

# Secondment of employees in France: What's new?

## Review of the new regulations on the secondment of foreign employees in France

The "Professional Future" law of 5 September 2018 entered fully into force last summer, after publication of decree No. 2019-555 and the order of 4 June 2019, leading to the reform of the system for the secondment of foreign workers in France. Moreover, order No. 2019-116 of 20 February 2019, transposing EU Directive No. 2018/957 of 28 June 2018, provides for new regulations which increase workers' rights and employer obligations, **applicable beginning 30 July 2020**.

The main measures are detailed below:

### Scope of the secondment regime

According to the French Labour Code, a seconded employee is defined as "*any employee of an employer regularly established and operating outside France, who, habitually working on behalf of the latter outside national territory, performs his work at the request of this employer for a limited period on national territory.*"

The seconded employee must therefore be bound by a contract with the foreign employer. The secondment must also be carried out:

- on behalf of the foreign employer and under its management, in the context of a service agreement entered into with the party for whom the service is performed, based in France;
- between establishments from the same international company or between companies from the same international group;
- on behalf of the employer without there being any contract between it and the party for whom the service is performed; or
- within the framework of a temporary contract.

### Cutting red tape for employers

In principle, employers established abroad must make a declaration prior to the secondment and appoint a company representative in France. From now on, a single electronic declaration via the online service *Sipsi*, will be sufficient to complete these two formalities.

Companies performing certain short-term or infrequent activities, listed in the order of 4 June 2019, are however exempt from these obligations. This notably includes artists, sportsmen/women, trainees, teachers, and researchers. Employers who second employees on their own behalf are also exempt.

When justified, it is also possible to ask the French administrative authorities to adjust the conditions for the fulfilment of secondment-related obligations.

It should be noted that, in any case, employers must inform seconded employees that their personal data will be automatically processed and that they are entitled to access and request rectification thereof. This formality can be omitted by employers established outside the European Union.

### Enhanced due diligence obligations for the principal

A principal or owner established in France and using an employer, a service provider with its own employees and established abroad, must verify that the service provider has fulfilled the above-mentioned obligations.

Since 1 July 2019, it must also ensure that the latter is up to date, as may be relevant, with the payment of amounts due for fines incurred for failure to comply with secondment-related obligations.

Otherwise, the principal has 48 hours to itself make the secondment declaration on the *Sipsi* website. In this case, it is notably the principal's responsibility to fulfil the obligation to inform seconded employees about the processing of their personal data.

We would draw your attention to the fact that this due diligence obligation is not limited to the principal's direct co-contractor, but applies to the entire subcontracting chain.

### [Rights of seconded employees](#)

Certain mandatory provisions under French law (listed in the Labour Code) constitute core rights from which workers seconded in France must benefit, in particular regarding minimum wage, working time, and occupational health and safety.

Beginning 30 July 2020, these core rights will be extended and seconded workers will benefit from regulations regarding remuneration in every sense (which has, up until now, been limited to the notion of minimum wage).

Secondments will also be limited to 12 months (18 months in certain cases). After a 12-month period, almost all French Labour Code provisions will apply to seconded employees.

### [More severe administrative penalties](#)

Administrative fines related to the secondment of foreign employees have been doubled, increasing from

a maximum of €2,000 to €4,000 per seconded employee, and €8,000 in the case of repeat offences within a period of 2 years, capped at a maximum fine of €500,000.

In certain cases, the French administration ("Direccte") can now suspend or prohibit the provision of services. If a suspension decision or ban is not respected, the employer will incur a specific fine of €10,000 per employee concerned.

In the event of an illegal work offence, the French authorities may order the closure of the establishment involved in the offence, for a maximum period of three months.

Finally, the law now characterizes a new case of "concealed work" by an employer's concealment of an activity: when a foreign employer argues that it should be in the scope of secondment-related provisions, when in reality, it is only performing internal or administrative management activities (not its core business) in its own territory, and/or when it is performing its activity in France in a habitual, stable, and lasting manner. The new law calls this "establishment fraud," which is close to the tax qualification of a fixed and independent establishment.

Unfortunately, the regulation remains silent concerning the case of the business trips of employees sent to France to attend business meetings, international conferences, and internal meetings, which are quite recurrent in the economic life of international groups. As a consequence, companies must be very careful about the framework of their employees' business trips.

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