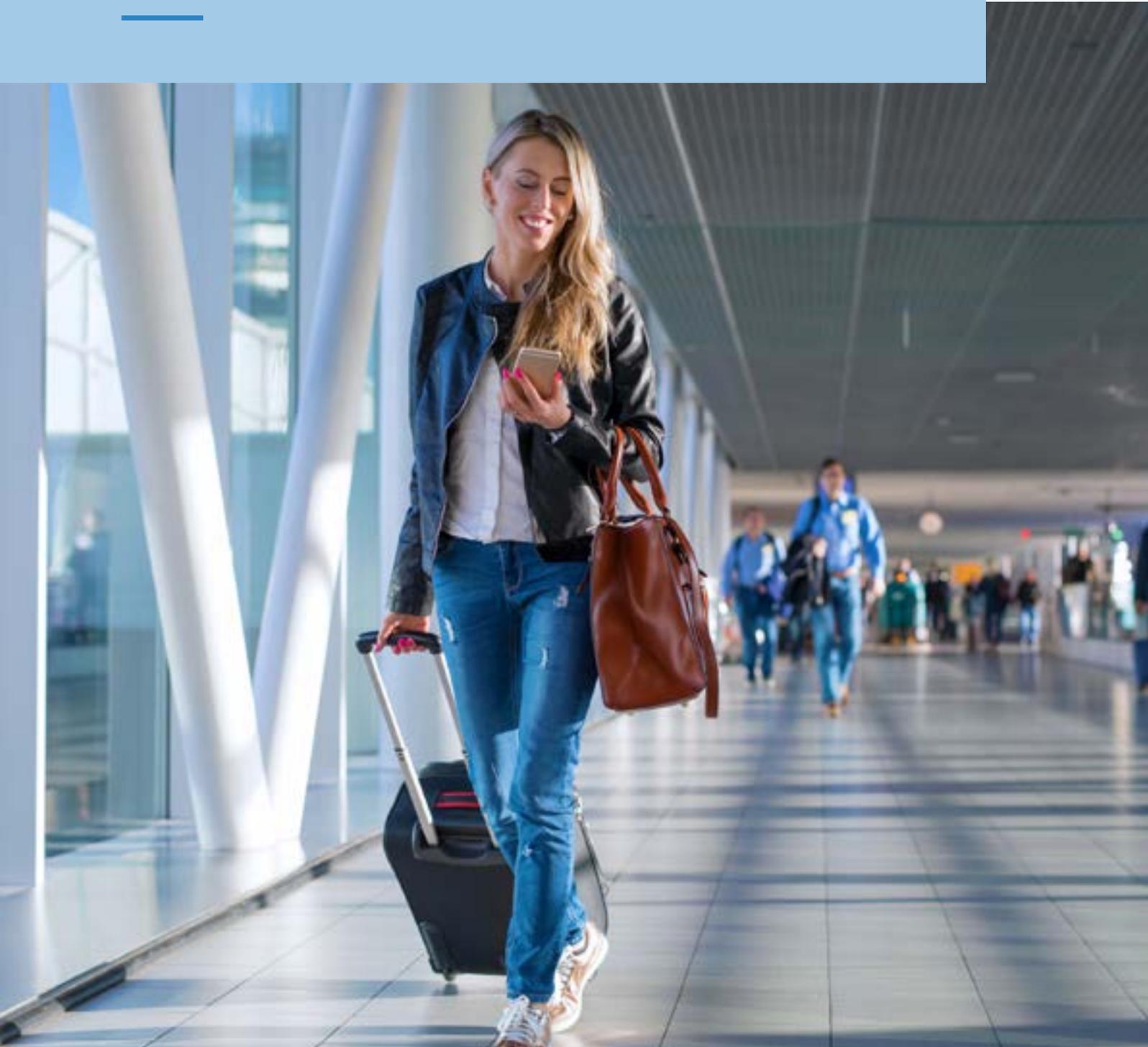


Foreign employers and self-employed persons with a temporary assignment in the Netherlands



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If you are a self-employed person (subject to a duty to report) or an employer from another country within the European Economic Area (EEA) or from Switzerland and you have a temporary assignment in the Netherlands, you must report this as of 1 March 2020 in the Dutch online reporting system. This is laid down in the Employment Conditions (Posted Workers in the European Union) Act (called: 'WagwEU'). In this whitepaper we have outset the duty to notify such temporary postings.

The purpose of the Act is to provide protection to employees and to prevent unfair competition and exploitation which may result from differences between working conditions within the member states of the European Union.

The Act makes a distinction between service providers, self-employed persons and service recipients. Foreign employers and foreign self-employed persons in certain sectors have a duty to report to the Dutch authorities what work they will be performing and when. Foreign employers also have to report the arrival of any of their employees. This information must be reported in the Dutch online reporting system.

Service providers and recipients

You are a service provider if, as a foreign employer, you:

- come to the Netherlands temporarily with your own personnel to provide a service;
- are a multinational company and are seconding employees to your own offices in the Netherlands; or
- are a foreign temporary employment agency and assign agency workers to a temporary job in the Netherlands.

If you are self-employed and will be coming to the Netherlands on a temporary assignment, you are also considered as a service provider.

The service recipient is the party for whom you will perform the work and with whom you have signed an agreement (building contract or service contract), also known as your client in the Netherlands.



Working conditions

Normally, in case of a cross-border situation, the individual employment agreement will be based on the legislation parties have explicitly or implicitly chosen. If no choice was made in the agreement, the agreement will be subject to the legislation of the country from where the employee normally performs the work. This is called the state of residence.

The Act is an exception on this rule. Notwithstanding the legislation applicable in the agreement (according to the rules outset above), the employee is entitled to benefit from some of the more favourable working

conditions in the country where the work is performed. If employees of companies in another EEA country or Switzerland come to work temporarily in the Netherlands, they are entitled to at least the main terms of employment that apply (the minimum wage; sufficient rest hours; safe working conditions; equal treatment of men and women; and a minimum number of paid days off).

In sectors where a universally binding collective agreement applies, posted workers are also entitled to the 'hard core' of the terms of employment from this collective agreement.



Reporting online prior to the start of the activities

As service provider, you must report through the online reporting system prior to the start of the activities in the Netherlands.

The notification can be made with eHerkenning, eIDAS or by creating an account at the [website](#). This website is available in English, Dutch and in German. There is also a page (in all three languages) with the most frequently asked questions and answers (FAQs).

As a service provider, you should report the following:

- your company's details;
- the director's personal details;
- the personal details of any employees, unless you are self-employed;
- the details of your contact person in the Netherlands;
- the details of your Dutch client;
- the workplace address;
- a description of the work and how long it will take.

If the posted worker's home country offers more favourable terms of employment and working conditions, these shall apply. This will apply to each term of employment.



What happens in case of non-compliance with the Act?

“The policy rules on fine imposition have recently been published. These policies contain an overview of fines for:

- Not providing information (€ 6,000);
- Non-notification by the service provider (scale of less than 10, 10 to 19 and 20 or more employees of € 1,500, € 3,000 and € 4,500, respectively);
- Non-checking by the receiving client (€ 1,500);
- Not having the required information available at the workplace (€ 8,000);
- Not having kept the required information after the period of posting (€ 8,000).

Service providers as well as the recipients can be punished with fines if the requirements in this legislation are not met. The fine might be significant since multiple violations of the legislation can occur simultaneously (as an example a combination of not meeting the requirement to report and not having the required information available at the place of work).

Conclusion

As of 1 March 2020 the duty to notify temporary postings in the Netherlands will enter into force and the service provider should now when and what to report. Furthermore, the receiving client should know how to meet his obligations to check the notifications and what should be done in case a notification is incomplete, incorrect or no notification has been made at all. For both the service provider as the receiving client, it is of high importance to be aware of this legislation, and to have sufficient information regarding the work performed and the involved persons so that the duty to notify or check such notification can be performed correctly.



Would you like to receive more information regarding this legislation and the obligations that arise hereof, please feel free to contact us:

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Schipper accountants

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