

Article 108. Posting of the foreign employer's employee to the Republic of Lithuania for the purpose of provision of services

1. With the exception of merchant ship crew members, an employee of an employer who is under the jurisdiction of a foreign country may be posted to work temporarily in the territory of the Republic of Lithuania:

1) in accordance with a contract for the provision of services or works performed concluded by the employer with a customer operating in the Republic of Lithuania;

2) to work at a branch, representative office, group company or other workplace of the juridical person of the employer;

3) to work as a temporary worker.

2. An employee specified in paragraph 1 of this Article, irrespective of the law applicable to the employment contract or employment relationship (except for the case provided for in paragraph 8 of this Article), shall be subject to the provisions of this Code and other regulatory legal acts of the Republic of Lithuania regulating labour relations, including national (cross-sectoral), territorial and sectoral (industry, services, professional) collective agreements or separate provisions thereof, the application of which has been extended, establishing:

1) maximum working time and minimum rest periods;

2) duration of the minimum paid annual leave;

3) remuneration, including extra pay for overtime, night work, and work on days off and holidays;

4) the terms of employment for temporary workers;

5) safety and health at work;

6) safety at work for persons under the age of 18 and employees who are pregnant, who recently gave birth, or who are breast feeding;

7) prohibition of discrimination at work;

8) conditions of employees' accommodation when it is provided by the employer to employees working outside their permanent workplace;

9) reimbursement of additional expenses (transport, travel and other expenses) incurred by employees travelling to and from their main place of performance of job functions in the Republic of Lithuania, as well as additional expenses (transport, travel, accommodation and other expenses) related to business trips in the Republic of Lithuania and abroad (if not in the cases specified in Paragraph 1 of this Article);

10) the provisions specified in Article 107(6) of this Code.

3. With the exception of payments allocated for the reimbursement of actual travel, accommodation and meal expenses related to the posting, the daily allowance and other payments payable to an employee specified in paragraph 1 of this Article shall be considered a part of the remuneration if, according to the labour legislation of the country laws of which are applied to the employee's employment contract or employment relationship, daily allowances and other posting related payments are separated from actual travel, accommodation and meal expenses. If daily allowances and other posting related payments are not separated from actual travel, accommodation and meal expenses, the daily allowance and other posting related payments paid to the employee shall be deemed to cover the actual travel, accommodation and meal expenses related to the posting.

4. If the effective duration of the employee's posting exceeds twelve (12) months, the employee specified in paragraph 1 of this Article shall, irrespective of the law applicable to the employment contract or employment relationship, be subject to terms and conditions referred to in paragraph 2 of this Article as well as all other provisions of this Code and other regulatory legal acts of the Republic of Lithuania regulating labour relations, including national (cross-sectoral), territorial and sectoral (industry, services, professional) collective agreements or separate provisions thereof, the application of which has been extended, with the exception of provisions related to the conditions for concluding and terminating the employment contract as well as arrangements and terms of non-compete agreements.

Note of the Register of Legal Acts (RLA). If the posting started before the Law No. XIII-2888 entered into force (30/07/2020), in the case specified in paragraph 4 of Article 108 of the Labour Code amended by this Law, the duration of the posting shall start counting from the Law's entry into force. Periods of postings prior to entry into force of this Law shall not be included in the total duration of the effective posting.

5. If an employer who is under the jurisdiction of a foreign country submits, in accordance with the procedure established by the Minister of Social Security and Labour of the Republic of Lithuania, to the territorial office of the State Labour Inspectorate a motivated notification regarding the extension of the period specified in paragraph 4 of this Article until the effective duration of the employee's posting does not exceed twelve (12) months, this period shall be extended but not exceeding eighteen (18) months of the effective duration of the posting.

6. The provisions of Article 75 of this Code, which ensure the application of the non-discrimination principle to temporary workers, shall apply to the employee referred to in point 3 of paragraph 1 of this Article, regardless of the effective duration of the posting. The temporary work user enterprise shall inform the temporary-work agency about the working conditions and remuneration insofar as Article 75 of this Code applies to those conditions.

7. If a temporary worker has been posted to work temporarily for the benefit of the temporary work user enterprise outside the territory of the Republic of Lithuania in cases specified in paragraph

1 of this Article during his or her posting to work for the temporary work user enterprise, it shall be considered that the temporary-work agency posted the worker to that other country. The temporary work user enterprise shall notify the temporary-work agency about the temporary worker's work in another country before the commencement of this work.

8. If under the labour legislation of the country laws of which are applied to the employee's employment contract or employment relationship the employee specified in paragraph 1 of this Article shall be entitled to more favourable working conditions than those prescribed by the provisions of paragraph 2 and paragraph 4 of this Article, the labour legislation of the country laws of which are applied to the employee's employment contract or employment relationship shall apply.

9. If an employee is posted to the territory of the Republic of Lithuania by an employer of a country that is not a member state of the European Union and the European Free Trade Association, he or she must obtain a permit in accordance with the procedure established by the laws of the Republic of Lithuania.

10. In the cases established in points 1 and 2 of paragraph 1 of this Article, provisions relating to remuneration, including extra pay for overtime, night work, and work on days off and holidays shall not apply if the posting duration does not exceed thirty (30) days.

11. Provisions of points 2 and 3 of paragraph 2 of this Article concerning the minimum duration of annual leave, remuneration and pay for overtime work shall not apply if the initial assembly and (or) first installation of the product is carried out by qualified employees and (or) specialists of the company that supplies the product where this is stipulated in the contract for the supply of goods and is necessary for the use of the product supplied, and when the duration of their posting does not exceed eight (8) days. This exception shall not apply when the posted worker is performing, in the territory of the Republic of Lithuania, construction work specified in the Republic of Lithuania Law on Construction.

12. The duration of the posting shall be calculated by adding together all the calendar days of the posting or postings within a period of one year from the beginning of the first posting. If a posted employee is replaced by another posted employee performing the same work at the same place of work, the effective duration of the posting calculated under paragraphs 4 and 5 of this Article will comprise the overall duration of the periods of posting of the respective individual workers. The condition of the same work at the same place of work shall be assessed taking into account the nature of the service to be provided, the work function, workplace address(es) and other circumstances related to the performance of work.

13. When the employer is a subcontractor, the contractor shall bear subsidiary responsibility for fulfilment of the monetary obligations established in point 3 of paragraph 2 of this Article related

to remuneration due to an employee specified in paragraph 1 of this Article when the latter is performing construction work specified in the Republic of Lithuania Law on Construction.

14. Subsidiary responsibility of the contractor when the employer is a subcontractor shall arise from the rights and obligations established in the subcontract.

15. Points 3, 8 and 9 of paragraph 2, paragraphs 4 and 5, and provision of paragraph 12 of this Article concerning calculation of the effective duration of posting in cases when a posted employee is replaced by another posted employee shall not apply to drivers performing international transportation of goods and/or passengers and complying with the cases specified in paragraph 1 of this Article. Drivers of road vehicles transporting goods and/or passengers on international road routes and complying with the cases specified in paragraph 1 of this Article shall be subject to the provisions of this Code and other regulatory legal acts of the Republic of Lithuania regulating labour relations, including national (cross-sectoral), territorial and sectoral (industry, services, professional) collective agreements or separate provisions thereof, the application of which has been extended, setting a minimum wage, including extra pay for overtime, night work, and work on days off and holidays.

Article 109. Ensuring working conditions of employees of a foreign employer

1. An employer under the jurisdiction of a foreign country who posts a worker to work temporarily in the territory of the Republic of Lithuania for a period of more than 30 days or to perform construction work established in the Republic of Lithuania Law on Construction shall, in accordance with the procedure established by the Minister of Social Security and Labour of the Republic of Lithuania, give advance notice to the territorial office of the State Labour Inspectorate where the job function of the posted worker will be performed about the conditions established in points 1–9 of Article 108(2) of this Code that will apply to this worker.

2. Employers must have the documents related to the posted worker at the place where the job function of the posted worker is being performed during the entire period of the posting and must provide them without delay to competent authorities at the request thereof.

3. The State Labour Inspectorate shall provide information immediately and free of charge to, or otherwise cooperate with, competent authorities of other European Union Member States regarding the application of terms and conditions specified herein to posted workers, as well as violations of posted worker guarantees. The State Labour Inspectorate shall ensure that information on the provisions of regulatory legal acts of the Republic of Lithuania, including national (cross-sectoral), territorial and sectoral (industry, services, professional) collective agreements or separate provisions thereof, the application of which has been extended, on the terms and conditions applicable to a posted worker, including remuneration components and additional terms and conditions of employment

contract, applicable to postings longer than twelve (12) or eighteen (18) months (if the period specified in paragraph 4 of Article 108 of this Code has been extended), is available to employers under the jurisdiction of a foreign country and their employees free of charge, updated in a timely, in a clear, transparent and comprehensive manner, remotely and electronically, in internet access format and standards, while ensuring accessibility to people with disabilities.

4. A worker posted to the territory of the Republic of Lithuania may defend his or her violated rights in accordance with the procedure for the settlement of labour disputes on rights.