

# Mandanten-Informationen



## Arbeitsrecht June 2020

**As of 30 July 2020, the amended German Act on the Posting of Workers (“AEntG”) comes into force. The amendment of AEntG implements the revised Posting of Workers Directive (EU) 2018/957, which reacts to pay disparities on the labour market in the EU and helps ensure that posted workers are granted the same working conditions as local employees. The amended AEntG was approved by the German Parliament (“Bundestag”) on 18 June 2020.**

### Key Aspects of New German Law

The AEntG extends the array of Germany’s applicable working conditions to posted workers. Of special importance is the extension related to remuneration terms, also known as **Equal Pay Principle of the revised Posting of Workers Directive**. In future, not only minimum wage rates need to be observed, but so does total remuneration, which consists of the following components:

- Base salary,
- Any remuneration components, which are granted depending on the performance of work duties, qualification, and/or the professional expertise of the employees,
- Any other allowances such as overtime allowance and benefits-in-kind.

The AEntG prevents the offset of payments received for board, lodging, travel, or accommodation against the remuneration granted to posted workers.

The extended working conditions must be, however, laid down in generally binding collective bargaining agreements (hereinafter: “CBAs”). Only if the posting company

falls within the scope of a generally binding CBA in Germany will that trigger the compliance requirements of the revised Posting of Workers Directive, i.e., Equal Pay Principle.

The amended AEntG has extended the scope of application of generally binding collective bargaining agreements pursuant to Sec. 5 of the Collective Bargaining Act (“TVG”). Generally binding collective bargaining agreements will in future apply not only to foreign companies sending employees in the construction industry, but to all companies providing services in any sector listed in AEntG. These sectors are as follows:

- Construction
- Cleaning services
- Security services
- Special coal mining work
- Laundry services for commercial clients
- Waste management, including road and cleaning and winter services incl. road clearance,
- Education and training services according to the Social Security Act
- Meat processing industry
- Nursing care

Additionally, collective bargaining agreements are relevant for all other sectors other than those referred to above if the extension of the legal provisions of the collective bargaining agreement appears necessary in the public interest. Currently, no extensions exist for other sectors though.

In addition, different collective bargaining agreements are relevant depending on the duration of the assignments, i.e. short-term and long-term postings. In case of short-term postings (up to 12 months plus one extension possibility of six months) only federal generally binding collective bargaining agreements apply, while regional generally binding collective bargaining agreements apply to long-term postings (more than 12 months plus 6 months).

If companies do not fall within the scope of generally binding collective bargaining agreement, they still need to observe mandatory working conditions such as minimum wage rates, mandatory working time regulations, minimum annual leave as well as mandatory working conditions for long-term postings.

- Under certain conditions, posted workers will be entitled to reimbursement of travel costs incurred pursuant to the German rules as long as they are more beneficial than the rules of the Home Country.
- Should the postings last longer than 12 months (with a one-time extension possibility of six months), all other terms and conditions of employment under German law – in addition to remuneration and minimum working conditions –

must be applied with few exceptions such as termination law, company pension scheme law, as well as laws related to fixed-term employment. The additional working terms and conditions for long-term postings need to be observed as of 30 July 2020. If the posting has started before 30 July 2020, the additional working terms and conditions need to be observed as soon as the posting exceeds 18 months.

- Certain activities, such as first installation work, contract negotiations, attendance of trade fairs or establishment of a branch, training, are exempt from the new rules if they are only performed to a minor extent. The rules will not apply to the road transport sector.
- In case of temporary agency work, the amended AEntG has introduced a new obligation for the borrowing employer to inform the lessor about the applicable working conditions for comparable employees in its company.
- The German Customs (“Zoll”) will remain the competent monitoring authority.

## **Recommendations for Companies**

- Assess whether employees could fall within the scope of Equal Pay requirements;
- If Equal Pay applies, review and adjust remuneration and other mandatory working conditions (e.g., by introducing equal pay allowance type);
- Make sure that relevant documentation for the posting (e.g., assignment contracts, assignment policies, working time sheets etc.) is compliant;
- Submit PWD registration notification only upon fulfilling Equal Pay requirements;
- Incorporate Equal Pay compliance into the overall travel process;
- Align Equal Pay with A1 compliance requirements

## **KPMG Law Services**

We offer full-fledged services around the implementation of the revised Posting of Workers Directive in Germany and throughout Europe. These include:

- Conduct Equal Pay risk assessment
- Develop company-specific Equal Pay Framework
- Review and adjust remuneration structure
- Integrate Equal Pay requirements into the overall travel process
- Provide IT-based Equal Pay assessment solution for Germany
- Advice on company’s documentation requirements (such as working time sheets etc.)
- Train your HR/Employees in:
  - Equal Pay requirements in general

- Equal Pay framework development for your company
- Review and adjust personnel staffing business concepts
- Review and amend assignment agreements and policies
- Provide PWD/Equal Pay Update Service

**Please find further information on our Equal Pay Hub to be checked out at <https://kpmg-law.de/rechtsgebiete/eu-entsenderichtlinie/>**

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