



TÖÖINSPEKTSIOON

Business Trips and Posting of Workers





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Introduction

Thanks to the constantly developing common market of the European Union (EU), there is an increasing trend in companies to post their workers abroad to work in other Member States. This is primarily as a result of the provision of international services.

Pursuant to the general principles according to which the EU functions, any kind of international rendering of services and the furtherance of the established common market must always be done through equitable and fair competition. At the same time, one also cannot forget the worker whose rights must not be harmed through this process. It is the obligation of the Member States to adhere to the collective minimum requirements developed by the EU.

The term used in the Estonian law "töölähetuses viibiv töötaja" ("worker on a business trip") is linguistically similar to the term derived from the law of the European Union "lähetatud töötaja" ("posted worker"). The term "posted worker" is regulated by the Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services.¹

Pursuant to the Employment Contracts Act in force in Estonia, a worker is on a business trip in case an employer sends the employee outside the place of performance of work prescribed by the employment contract in order to perform duties domestically or abroad. Therefore, if an Estonian employer has agreed with its employee that the worker's place of employment is Sweden, then when travelling from Estonia to Sweden this worker is not going on a business trip under the definition of the Employment Contracts Act.

The regulation of the Directive has not established that the temporary location where work is performed must remain outside the place of performing work specified in the employment contract. Within the meaning of the Directive, a posted worker is also a worker with whom a temporary agreement has been entered into for employment in the territory of a Member State because from the standpoint of the Directive, it is important that employment in another country would be of a temporary nature. The Directive is applicable in the event that the worker does not move permanently to live and work in another country but it is known from the beginning that he will be working abroad temporarily.

Based on the above mentioned, it could be said that the term business trip may overlap with regard to the Employment Contracts Act effective in Estonia and the Directive but not always. In this brochure we address in more detail who under the definition of Estonia and the European Union is a "posted worker" and which rights, obligations and liability result from such cross-border business trips to the worker and employer.

Business trips according to the Estonian law

In the Employment Contracts Act the sections regulating issues concerning business trips are subsection 8 of section 6 and sections 21 and 40. In addition to the specified provisions, pp 2–4 and p 5 of § 628 of the Law of Obligations Act and the Regulation No 110 of the Government of the Republic of 25 June 2009 titled "Policies for the payment of compensation for the expenses relating to business trips and the minimum daily allowance rate, conditions and policies for the payment thereof" (hereinafter *regulation concerning business trip expenses*) are applicable.

¹ The EU member states must adhere to the principles of the Directive (Austria, Belgium, Bulgaria, Estonia, Spain, Croatia, Ireland, Italy, Greece, Cyprus, Lithuania, Luxembourg, Latvia, the Netherlands, Malta, Poland, Portugal, France, Sweden, Romania, Germany, Slovakia, Slovenia, Finland, Denmark, Czech Republic, Hungary, United Kingdom) and in addition also applies to the countries of the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) but the principles of the Directive concerning the posting of workers also apply in Switzerland.

In order to understand whether something constitutes a business trip or not, the place of performing work of the employee must be determined first. The place of performing the work must be communicated to the worker in writing pursuant to § 5 (1) 8) of the Employment Contracts Act.

The Employment Contracts Act presumes that the place of performance of work is agreed on with the precision of the local government (city or rural municipality) but considering the nature of the work other agreements are not prohibited either. For example, an employer and a worker may enter into an agreement for working at a specific address or in case of mobile work different counties can be agreed (Tartu County, Viru County), countries (Estonia, Norway) or even a region (Europe). The definition of the place of performance of work must be based on the nature of the work, the interests of the worker and the employer and the principle of good faith. It is not in accordance with the law to define an unreasonably wide area as the place of performance of work. The place of performance of work communicated to the worker under a written document of the employment contract must correspond to the actual place of performance of work.

For example, in case of sales representatives, it can be deemed justified to define the Republic of Estonia as the place of performance of work, however, it is not appropriate to include it in the employment contract of a welder working in a specific factory because the agreement does not correspond to the aim of the Employment Contracts Act to provide parties to the employment relationship security with regard to where duties are to be performed.

The definition of the Republic of Estonia as the place of performance of work cannot be deemed justified and a situation whereby a transport company employs a foreigner as a long distance vehicle driver who mainly drives in other European Union Member States and only comes to Estonia either infrequently or not at all also cannot be deemed as working in Estonia. Such cases do not entail business trips abroad but rather employment abroad and the employer is under no obligation to pay separate compensation to the obligated person for the business trip.

At the same time, one must remember that each time an employer assigns a worker to perform work outside the ordinary place of performance of work, pursuant to law, this constitutes a business trip and all of the resulting obligations and limitations arising from law must be adhered to.

When a foreigner working in Estonia is sent on a business trip, in addition one must take into consideration the fact that a foreigner who has a residence permit or right of residence in Estonia must stay in Estonia for the duration of at least 183 days in a year. If a foreigner who has a residence permit wishes to be away from Estonia for the purposes of employment for the duration of more than 183 days in a year, he or she must register the stay away from Estonia with the Police and Border Guard Board. If a foreigner living in Estonia under right of residence temporarily stays away from Estonia due to a business trip and the stay abroad does not exceed one continuous year, it is considered to be part of the period of permanent residence in Estonia.



Daily allowance for business trips

Depending on the destination of the business trip, the business trip can be either domestic or foreign (business trip abroad).

The main difference of a domestic business trip compared to a foreign business trip is the fact that domestic business trips do not entail an obligation by the employer to pay a daily allowance for the business trip.

The terms and conditions for payment of a daily allowance for foreign business trips are regulated in the regulation concerning business trip expenses.

The minimum rate of the daily allowance for foreign business trips is 22.37 euros per day (minimum rate in 2014) but it is conditional upon the fact that the destination of the business trip in a foreign country is located at least 50 kilometres away from the border of the settlement where the place of performance of work is located. Pursuant to § 7 (1) 3) of the regulation concerning business trip expenses, daily allowances of up to 32 euros of foreign business trips are not subject to taxation. This means that the employer may also pay a higher daily allowance to the worker than the amount indicated in the regulation, however, this shall be deemed a fringe benefit for the purposes of taxation.

Notification of workers of special conditions on business trips

When an employer assigns a worker to be on a business trip to a country whose law is not applicable to the employment contract entered into between the parties, the employer must also, in addition to other conditions of employment specified in the law, pursuant to § 6 (8) of the Employment Contracts Act communicate to the worker in writing the special conditions related to the business trip.

The special conditions that must be communicated to the worker in writing are the time of working in the country, the currency of payment of wages (whether their remuneration is paid in euros or in the currency of the country of destination of the business trip), the benefits relating to the stay in the country (business trip allowance, accommodation opportunities, etc.), and the conditions of returning from the country (means of transportation and the date of departure from the country). These data must be provided to the worker in all cases before their departure to the foreign country.

Example. *The employment contract has been entered into in Estonia and the person is also typically working in Estonia. Therefore, it is evident that in this legal relationship the legislation effective in Estonia shall be applicable. If an employer assigns a worker to a business trip to Latvia with a duration in excess of one month, the employer must communicate to the worker before departure:*

- 1) in which currency and amount the employer will pay his or her remuneration during his or her stay in Latvia;*
- 2) whether he or she also is entitled to a daily allowance and in what amount;*
- 3) what are his or her accommodation opportunities during the business trip and whether the employer will reimburse his or her stay at a specific hotel or the worker must find a place of residence himself or herself and the employer will instead reimburse living expenses in a specific amount;*
- 4) under which conditions can the worker return to Estonia, whether he or she will be able to do this at the employer's expense only at the end of the business trip or whether parties will agree for example on a weekly return possibility at the employer's expense using a specific means of transportation.*



Business trips and posted workers within the meaning of the Directive

The term “worker on a business trip” used in the Estonian law (“töölähetuses viibiv töötaja”) is linguistically similar to the term derived from the law of the European Union “posted worker” (“lähetatud töötaja”), which follows from the Directive.

Pursuant to the Employment Contracts Act, an employer may send a worker outside the place of performance of work prescribed by the employment contract in order to perform duties.

Hence, the “business trip” within the meaning of the Employment Contracts Act and the Directive may overlap but not always. It is important to clearly distinguish in which cases we can speak of a posted worker in the sense of the Directive.

The Directive 96/71/EC concerning the posting of workers in the framework of the provision of services is applied in three cases:

1) A company posts workers to the territory of a Member State on its behalf and under its management on the basis of a contract entered into between the posting company and the person receiving the service.

On the basis of this provision, the people frequently posted are, for example, skilled workers, artificers and other specialists.

***Example.** An Estonian company commissions from a Polish company the provision of construction work in the Republic of Estonia. In order to perform the service, the Polish company posts its workers to Estonia to fulfill the order. The Polish employer will be responsible for fulfilling the order and instructing its workers, however at the same time the domestic company as the client will be responsible for compliance with working environment regulations in Estonia.*

2) A company posts its workers to an institution or company located within the territory of a Member State which is owned by the group.

On the basis of this provision, the people frequently posted are for example segment managers, specialists and skilled workers.

***Example.** An Estonian worker is dispatched from a parent company operating in Estonia to perform duties in a subsidiary in Finland. The work of the Estonian worker in Finland is organised by the Finnish company. The Finnish company will also be responsible for compliance with working environment regulations during the Estonian worker's assignment in Finland.*



3) A company engaged in the supply of temporary staff posts a worker to a company located or operating within the territory of a Member State.

This is temporary agency work whereby a tripartite relationship arises between the temporary staffing agency, temporary agency worker and the user undertaking. In case of this type of assignment, people typically work primarily in the construction, agricultural, service or catering sector.

***Example.** A Lithuanian worker is sent through a temporary staffing agency operating in Latvia to work for a user undertaking in Norway. A service contract is in place between the Latvian and Norwegian companies for the supply of temporary labour. An employment contract is entered into between the Lithuanian worker and the Latvian temporary staffing agency under Norwegian law, job assignments are given and performing duties is supervised by the Norwegian company, which is also responsible for the Lithuanian worker's working environment and occupational safety. In such situations, the entities paying the worker's salary may be either the Latvian or the Norwegian company.*

In the event of a delay upon payment of the salary, the worker must nevertheless contact the employer in Latvia because in case of a claim for salary, the obligated person with respect to the worker is only their actual employer and not the third party (Norwegian company) that they are working for.

In all three cases, by the time of posting the worker, the posting company (employer) and the worker must have entered into an employment contract and this employment relationship must be maintained for the entire duration of the assignment. If during the stay in a foreign country the employer's employment contract ends with the employer located here and he or she enters into an employment contract with the company of the destination country, he or she will no longer be a posted worker for the purposes of the Directive.

A posted worker for the purposes of the Directive is distinguished by a worker assigned on a business trip for the purposes of the Employment Contracts Act effective in Estonia above all by the fact that a posted worker always has a specific recipient or a parent company or subsidiary belonging to the group of companies of the person receiving the service or in the case of temporary agency work a user undertaking. Hence, a posted worker in a foreign country has a company that handles their employment or working environment. When being assigned to a business trip for the purposes of the Estonian law, for example to participate in a trade fair, there is nobody to receive the worker in the foreign country.

Why should posted workers be distinguished from workers on business trips?

The Directive obligates certain terms and conditions of employment to be provided to posted workers, which are also applicable to workers of the destination country or those who are performing their duties in their home country. For example, if a worker is posted from France to Germany, he or she must be provided with terms and conditions of employment that are required in Germany.

Terms and conditions of employment that must be provided to posted workers pursuant to Article 3 (1) of the Directive:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- the minimum rates of pay, including overtime rates;
- the conditions of hiring-out of workers, in particular the supply of workers by temporary

employment undertakings;

- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- equality of treatment between men and women and other provisions on non-discrimination.

If the terms and conditions of employment are more favourable in the home country of the posted worker, the terms and conditions of employment of the home country shall be applied.

One important condition of employment that according to the Directive must be ensured to posted workers in the destination country is the local minimum rate of pay. In addition, overtime work must be compensated to the posted worker on the conditions that apply in the destination country.

For example, in case of an assignment to Finland, workers must be paid the minimum rate of pay prescribed in the collective bargaining agreement of the specific sector. In the case of Finland, it must be noted that no general minimum rate of pay has been imposed and one must be guided by the collective bargaining agreement of the relevant sector.



Example. *A worker was made redundant from a manufacturing company in 2011. She spent a long time looking for employment and finally found a suitable offer from a company engaged in temporary supply of labour in Estonia. In consideration of her education and prior work experience, the temporary staffing agency offered the worker work as a domestic worker in Germany.*

Pursuant to an employment contract entered into in Estonia, the temporary agency worker became employed as a domestic worker full time, working 40 hours per week, with the place of employment in Estonia, regardless of the fact that parties agreed verbally since the beginning that the place of performance of the work will be in Germany. According to the agreement, the salary of the domestic worker was 355 euros per month.



The temporary agency worker was employed in Munich for five months, their workday usually lasted up to ten hours and they also had to work during weekends, so seven days per week. The employer paid the worker in exchange for the work 355 euros per month, pursuant to the working hours and salary agreed in the employment contract, plus the daily allowance for a business trip abroad. The worker became seriously ill due to continuous work and had to return to her home country and cancel the employment contract on an extraordinary basis.

After the end of the employment relationship, the worker filed with the labour dispute committee a claim for unpaid salary, on the grounds of the Directive concerning the posting of workers and the minimum rate of pay of 8.75 euros per hour applicable to cleaning service workers in Germany during her employment.

The labour dispute committee satisfied the worker's claim and ruled that she must be paid 2800 euros for the time she worked in Germany.

What was wrong in this example?

- 1) The place of performance of work in the employment contract should not have been specified as Estonia because the worker did not work a single day in Estonia for the temporary staffing agency and ever since the beginning it was known that her place of performance of work would be Germany.
- 2) The daily allowance for a business trip is not subject to social security tax and therefore the worker's incapacity benefit, monetary compensation for unused holidays and subsequent pension were only calculated based on the minimum rate of pay that was paid out.
- 3) The worker was paid a salary that did not correspond to the minimum rate of pay applicable in the specific field of activity in Germany.
- 4) By demanding continuous work seven days per week, her rights to daily and weekly rest periods were violated and in aggregate it was harmful to the worker's health.

Choice of the applicable law when working abroad

According to the general principle, a contract is governed by the law of the country that parties have agreed should apply. At the same time, this does not release the contractual parties from their obligation to also comply with the mandatory provisions of the law of the country where the contract is actually implemented.

Example. *A worker entered into an employment contract with an Estonian employer according to which its implementation shall be governed by legislation of the Republic of Estonia. However, in fact the worker is working in Sweden on these construction sites where his or her employer happens to win a contract. Thus, the worker wishes to find out whether in terms of occupational health and safety regulations they must be guided by Estonian or Swedish law.*

Answer: they must be guided by the law of the country of performance of the work, in other words they must comply with the occupational health and safety regulations effective in Sweden.

In addition, when performing work in a foreign country, the following principle applies: the choice of applicable law on the contract made when the contract is entered into must not lead to the worker being removed of social protection and guarantees. This means that the worker must not lose the protection that they are afforded under the laws of the country of assignment.

Upon application of the law, first the agreements between the worker and employer must be taken into consideration but at the same time one must ensure that these do not harm the worker in any way.

Example. *A Romanian driver entered into an employment contract with an Estonian employer in his home country, according to which the place of performance of work is Estonia but the applicable law is Romanian law. The Estonian employer wishes to pay the minimum rate of pay applicable in Romania which is lower than that applicable in Estonia.*

The decision of the employer does not comply with the principles applicable to posted workers. The driver has the right to receive at least the minimum rate of pay applicable in Estonia and in case they are subject to the general labour agreement for domestic carriage of goods applicable in Estonia, salary must be paid that is at least equal to the rate indicated in this agreement.



If parties to the employment relationship have not agreed as to which country's law shall be applied to a contract, the law that is applied to the employment contract is:

- the country's law where the worker is typically performing work;
- the country's law through which the worker was employed;
- the country's law to which the employment contract is related the most.

Labour dispute arising on the subject of working abroad

It is recommended to indicate in the employment contract the possibilities and place for the resolution of disagreements arising between the parties, in other words the employer and a worker should specify jurisdiction among other terms when they are entering into an employment contract. Parties to the employment relationship must always carefully consider in which country's court it makes more sense to have recourse to in the case of a labour dispute.



Example. *An employment contract entered into by parties may include the clause: “Any disagreements arising during the employment relationship shall be resolved mainly through negotiations. If a compromise cannot be reached, the labour dispute shall be resolved pursuant to Norwegian law and the procedures of the Kingdom of Norway.”*

If parties have agreed in a jurisdiction, the dispute will be resolved in the country that was specified in the contract. However, workers in certain situations may nevertheless have recourse to a dispute resolution body of their home country. An Estonian worker may have recourse to an Estonian court or labour dispute committee if the agreement relating to the jurisdiction can be deemed a standard term of employment contract and it is clearly harmful to the worker (for example it causes unreasonably large expenses relating to travel from Estonia to Norway, etc.).



If parties have not agreed any jurisdiction in the employment contract, the worker has the right to seek recourse in the court of the country in which he or she performed their duties.

NB! In Estonia, the labour dispute committee also engages in the resolution of labour disputes but, unlike a court, it operates under a simplified procedure. As the determination of a foreign country's law is a highly complex and lengthy process and the time for the procedure imposed on the labour dispute committee for processing the case is substantially shorter compared to a court (typically 30 days), the labour dispute committee may refuse to accept labour dispute cases for proceedings if they contain a foreign element due to the lack of competence.

Posting of workers to Estonia

According to the Working Conditions of Workers Posted to Estonia Act, a posted worker is a private individual who normally works under an employment contract in a foreign country and whom the employer posts to work in Estonia for a specified period of time for the provision of a service. A contract concluded in a foreign state concerning an employment relationship is considered to be an employment contract if it complies with the provisions of the Employment Contracts Act relating to an employment contract.

Regardless of the choice of the law to be applied to an employment contract, the application of the working conditions listed in section 5 of the Working Conditions of Workers Posted to Estonia Act must be guaranteed for a posted worker, including:

- working time;
- rest time;
- time off for a prenatal examination;
- wages and compensation for overtime work;
- duration of annual holiday;
- equal treatment and equal opportunities.

If the provisions of the laws of a foreign state that apply to an employment contract of a worker posted to Estonia are more favourable to a posted worker than the provisions of Estonian law, the provision that is more favourable to the worker shall be applied.

Occupational health and safety regulations

The Occupational Health and Safety Act shall be applied to a posted worker. This Act shall be applied even when it is less favourable to the posted worker than the provisions of a foreign law.

Compliance with occupational health and safety regulations applicable in Estonia shall be ensured by the person receiving the posted worker for whom the posted worker performs their duties in Estonia.

Specifications

The terms and conditions of compensation of salary and overtime pay and duration of annual holiday applicable in Estonia are not applied to skilled workers whose assignment is of a duration of up to eight days. A skilled worker is understood to be a worker whose duty is the initial assembly or first installation of goods necessary for taking the goods ordered into use, if such work is an integral part of a subscription contract.

***Example.** An Estonian company orders a new production line from Germany. It is agreed with the manufacturing facility of the equipment that representatives of the facility will come to install the line. The installation of the production line takes five days. During this time, the installers must be guided by the provisions of the Occupational Health and Safety Act of Estonia but they are not subject to the terms and conditions for payment of salaries, compensation of overtime work and granting and calculation of annual holiday as regulated by the Employment Contracts Act of Estonia.*

Acceptance of foreign workers

Citizens of the European Union, nationals of a Member State of the European Economic Area and nationals of the Swiss Confederation (hereinafter EU citizens) may live and work in Estonia without registering a temporary right of residence for up to three months. A foreign family member of an EU citizen may only work in Estonia if they have been granted a temporary or permanent EU right of residence of a family member.



If one wishes to employ any third-country nationals and persons of undefined citizenship as a posted worker under the meaning defined by the Working Conditions of Workers Posted to Estonia Act, the worker must first apply for a temporary residence permit for employment in order to start their employment in Estonia. The temporary residence permit issued to a posted worker defines in addition to the place of performance of work and employer also the private individual or legal person for whom the service is provided in Estonia. The obligations arising under the Aliens Act related to the invitation will also apply to such person.



Information is available on the website of the Police and Border Guard Board on www.politsei.ee or on the customer infoline 612 3000.

Supervision

Supervision over the terms and conditions of employment of workers posted to Estonia is performed by the Labour Inspectorate.

The Labour Inspectorate publishes information and responds to justified information requests regarding laws, other legal acts and extended collective bargaining agreements that are applicable to posted workers.

In addition, the Labour Inspectorate responds to justified information requests concerning self-employed persons and legal persons supplying temporary labour, including the violation of laws committed by such persons or cases of unlawful international activities.

In addition, it is the responsibility of the Labour Inspectorate to cooperate with the respective institutions of the Member States of the European Union and the Member States of the European Economic Area.

In the event of problems concerning terms and conditions of employment of posted workers, the system of exchange of information of supervisory authorities, IMI, is in operation within the European Economic Community. Through the aforementioned system, the Labour Inspectorate of Estonia is for example able to make inquiries to other countries concerning companies domiciled in such countries which posted their workers on assignment to Estonia. In addition, other countries are able to contact the Labour Inspectorate of Estonia with inquiries concerning Estonian employers whose workers performed work in their countries.

Recommendations to employers

Before posting workers to foreign countries, you must find answers to the following questions:

- Where is the worker's place of employment? The actual place of performance of work must be specified in the employment contract.
- Could this be a posted worker regulated by the Directive of the European Parliament and of the Council concerning the posting of workers?
- Can the payment of the worker's salary be based on the minimum rate of pay applicable in Estonia or should the minimum rate of pay applicable in a foreign country be applied instead?
- Does the worker have a right to receive a daily allowance during his or her assignment?

- Which specifications applicable abroad may affect the worker's terms and conditions of employment and which obligations does the employer thereby become subject to?
- Should the posted worker be registered in the destination country before he or she is posted?

It is definitely advisable for the employer to research the regulations concerning employment relationships and terms and conditions of employment applicable in the destination country before the worker is posted.



More detailed information about the regulations concerning terms and conditions of employment of posted workers can be found from the contact agency of posted workers of the country of destination:

http://europa.eu/youreurope/citizens/work/postings-abroad/formalities-conditions-employees/contacts-list_en.htm#popup-contact-points

In Estonia, the contact agency of posted workers is the Labour Inspectorate.

Recommendations to workers

You can obtain useful information concerning working and living conditions abroad from the labour supply network EURES (European Employment Services).

One must take into consideration the fact that an Estonian citizen wishing to stay in another EU Member State for a duration in excess of three months must register his or her stay in the country. In order to register, one must contact his or her local competent authority not later than three months from the date that he or she has entered the country.

The same conditions also apply in the event that one wishes to settle, work or study in another Member State.



Information is available on the EURES websites
<http://europa.eu/eures> and www.eures.ee.



Tax issues

Before going to work abroad, workers must find out the following:

- 1) how will compensation be paid for the employment and will the salary be paid by the Estonian employer or the employer of the country of destination;
- 2) does Estonia have a bilateral tax treaty in place with the country where one intends to go to work in and what are the worker's potential tax obligations? More detailed information can be obtained from the website of the Estonian Tax and Customs Board on www.emta.ee or from customer service offices;
- 3) whether income tax returns must be filed in the foreign country.

Upon arrival, one must find out from the receiving person whether and how the payment of tax on salaries is arranged, whether the employer withholds the tax or the worker must pay the tax himself or herself.

In addition, it is advisable to retain all of the documents related to the receipt of pay or payment of taxes. One must keep in mind that all persons having received income in a foreign country must include it in the tax returns filed in Estonia even if the employer of the foreign country has withheld and paid the taxes.

If the income tax is paid in the foreign country pursuant to the laws of the relevant country and said foreign country has a right to taxation (ensured by a bilateral tax treaty), the foreign income shall not be double taxed in Estonia.



Information can be obtained from the website of
the Estonian Tax and Customs Board on www.emta.ee.

Insurance against sickness

If social security tax is paid for the posted worker in Estonia and the worker has a valid insurance against sickness here then they must order a European Health Insurance Card before going on assignment abroad. This can be done through the website www.eesti.ee by submitting an application to the regional customer service office of the Health Insurance Fund or by sending it to the Health Insurance Fund as a regular letter or in a digitally signed format via email.

On the basis of a European Health Insurance Card an worker has the right in their country of employment to receive the medical care they need during their temporary stay on equal terms as the persons who are insured in that Member State. As to what treatment or drugs are necessary for the posted worker during the term of the assignment is decided by the doctor, taking into consideration the person's health condition and the duration of their assignment.

If an worker is posted to another Member State for a duration in excess of one year, the Health Insurance Fund will issue them Form E106, which the person can register in their country of assignment to receive the right to receive any kind of medical assistance as if they were insured in that country.

If a citizen of Estonia starts working in a Member State of the European Union and the social security tax or health insurance contributions are paid for them in that country, they will also obtain health insurance while working in that country. However, they must not have valid insurance in Estonia at the same time.

If an worker is posted from another Member State of the European Union to Estonia, he or she must also have a European Health Insurance Card or Form E106/S1 with them on the basis of which he or she will receive medical assistance. A European Health Insurance Card must be shown when going to see a doctor but Form E106/S1 must be first registered with the Health Insurance Fund.

If an individual works in multiple Member States of the EU, he or she themselves or their employer must contact the National Social Insurance Board of either their country of residence or employer's domicile, which determines which country's legislation concerning social insurance the worker is subject to or which the competent Member State of the worker is. Among other factors, the applicable law will be determined based on where the worker resides and what proportion of their activities takes place in the country of residence.



Information can be found on the website of the Estonian Health Insurance Fund www.haigekassa.ee.

Social insurance

In order for an individual to be able to freely select a country of residence and employment within the EU, they must be granted the right to free medical assistance, sickness benefits, pension, occupational accident and occupational illness benefits, unemployment benefits and family benefits for their children. Solely by applying domestic law, it is not always possible to grant social protection to migrant workers. Depending on the medical or pension system of the country of residence and employment, an individual may encounter a situation where they are socially insured in both countries at the same time or the opposite – they are uninsured in neither country.



Information can be found on the website of the Estonian National Social Insurance Board www.sotsiaalkindlustusamet.ee.



Misuse of labour

An individual heading to a foreign country for work is more vulnerable and sometimes it happens that they are misused by the sending or receiving companies. In the worst case, the outcome could be misuse of labour or even forced labour.

Misuse of labour is considered to be forcing someone to work through deceit or threats or taking advantage of another person's unawareness or vulnerability in labour relations in general.

What indicates a potential misuse of labour?

- A worker is asked to pay for being sent abroad for work.
- The person sending the worker abroad or receiving them there demands that they hand over their personal documents.
- They refuse to enter into a contract or offer a contract the content of which the worker is unable to understand.
- An employer threatens to withhold pay or refuses to pay it.

What to do if you experience trouble while working abroad?

Citizens of Estonia can get consular protection abroad from consuls of the foreign missions of Estonia and the honorary consuls representing Estonia.

Information is available on the website of the Ministry of Foreign Affairs

<http://vm.ee/et/kkk-eesti-kodanikule>.

If you experience trouble in a foreign country in the weekend and holiday or if there is no foreign mission of Estonia in the country you are staying in, you can contact the on-call staff at the Ministry of Foreign Affairs of Estonia on the telephone +372 5301 9999 or +372 637 7000. In the absence of foreign missions of Estonia, Estonian citizens also have the right to contact the foreign missions of all other member states of the European Union for assistance.

In addition, volunteers from the nonprofit association called Living for Tomorrow can help you.

Information: www.lft.ee

Infoline: +372 660 7320



Annex 1. Legislation applicable for cross-border employment

The posting of workers within the EU is addressed by several laws, the regulations of which must be known by each employer and worker who is providing services within the EU.

On the European Union level:

- Treaty establishing the European Community
- Rome Convention
- Rome I Regulation
- Lugano Convention
- Brussels I Regulation
- Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services

On the level of Estonia:

- Private International Law Act
- Working Conditions of Workers Posted to Estonia Act
- Employment Contracts Act
- Occupational Health and Safety Act
- domestic laws

In other Member States of the European Union:

- domestic laws
- collective bargaining agreements

NB! Legislation regulating labour relationships or disputes related to them within the European Union and the European Economic Community are not applicable in third countries, such as Russia, Ukraine or Belarus.

In addition, it is useful to know that the principles of the Directive also prohibit more favourable treatment of service providers from third countries compared to service providers from the Member States.



Annex 2. Figure it out!

An employee in Estonia



			Contract for services				2. Explanation	Trafficking in human beings		3. Time of employment abroad
					9. Employee's approval					
								At employee's own expense		
	Coercion						8. Conditions of return			Lack of additional funds
1. Employment contract						Without prior agreement			5. Currency for payment of remuneration	
11. Daily allowance										
		10. Pre-payment								Business trip for an unspecified period
								7. Application of foreign laws		
12. Compensation of business trip expenses			Authorisation agreement	4. Business trip agreement			Work-related exploitation			6. Benefits related to stay abroad
	Domestic									



Business trip abroad

Help an employee in Estonia get on a business trip abroad! For this, you must pass the correct (green) checkpoints in the right order on the way and avoid the wrong (red) checkpoints that lead you astray. Draw a line which passes every cell only once, except the red cells. Line moves orthogonally between the centre of cells.

E U N I L A T E R A L C P N
 T X A L A S U F E R I O R O
 A Y P R E G N A N T R N E T
 D R R L P N R P S R O T P I
 T T E W A I V E R O N R A F
 R N Y J V N M F E A I A Y I
 A U O O L O A F O M M C M C
 T O L B D S R T O R E T E A
 S C P D E A D L I N E N N T
 M A M N E E M T S O C I T I
 P L E O Y R E T U R N E G O
 E C O M P E N S A T I O N

What does an employer require from an employee whose business trip lasts longer than 30 consecutive calendar days?

Find the terms below from the grid of words and cross out their letters. The remaining letters will reveal the correct answer.

3 letters: JOB

4 letters: COST

5 letters: MINOR

6 letters: RETURN, WAIVER

7 letters: FOREIGN COUNTRY, REFUSAL

8 letters: CONTRACT, DEADLINE, DOMESTIC, EMPLOYER, PREGNANT

9 letters: AGREEMENT, REASONING, START DATE

10 or more letters: COMPENSATION, EXPLANATION, NOTIFICATION, PREPAYMENT, UNILATERAL



Correct answers

Puzzle:

An employee in Estonia



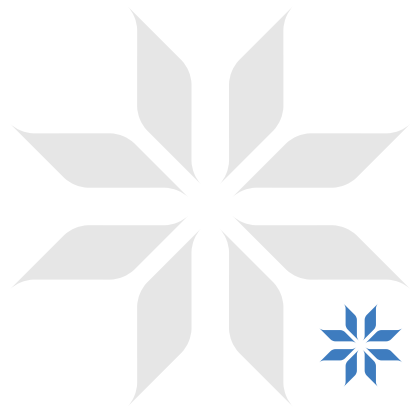
The puzzle grid contains the following words:

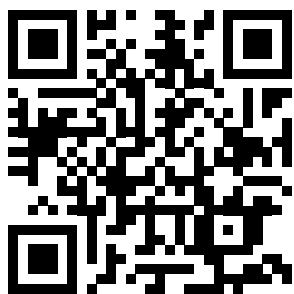
- Contract for services** (top-left)
- 2. Ex-planation** (top-middle)
- Trafficking in human beings** (top-right)
- 3. Trip of employment abroad** (top-right)
- 9. Employ-er's approval** (middle-top)
- At employ-ee's own expense** (middle-right)
- Coercion** (middle-left)
- 8. Con-ditions of return** (middle)
- Lack of additional funds** (middle-right)
- Employment contract** (middle-left)
- Without prior agree-ment** (middle)
- 5. Curren-cy for pay-ment of re-tribu-tion** (middle-right)
- 11. Daily allow-ance** (middle-left)
- 10. Pre-pay-ment** (middle-left)
- Business trip for an un-specified period** (middle-right)
- 12. Com-pen-sation of busi-ness trip ex-penses** (bottom-left)
- 10. Dom-estic** (bottom-left)
- Authori-sation agree-ment** (bottom-left)
- 4. Busi-ness trip agree-ment** (bottom-left)
- Work-related exploi-tation** (bottom-middle)
- 7. Appli-cation of forei-gn laws** (bottom-middle)
- 6. Ben-efits re-lated to stay abroad** (bottom-right)



Business trip abroad

Word search puzzle: approval from an employee





Working life raises questions?

LOOK at the website of the Labour Inspectorate of Estonia at **www.ti.ee** and the Working Life portal at **www.tööelu.ee**

CALL the lawyer's infoline at **640 6000** on working days between 9 a.m and 3 p.m

WRITE the lawyers at **jurist@ti.ee**

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