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NOTIFICATION OBLIGATION FOR TEMPORARY SECONDMENT OF EMPLOYEES TO THE NETHERLANDS

As of March 1, 2020, a notification obligation applies to companies from other EEA countries (all EU Member States and Norway, Liechtenstein and Iceland) or Switzerland who assign employees to work temporarily in the Netherlands. This reporting obligation also applies to foreign Self-Employed persons in certain sectors. The reporting obligation applies to temporary services that start on or after March 1, 2020. This is based on the Posting of Workers Directive (and Enforcement Directive) of the EU that has been implemented in the Netherlands in The Terms of Employment Posted Workers in the European Union Act (WagwEU).

The purposes of this directive and law are in particular to prevent exploitation of cheap labor and to guarantee minimum working conditions in the country where the work is performed.

Service providers and service recipients

The WagwEU distinguishes between Service Providers, Self-Employed and Service Recipients. Foreign employers (Service Providers) and Self-employed persons in certain sectors must report which activities they will perform and when in the Dutch [online reporting desk](#). Foreign employers must also report the arrival of any employees.

A foreign employer is considered a Service Provider in the following cases:

- if the employer assigns own staff to carry out work temporarily in the Netherlands;
- if the employer temporarily secondes employees from a multinational enterprise to its own company/branch in the Netherlands or;
- if the employer is a foreign temporary employment agency and makes temporary agency workers available to work temporarily in the Netherlands.

Foreign Self-Employed persons who work in the construction, cleaning, the food industry, metal, care, window cleaning or in agriculture and horticulture are obliged to register. Additional rules apply to the transport sector.

The Service Recipient is the one for whom the Service Provider is going to work for in the Netherlands and with whom the Service Provider has a service contract (construction contract or contract for services).

Reporting obligation

The Service Provider reports through the [online reporting desk](#) for foreign employees. The foreign employer must report the following:

- the identity of the reporter;
- the company details of the foreign employer;
- the details of the contact person in the Netherlands (as referred to in Article 7 of the WagwEU);
- the identity of the Service Recipient;
- the sector in which the foreign employer will work in the Netherlands;
- the address of the workplace;

- expected duration of the work;
- the identity of the person responsible for the payment of wages;
- the identity of employee (s) who come to work temporarily in the Netherlands; and
- the presence of an A1 statement or other evidence that shows where the social contributions are paid for the employee (s), due to the contribution to the applicable social security legislation.

Employees do not have to be reported if the Service Provider has a company in the Netherlands and if the employees work with a Dutch contract.

Employees who perform certain types of incidental work do not have to be reported either. This includes, for example, business meetings, urgent maintenance or repairs or attending conferences.

One-year notification

In some cases there is a limited reporting obligation (one-year notification) which means that the Service Provider only has to report once a year. This regulation applies to the following cases:

- the employer has a small company (0-9 employees) with a notification obligation, works regularly in the Netherlands and is located within 100 km of the Dutch border;
- the Self-Employed person has a notification obligation, works more regularly in the Netherlands and is located within 100 km of the Dutch border;
- if the employer / Self-Employed person works in road freight transport.

Control obligation

Dutch companies that hire a company or a Self-Employed person reporting from a country within the EEA for a temporary assignment in the Netherlands are obliged to check whether the notification has been correctly entered in the [reporting desk](#). They receive a message when the foreign Service Provider or Self-Employed person has reported his arrival in the Netherlands and can view and check the report online. If there are inaccuracies in the report, they must report this in the online reporting desk and ask the foreign Service Provider or Self-Employed person to correct the information.

Contact person

A contact person is the point of contact for the foreign employer (Service Provider) in the Netherlands and must therefore be present in the Netherlands to answer questions from the Inspectorate SZW about the posting. A contact person must also be authorized to send and receive documents from the secondment.

Only private persons can be contact persons. A posted worker can act as a contact person if he/she is available throughout the whole assignment in the Netherlands for the Inspectorate SZW.

Administrative obligations

Employers from countries in the EEA and Switzerland with temporary seconded personnel in the Netherlands must comply with a number of administrative obligations:

- The obligation to have certain documents available at the Dutch workplace of the posted worker (or to have them available digitally immediately). These are employment contracts, pay slips, working time overviews, A1 forms and proofs of payment. These documents must be available in Dutch, English, German and / or French. They may be available digitally or in writing.
- Information obligation: the obligation, if requested, to provide the Inspectorate SZW with all information that is necessary for the enforcement of the WagwEU.
- The obligation to designate a contact person in the Netherlands who can approach the Inspectorate SZW and act as contact point, this can also be a seconded employee.
- Reporting obligation: foreign employers are, since March 1, 2020, obliged to announce their activities in the Netherlands via the Dutch [online reporting desk](#) for foreign employees.


Enforcement

The Inspectorate SZW checks whether employers and clients comply with the WagwEU. The Inspectorate SZW, together with the Dutch Tax authorities and Social Insurance Bank (SVB), has direct access to all reports. The Immigration and Naturalization Service (IND) can request information from the reporting desk for the performance of its tasks. Social partners can also request information from the reporting desk when checking compliance with collective labor agreement provisions. If an inspection shows that the arrival was not reported in advance or incorrectly, the Service Provider and the Service Recipient can both be fined.

Fines

A Service Provider or Service Recipient who does not meet the administrative obligations under the WagwEU risks a fine. The amounts of the fines are included in the Policy Rule on the Imposition of Fines Act for posted workers in the European Union:

- A foreign employer risks a fine of € 1,500 if the employer posts less than 10 employees in the Netherlands. The more posted workers, the higher the amount of the final fine(s). The fine for 10 to 20 employees is € 3,000. From 20 employees the fine is € 4,500.
- If the administrative obligations are not met, the employer risks a fine of € 8,000.

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- A Service Recipient who has not complied with the obligation to check the details of the Service Provider risks a fine of € 1,500. If the Service Recipient is a natural person, the fine is € 750.
 - The Policy Rule includes situations under which the fine is increased by 50%. Also, on the basis of this Policy Rule and specific situations mentioned herein, the fine can be moderated (= reduced) by 25%, 50% or 75%.

No fines will be imposed before September 1, 2020.

More information?

Do you have any questions about this scheme or would you like more information? Please contact your trusted RSM advisor.