

Appendix

What are the main rights of seconded employees

Foreign employers are responsible for complying with the French regulations on the following matters:

- Seconded employees in France avail of **individual and collective freedoms**, the same as French employees, and their **right to strike** (stopping work as part of a collective movement, for the purposes of claiming their rights) is also recognised.
- Seconded employees in France avail of the principle of **non-discrimination** and **professional equality** between men and women (application of the "equal work, equal pay" principle, requiring employers to ensure equal pay between male and female employees working in the same situation), and French provisions on **maternity protection**, **minimum age for admission to employment** (16 years old), **child employment**, **working time and night shifts of young workers**.

Working time and leave

In France, the maximum legal working time is 10 hours a day, and 48 hours in the same week. The French regulations on annual paid leave (assessed on the basis of the stay in France), leave for family occasions, maternity leave and paternity leave apply. However, the regulations of the *Code du travail* (French labour laws) on unpaid leave (leave for executive and youth leader training, etc.) and on the *compte épargne temps* (time savings account) do not apply.

- Conditions of liability to weather risk and paid leave funds (construction and events sectors)

Foreign employers must:

- join the paid leave fund (construction and events sectors),
- pay contributions to the *chômage intempéries* (weather-related unemployment) insurance scheme (construction sector).

There are cases of exemption from membership (e.g. if proof can be furnished of an equivalent scheme, for employers based in the EU, EEA or Swiss Confederation).

- Minimum wage

Regardless of the time for which they are posted, seconded employees must be paid at least the minimum wage (the minimum wage in France, gross, per hour, has been 9,40 € since 1 July 2012, which amounts to a monthly minimum wage, gross, of 1 425,67 € for a 35 hours working week), or the contracted minimum wage if it is higher. Allowances specific to secondment (expatriation benefit for example) are part of the minimum wage. However, benefits covering excess costs incurred during the secondment (travel or accommodation expenses, for example) are not considered in the calculation of the minimum wage and must be reimbursed by employers (see article R. 1262-8 of the *Code du travail*).

When the posting in France exceeds one month, the seconded employees must be paid a monthly salary, and receive a payslip (or any equivalent document), translated into French and indicating the following information:

- salary due (including over time), in euros,
- working hours and periods,
- leave and public holidays,
- conditions of liability to weather risk and paid leave funds,
- name of the applicable collective convention.

- Conditions of labour supply and guarantees owed to workers by temporary employment agencies

The provisions of the *Code du travail* on temporary employment apply to seconded employees in France. Temporary employment agencies (TEAs) based outside of France must therefore comply with the regulations on:

- authorised cases of recourse to temporary work (article L.1251-5 to 8 and L. 1251-9 and 10 of the *Code du travail*),
- the assignment contract signed between the TEA and the employee, and the labour supply contract between the TEA and user company in France (article L.12541-11 to 15 and L.1251-43 of the *Code du travail*),
- the requirement to justify an equivalent financial guarantee to the one payable by TEAs based in France, ensuring, should the employer default, that seconded temporary employees are paid all of the wages, benefits and incidental costs owed to them for the working period carried out in France (including the job insecurity compensation and paid leave compensation).

Seconded employees avail of the same working conditions as the other employees working in French companies:

- at least equal pay to the salary received by an employee of the user company with the same qualification and carrying out the same job;

- collection of job insecurity compensation at the end of their assignment (article L. 1251-32 and 33 of the *Code du travail*), except if they have a permanent contract in their home country (article L. 1262-16 of the *Code du travail*), as is the case in Germany for example;
- application of French regulations on working time, night shifts, weekly breaks, public holidays, health and safety, etc.

- Regulations on occupational health and safety and on health surveillance

Safety

Employers must ensure the safety of employees' workplaces by taking account of the occupational risks to which the latter may be exposed during their working period in France (e.g. work in high places or exposure risks to asbestos or noise). Accordingly, employers must, for example, take steps to ensure that employees working in the open air are protected against atmospheric conditions, are not exposed to harmful noise levels, have safety equipment available to them (a helmet must be worn for certain types of work) and cannot slip or fall (see article R. 4225-1 of the *Code du travail*).

Seconded employees in France avail of the **right to leave**, which entitles them to leave their work station if they are exposed to a life-threatening or health hazard (see article L. 4131-1 of the *Code du travail*).

On the applicable regulations on occupational safety, see the "occupational health and safety" document online on the French Ministry for Labour website – "working documents per theme".

Occupational health/medicine

Health surveillance

Employers based in a European State (member of the EU, EEA or in the Swiss Confederation) can prove that their employees, having already attended medical check-ups in their home country, justified by exposure through their job to an occupational risk (asbestos, etc.), avail of an equivalent health surveillance scheme to the French system (see art. R.1262-10 of the *Code du travail*). In this case, seconded employees will not have to repeat the necessary medical check-ups before being posted to France. However, equivalent health surveillance or not, the French regulations shall stipulate how often medical checks are to be carried out during the secondment of employees in France.

Receiving the services of an occupational health department in France

The services of an occupational health department involve periodic medical check-ups and measures in the workplace (health advice based on a study, by the doctor for the employees' jobs). During their posting in France, seconded employees can receive services from the occupational health department of the host company (or the competent inter-company occupational health department in the place where the secondment is taking place for an assignment on the employer's own behalf). Any extra costs that may be incurred for the host company by the presence of seconded employees, when it comes to pay its contribution to the occupational health department, may be passed on to the foreign company (this additional cost may be indicated in the business contract binding the two companies).

- Illegal work

The following infractions may be raised against the employer of seconded employees:

Concealed work by concealment of business (article L. 8221-3 of the *Code du travail*), which punishes the exercise of profitable production without being listed in the Trade and Companies Register or without having made the necessary declarations to social protection organisations. Punishable by: 3 years' imprisonment and a 45,000-euro fine.

Concealed work by concealment of paid employment (article L. 8221-5 of the *Code du travail*), which applies to employers who deliberately did not make a pre-employment declaration or did not issue payslips to their employees. Punishable by: 3 years' imprisonment and a 45,000-euro fine.

Bargaining (article L. 8231-1 of the *Code du travail*), applying to profitable labour supply operations which do the employee harm (case of labour supply outside of the framework of temporary employment). Punishable by: 2 years' imprisonment and a 30,000-euro fine.

Illegal supply of labour (article L. 8241-1 of the *Code du travail*), applying to profitable operations with the exclusive intention of labour supply. This seeks to punish the "false provision of services" where "supplied" employees act under the responsibility of the host company (known as the "user"). Punishable by: 2 years' imprisonment and a 30,000-euro fine.

