



ETUC note on Posted Workers and the COVID-19 Outbreak

Measures fall short of protecting posted workers in the outbreak of COVID-19

Posted workers in the EU face particular challenges in view of the COVID-19 outbreak and the measures imposed, not only in terms of border restrictions on the free movement of workers and services, but also in terms of emergency measures introduced to mitigate and protect workers and businesses from negative consequences of the crisis. Posted workers are at particular risk of being left behind.

While measures such as short-time work schemes, adjusted unemployment benefits and measures to facilitate working from home are being introduced in the Member States, such arrangements do not necessarily apply to posted workers or do not sufficiently address their needs or their particular situation.

Need for fair, coordinated and comprehensive measures to protect posted workers

There is a lack of targeted and coordinated measures for posted workers. They must not be left behind in the crisis, as a result of their employers having exercised their freedom to provide services under EU law.

On 30 March 2020, the European Commission published [Guidelines](#) on the free movement of workers against the background of the COVID-19 pandemic and the border restrictions that have been put in place by Member States. Although setting out equal treatment as the overarching principle for putting in place or alleviating any restriction to the free movement of workers during the crises, the Guidelines fall short of adequately addressing the problems faced by posted workers with regard to access to the work place, health and safety, social protection as well as access to decent accommodation, sanitary facilities, health care and information. Similarly, the Commission [Factsheet](#) with questions and answers intending to complement the Guidelines, does not sufficiently address these problems of legal uncertainty and lack of decent working conditions encountered by posted workers.

For the purpose of facilitating transports at border-crossings, the Commission furthermore on 23 March published special Guidelines on so-called [Green Lanes](#), which in fact risk having far-reaching consequences to the detriment of working conditions of many transport workers.

Many posted workers are active in critical occupations and crucial sectors

Posted workers are employees who are regularly employed in one Member State but sent to another Member State by the same employer to work there for a limited period of time. According to [data on posted workers](#), 2.8 million posting operations took place in the EU in 2017.

There is not yet any available data on how the outbreak of the corona virus has and will affect postings within the internal market, but alarming observations show that posted workers are particularly vulnerable to the negative impacts that the crisis has, both in terms of health as well as socio-economic consequences. The situation of these workers needs to be urgently remedied and closely monitored.

Most of these posted workers are active in sectors such as construction and infrastructure, transport, logistics and redistribution, food industry and agriculture. These sectors are of crucial importance especially during the COVID-19 crisis. Many posted workers are at the forefront of helping societies to cope during the crisis, and therefore need to be guaranteed adequate information, protection and decent working and living conditions under all circumstances.

The current legal framework falls short of addressing the challenges of posted workers

The posting of workers within the internal market is currently primarily governed by the Posting of Workers Directive [96/71](#) together with the Regulation on Social Security Coordination [883/2004](#). The Directive in question entitles posted workers to a set of core rights in force in the host Member State, but e.g. sick pay is not part of the hard nucleus of the rights guaranteed under the Directive. Sick pay which is paid by the employer under labour law or relevant collective agreements in the host Member State does not necessarily extend to posted workers as part of their remuneration. Nevertheless, the Directive provides for the possibility of host Member States to further extend the application of terms and conditions of employment to posted workers on the basis of equal treatment and public policy. Such measures should urgently be considered to be introduced.

According to the 883 Regulation posted workers remain entitled to social security benefits from the (home) Member State where they pay social security contributions, and not from the host Member State where the service is carried out. Under the current rules, the social security system of the host Member State may become applicable only in case the posting would exceed 24 months.

Temporary measures introduced to mitigate the socio-economic consequences of the crisis for workers may combine elements of social protection with labour law and collective agreements. This risks creating loopholes in the protection with regard to posted workers and whether they can benefit from such schemes, as they are not entitled to equal treatment in the same way as workers exercising their free movement under Article 45 TFEU, but in fact fall under the free movement of services under Article 56 TFEU.

Need for access, information and enforcement of health and safety measures

In line with the Posting of Workers Directive, posted workers are protected by health, safety and hygiene provisions in the host Member State. In view of the COVID-19 outbreak, further measures have been introduced by authorities or through collective agreements to improve the protection of workers and prevent further spreading of the virus.

Nevertheless, there is a lack of access to adequate and visible information about the risks to posted workers in other languages than the one(s) of the host Member State. Evidence also show that many companies have not implemented precautionary measures, or provided workers with necessary protective equipment, which in turn generates stress, insecurity and increases the risks of contamination. Practices such as chain-posting and posting of temporary

agency workers risks further blurring information obligations as well as health and safety responsibilities.

Similarly, regulations related to social distancing, maximum number of workers and other hygiene precautions are often not observed in workplaces, with working methods, procedures and targets not being adapted accordingly. Social distancing may be difficult to observe in workplaces such as construction sites, warehouses and farms, unless special procedures are introduced. Due to the heavy workload and time pressure, many of these workers feel pressured and do not even have the time to follow the official safety measures in place, afraid of not being able to meet their daily or hourly targets.

Labour inspectorates need to be given the mandate and capacity to monitor and enforce also these kinds of occupational health and safety measures. Moreover, employers who decide to suspend their posting services due to health and safety concerns should not be held liable for not being able to provide their service obligations in time.

Problems of access to the workplace, entry, exit and risks of labour shortage

As a consequence of imposed public health measures in the workplace, in the sector or at the borders, posted workers may experience difficulties to access the workplace or the host Member State in order to perform their services. As a result, posting activities may not only be delayed or cancelled, but posted workers are equally at risk of being the first to be laid off because of the economic consequences of the COVID-19. Even in cases where Member States have decided to suspend dismissals, such measures do not necessarily protect posted workers who are not formally employed in the host Member State.

Many posted workers are no longer able to continue carrying out their services in the host Member State, as they have already been called home by their sending employer as a result of the COVID-19 outbreak. There are indications that many posted workers in e.g. construction industry left their host Member States, which on the medium term may result in labour shortages in several sectors. Posted workers who wish to pursue work may also face problems re-entering the host Member State due to border restrictions or quarantine orders without access to sick pay.

Problems to access social protection and support schemes in/from the host Member State

Posted workers who are not able to return to the home Member State or who choose to stay in the host Member State – regardless of whether they are able to work or not – may face problems of accessing social protection, temporary measures and support schemes introduced in view of the COVID-19 outbreak. They risk being stuck without protection or income in a Member State where they are not covered by the national social security system.

Some posted workers reportedly struggle to claim unemployment benefits in their home Member State while still being present on the territory of the host Member States. This should be facilitated by electronic application procedures and increased possibilities to export benefits.

Additionally, the COVID-19 outbreak sheds light on the injustices related to posting practices where the gross remuneration of posted workers to a large extent is made up of tax-free posting allowances other than compensations for expenditure on travel, board and lodging.

Such posted workers who claim unemployment benefits in their home Member State, receive benefits calculated based on their taxable gross wage – which in many cases is significantly lower – rather than based on the gross amount actually paid during the posting.

Furthermore, posted workers may not be eligible to measures introduced in connection to the social security system of the host Member State, such as different kinds of allowances for short-time work, simplified access to social assistance and sick leave arrangements making it easier for employees to stay home. Similarly, state aid schemes introduced by some Member States only target employers who pay social contributions for employees working in that same Member State, thus excluding posting employers and posted workers. In such cases, the posted workers should be made eligible under any relevant support scheme in the home Member State.

Should posted workers as a last resort be able to apply for social financial assistance in the host Member State, they may nevertheless not be aware such support exists or struggle to find information or apply in a language that they understand.

Third-country nationals being posted from one Member State to another are in a particularly vulnerable situation, since they may experience even more limited possibilities of returning “home” to the sending Member State and/or access social protection. Migrant posted workers who are laid off may even face risks of having to leave the EU, if their work permit has been issued on the basis of an employment contract.

Health risks due to lack of decent accommodation, conditions and care for posted workers

Alarming reports on the lack of decent conditions for posted workers in crucial sectors constitute a health risk not only for the posted workers themselves but also significantly increases the risk of further spreading of the virus. Urgent action is needed to eliminate these risks while protecting the workers.

The accommodation provided to posted workers in the host Member States are often of deplorable standard, with poor access to sanitary facilities. Many workers live together in small facilities with constant changes of roommates. They may be transported to and from the workplace in minivans, everyday eating close together in cramped canteens. Under such conditions social distancing is impossible, neither at work nor in their free time. Employers and companies using posted workers should be considered liable to ensure decent, healthy and safe housing conditions and sanitary facilities, also where third parties are contracted to provide accommodation.

Posted workers must equally be guaranteed access to affordable healthcare in the host Member State. With little access to accurate information or sick pay and afraid of losing their income or job, posted workers may find it hard to stay away from work even in case they feel ill. For many posted workers, their accommodation is closely connected to their work. Losing their job in times of COVID-19 outbreak not only constitutes a risk of losing their income, but also their home.

Concluding remarks on the need for targeted measures to protect posted workers

In view of the COVID-19 outbreak, posted workers find themselves in a particularly vulnerable situation, which is not sufficiently remedied by the existing legal framework, recommendations

or temporary measures introduced in Member States. The guiding principles for any measure taken to address the particular challenges faced by posted workers should be the health and safety of all workers, respect for all working conditions in place as well as their effective enforcement, equal treatment between local and posted workers, while at the same time recognising the particularly vulnerable situation of many mobile, cross-border and migrant workers.