee, including posting allowances (Entsendezulagen) provided for the duration of a contract. Any other costs incurred by the posted employee related to travel within Germany will need to be covered by the employer.

## Duration of posting

The maximum duration of an EU foreign national employee posting cannot exceed 12 months per the amended AEntG, though exceptionally it can extend to 18 months per Article 13b if the employer submits a notification to Customs (Zoll) with the following data:

- First and last names and birthdate of posted employee
- Place of employment in Germany (location of worksite)
- Reasons for exceeding 12-month contract
- Expected length of contract remaining

If a posted employee works in excess of 12 months, all the employment conditions prescribed by German legislation will apply. However, termination terms, including any post-contractual non-competition clauses or occupational pension benefits, will not apply.

## Unfair competition and wage dumping

The legal transposition of EU Directive 2018/957 is based on the principle of equal wages for equal work at the same workplace. It creates a framework of fair competition for German employers and equal wage levels for EU foreign nationals posted in Germany. It also shields Germany's labor market from wage dumping and unfair competition. EU employers will still be able to bid for contracts in Germany and post their own staff, but the wages of posted employees will need to match those of domestic employees to avoid wage dumping.

## Accommodation standards

Per the amended AEntG, the accommodation of posted employees from other EU states will now need to conform to the minimum standards of Germany's Workplace Ordinance (Arbeitsstättenverordnung).



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### **Subcontracting chains**

The amended AEntG ensures that subcontractors pay employees the same wages as the main contractor, even in so-called subcontracting chains (Untervergabeketten). In general, the rights of posted employees will be protected from any abuse related to subcontracting chains. Employers will be required to offer the same wages as the main contractor even if these are stipulated in a CBA that is not generally binding.

### **Temporary employees**

The regulations in the amended AEntG guarantee equal treatment for temporary or seconded employees (Leiharbeitnehmer) posted from another EU state in relation to domestic employees. The same employment conditions will apply across the board, including temporary employees working as part of a subcontracting chain, except for assembly or installation projects under 8 days. The amended AEntG will not apply to employees sent to attend conferences, trade fairs or training for under 2 weeks.

### **NEXT STEPS TO CONSIDER**

As of 30 July 2020, employers in Germany are advised to familiarize themselves with the new regulations in the amended Posted Workers Act (AEntG) and to adapt company internal processes.

In the context of cross-border employees from other EU states, employers should be vigilant about concluding local employment contracts that involve posted or seconded employees to determine whether they could fall within the scope of equal pay requirements. If equal pay requirements apply, employers will need to review their remuneration and employment conditions. They will also need to ensure that all relevant documentation for posted employees complies with the amended AEntG, including contractual agreements and time sheets.

### **BACKGROUND**

#### Legislative process

On 12 February 2020, Germany's federal cabinet adopted a draft bill by the Ministry of Labor (BMAS) legally transposing EU Directive 2018/957 (Posted Workers Directive). The EU Directive, which has replaced Directive 96/71/EC, came into effect on 28 June 2018 and required a legal transposition across EU jurisdictions by 30 July 2020. The Bundestag adopted the transposed version in a third and final reading on 18 June 2020. It was approved by the Bundesrat on 3 July 2020. The amended Posted Workers Act (Act Implementing EU Directive 2018/957 of the European Parliament and Council of 28 June 2018 amending Directive 96/71/EC on the Posting of Workers in the Provision of Services) was published in the Official Journal (BGBl) on 16 July 2020 and came into effect on 30 July 2020.



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## Hong Kong: The Employment (Amendment) Bill 2019 increases maternity leave to 14 weeks

On 17 July 2020, the Hong Kong official gazette published the [Employment \(Amendment\) Ordinance 2020](#) (2020 年僱傭 (修訂) 條例), under which statutory maternity leave will be extended from 10 to 14 weeks. The effective date will be determined by the Secretary of Labor and Welfare Bureau and published in the government gazette once determined.

### **Affected employers and employees**

All employers and all female employees will be affected.

### **Maternity leave extended**

The statutory maternity leave will be extended from 10 weeks to 14 weeks. An eligible employee will receive 80% of her average daily wages for the additional 4 weeks, the same rate she receives for the original 10 weeks of maternity leave. The additional wage compensation will be capped at HKD 80,000 per employee. The additional 4 weeks of benefit are to be funded by the Hong Kong government, but employers will need to make the wage payments first before applying for full reimbursement.

### **Miscarriage redefined**

The length of pregnancy required to receive the miscarriage leave benefit will be reduced from 28 weeks to 24 weeks. Under the Amendment Ordinance, the employee will be entitled to the statutory maternity leave benefit if a child does not survive after the 24<sup>th</sup> week of pregnancy.

### **Medical certificate requirement**

Under the new amendments, a certificate of medical care attendance issued by a health professional will suffice for employees claiming sickness allowance in relation to pregnancy. Prior to the Amendment Ordinance, employees were required to obtain a medical certificate as proof of eligibility for sickness allowance.

### **NEXT STEPS TO CONSIDER**

Once the effective date of amendment to maternity-related leaves is determined by the Secretary of Labor and Welfare Bureau, employers will need to review their relevant policies to ensure their offerings are in line with the updated benefits: 14 weeks of maternity leave, miscarriage leave starting at 24 weeks of pregnancy, and a certificate of medical care attendance from a health professional rather than a medical certificate required to claim sickness allowance in relation to pregnancy.



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Employers should also consider communicating the up-coming changes to their employees.

## **BACKGROUND**

The Amendment amending the Employment Ordinance was proposed by the Labor and Welfare Bureau and a draft was published in the government gazette on 27 December 2019. The proposal had been under review by the Legislative Council since 8 January 2020. Compared to the draft, the approved Amending Ordinance increased the maximum compensation for the additional 4 weeks of maternity leave from HKD 36,882 to HKD 80,000 per employee. Other proposals in the Draft were kept unchanged.



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## Saudi Arabia: Labor law salary reductions, annual leave, and unpaid leave provisions amended amid COVID-19

Effective 6 April 2020 (13,8,1441 Hijri), the Ministry of Human Resources and Social Development (MHRSD) issued [Article no. 41](#) through Ministerial Decision no. 142906 under the Ministerial Decision no. 70273 amending the implementing regulations of the Labor Law to mitigate the repercussions of COVID-19 on employment agreements.

Article no. 41 enables both the employer and employee to agree over a period of 6 months on salary reductions, annual leave, and unpaid leave.

### Article No. 41 Measures

Article No. 41 was issued on 6 April 2020 and will remain effective until 6 October 2020. The Article is applicable whenever the government takes any precautionary measure to mitigate the COVID-19 crisis, and enables employers and employees to agree on one of the following measures:

1. Reduction in employee's salary in proportion with their working hours; or
2. Placing the employee on annual paid leave (using the employees' accrued annual leave days); or
3. Implementing unpaid leave.

Businesses heavily affected by COVID-19 can take any of the 3 measures starting 6 April 2020 for up to 6 months. During this period, employers cannot terminate their employees unless they are unable to pay the employees' wages after:

- The period has ended (April 2020 until October 2020); or
- They exhausted all 3 applicable measures; or
- They prove that they never received any governmental subsidy or assistance during that period.

The MHRSD clarified that the first 2 measures are decided by the employer, whereas the implementation of unpaid leave needs the approval of the employee.

### Reduction of salaries

Any reduction in salaries must correspond to the employee's working hours and must not exceed 40% of the employee's salary. The agreement must be made in written form without invalidation the initial employment contract.

### Annual paid leave

The granted leave must be made in written form without invalidation the initial employment contract.



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## **Mexico: Government pension reform would increase employer contribution rates for retirement program, introduce early retirement benefit**

On 23 July 2020, the government unveiled its plans for Mexico's pension reform. The key points of the reform proposal include:

- Increased employer contribution rates for Retirement Age Unemployment and Old Age Retirement (Cesantía en edad avanzada y vejez, CEA)
- Decrease in the minimum number of contributions for early retirement (CEA);
- Increased guaranteed minimum pension

The government will send the pension reform proposal to Congress for analysis on 1 September 2020. If enacted, it is expected that the provisions would come into force in early 2021.

### **Increased employer contribution rates for Retirement Age Unemployment and Old Age Retirement**

According to the proposal, the employer contribution rate for retirement (CEA) would range from 5.15% to 13.875% based on the employee's monthly salary. Employee contribution rates would also be increased based on the employee's monthly salary; however, the government has not specified the range of contribution increase for employees at this time. Currently, employer contribution rates for retirement pensions (CEA) are 5.5%, and employee rates are 1.125%. Contributions are assessed on salary up to the maximum salary contribution ceiling (25 times the measurement unit (Unidad de Medida y Actualización, UMA), which is MXN 86.88 per day as of 10 January 2020).

### **Decrease in the minimum number of contributions for early retirement (CEA)**

According to the proposal, individuals would be entitled to old age unemployment retirement (cesantía en edad avanzada, CEA) benefits at the age of 60 years, and to old age retirement benefits (retiro por vejez) at the age of 65 years. The minimum number of contributions to the AFORE system in order to receive benefits for both types of retirement would be 750 weeks.

Currently, individuals are entitled to old age unemployment retirement benefits under the AFORE system if they are aged 60 to 64 (cesantía en edad avanzada) or 65 (retiro por vejez), and must have contributed for at least 1,250 weeks (if the individual is insured under the new post-1997 system) or at least 500 weeks (for the individual insured under the pre-1997 system).

### **Increased guaranteed minimum pension**

The guaranteed minimum pension would increase to MEX 4,345 per month from the current minimum of MEX 3,289.



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