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# Issues to consider in cross-border employment

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It is a common feature of the European Union's labor market that an employer located in one member state may temporarily send an employee to another member state to perform work there.

This could happen in different circumstances: It may be an intra-group relocation of workforce or inter-state provision of services by one company to another. Usually the company (i.e., the employer) in the employee's home state remains the employer for the purposes of the employment contract and continues to pay the employee's salary.

However, the work performed by that employee is, for a limited period of time, in another country for another company or enterprise. Such situations are known as "posting of workers." Since the employment contract remains unaffected in such situations, the company that posts its employee to work temporarily in another country would prefer to know that its obligations to that employee are not altered in any way. However, both national law and the EU directive concerning posting of workers may well require something different.

The Labor Law of Latvia contains several general provisions regarding the law applicable to cross-border employment cases. Those provisions arise from the Rome Convention on the law applicable to contractual obligations, an international treaty to which the majority of European states are parties. The basic requirement of that convention and the national laws implementing it is that, even if the company and the employee have agreed about the law applicable to their relationship, this may not deprive the employee of the protection that would be available under the law that would apply under the convention's rules in the absence of agreement between the parties.

The EU Directive concerning posting of workers includes additional requirements imposed upon companies sending their employees abroad if those situations fall within the "posting of workers" covered by the Directive. Those are intra-group posting and cross-border provision of services described above, as well as the activities of temporary employment undertakings and placement agencies.

In all these cases, when the employee is posted to an EU member state, certain protection of the employee must be guaranteed under the law of that state – maximum work and minimum rest periods, minimum annual paid holidays, minimum pay rates, health, safety and hygiene at work, non-discrimination, and protective measures for pregnant women or women who have recently given birth, children and young people. This may be relevant, for example, when an employee from the U.K. who has opted out of the maximum working hours' provisions at home is posted to work in Latvia, where such opt-outs are not clearly recognized under labor law. On the other hand, if the posted employee's home state offers better work conditions that the host state, then the home state rules apply. Although the Directive allows for some derogation from these rules, it is a different matter whether, and to what extent, these derogations have been applied in each country.

Usually posting of workers to another company involves a contract between the host company and the company making the posting. Such contracts typically cover the work to be performed by the posted employee, the conditions, the service charge that the host company will pay, etc. Nevertheless, it is also important for a company contemplating posting its employees to another member state to consider the possible implications of both the national law in the member state to which the employee is posted and

the EU Directive. Not least, because under the rules of the Directive a foreign company posting its employee to a member state may be sued in the courts of that state for not ensuring for that employee the minimum protection required by those EU rules.

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