

POSTED WORKER AND A1 CERTIFICATES: 2021 TRENDS

Webinar Q&A Report

25 May 2021

Have Posted Worker specific questions related to your employees?

Reach out to your dedicated CIBTvisas or Newland Chase representative. Don't have one? [Contact us](#) to find out more about our Posted Worker service offerings and how we can support your organisation.



What, in short, are the Posted Worker (PW) obligations?

The most important obligation, and the goal of the PW Directives (PWDs), is for the posted worker to meet a core set of working conditions in the host country during their posting there. If these are more favourable for the posted worker, the host country conditions would supersede the home country conditions. For postings of more than 12 months, additional working conditions need to be met. Under certain conditions, the application of only the core set of working conditions can be extended up to 18 months.

Other obligations include tools for the authorities to check if the working conditions are being met: the sending entity filing a notification to the authorities in the host country (generally referred to as Posted Worker Notification, or PWN) before start of work; keeping records related to the working conditions during the posting available for the host country authorities during, and sometimes after, the posting; and appointing a person to act as liaison between the sending entity and the host country authorities to dispatch and receive documents, and/or notices, if need be. In some countries, there is an additional requirement of appointing a person via who the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State.

Although these are based on the EU Directives, because the Directives needed to be implemented into national legislation to become applicable, details on how these obligations have been implemented vary by country.



Do PW obligations apply to very short postings?

The duration of the posting does not affect whether someone is considered a posted worker. The PWDs allow for countries to apply exemptions to some of the obligations for very short postings. Based on this, in certain countries there may be exemptions from one or more of the PW obligations for some short-term activities, however, this does not mean that the person is not a posted worker. For example, first installation of equipment supplied by the posted worker's employer in most countries is exempt from some of the working condition requirements for up to 8 days, but the other requirements do continue to apply; Spain has an exemption for trips of up to 8 days for the notification (PWN) requirement only, but other requirements for equal working conditions for posted workers still apply; etc.



Do PW obligations apply if work is performed, but there is no recipient of a service? (E.g. a film crew shooting a documentary to be broadcast in the home country)

Working activities that are not a service delivery to the hosting entity or person in the host country are not considered a posting under the PWDs. However, based on national legislation, either in the country's Posting Act or in other national laws, some of these requirements (or similar ones) may still apply to such trips. We advise to verify this with a labour law expert in the host country.



Do Posted Worker Obligations apply to touring artists?

Yes, touring artists are generally considered posted workers if they are employed. However, touring artists form a category of workers which, in some countries, falls under exemptions from some of the requirements for short stays. This should be verified by country.



Are sports people or people involved in sports tournaments (e.g. referees) considered posted workers?

Yes, if employed, they are generally considered posted workers. Country-specific exemptions from some of the PW obligations may apply. This should be verified by country.



Who is responsible for filing PWNs in case of subcontracting – the employer (subcontractor) or the entity which holds the service contract with the service recipient in the host country?

In principle, the employer is responsible for all PW obligations. However, countries may have placed specific obligations on the hosting entity, or on an entity who is subcontracting some of their responsibilities under a service contract to another entity. We recommend undertaking an assessment on who is responsible for what activities whenever the posted worker is not providing their service under a direct contract between their employer and the service recipient in the host country.



Do the PW obligations apply to postings from outside of the EU?

The PWDs are applicable to postings originating within EU/EEA/Switzerland (EU+). However, around half of the EU+ countries have extended the scope of the PW requirements beyond the EU+ countries, based on their national implementation of the Directives. In those countries, the sending country does not impact whether someone falls into the scope of the PW obligations.

Note that those countries that do not apply their PW laws to postings from outside EU+ directly may still apply similar requirements based on other laws. For example, Czech Republic applies a Labour Office Notification (which is very similar to the PWN) to other types of assignments based on separate laws; Spain applies the same working condition requirements to Intra-Company Transfer permit holders based on Immigration Law, among others.



What is the impact of Brexit?

Since about half of the EU+ countries are applying their PW Regulations to postings from outside EU+, in those countries postings from the UK will still fall into the scope of the requirements. It is especially important to note that the EU-UK Trade and Cooperation Agreement (TCA) has no impact on the PWD requirements. Companies

should be aware that allowable activities on business status under the TCA between the UK and the EU member states do not exempt the company from PWN or other PW requirements, if the host country applies their PW laws to postings from outside of EU+. For instance, there may be a work permit exemption for a certain activity for trips of up to 90 days based on the TCA, however, all PW obligations may still apply.

As explained above, even if the PW legislation in the host country does not apply to postings from outside EU+ there may still be similar requirements applicable. This should be verified with a labour law expert in the host country.



What regulations under the PWDs cover remote employees, i.e., employees living in an EU+ country other than where they hold their employment contract, and working remotely? Are employers required to provide remuneration and mandatory benefits aligned to the country where the remote employees are employed or the country where the employee is living?

Generally speaking, the PWDs do not cover those working remotely from home or a hotel. However, there are other potential issues around remote work. The employee's regular place of work is a deciding factor. If an employee is assigned to work in a country other than the one in which they normally work, and is providing a service for a person or entity in the host country, they would be considered a posted worker. But even if they will not be providing a service to anyone in the host country, and they are not considered a posted worker, working condition requirements may still apply, based on other laws. In addition, there are several other areas to be considered before agreeing for employees to work remotely from another country, including social security obligations and the risk of corporate establishment, to name just two.



How should the EU posting duration be calculated? Based on the period, stated in the posted worker registration, or sum of presence days in the host country etc.?

This is very much subject to national legislation that transposes the PWDs into national law. The PWDs only state that "*The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting.*" National law sometimes provides for different calculation modes based on the type of work/activities and schedule of such posting.



On 30 July 2020, the newest PWD with more strict working condition requirements was due to be implemented into national legislations. Have the EU and EEA countries been able to actually implement this into their national legislations in the middle of the Covid crisis? And are there any other updates on this topic?

All member states, except Slovenia, are generally considered to have implemented the changes included in the revised PWD. We are observing updates on the single official websites of many states, posting more comprehensive and up-to-date information on the applicable rules and collective bargaining agreements regarding the basic working conditions and rights, and such extended terms and conditions that will have to be observed after 12/18 months of a posting.



I have always found it difficult to find the correct website to register employees in specific countries. Is there a list of where each registration should be submitted?

The following website has a drop-down menu from where you are able to go to the national websites regarding posted workers: https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm. However, it should be noted that the links do not always work - sometimes the countries change the location of

their website and do not inform the EU. Also, some countries have different websites regarding the various obligations, which do not always link to each other, and then only one of these links is included. Or the link goes to the general website of the responsible Ministry, and then you need to search there to the correct sub-page (while the webpage may be in local language). Using your search engine with search term Posted Worker [Country] may help you find the correct website.

However, as an alternative, to help navigate this complex landscape, Newland Chase offers assistance with filing PWNs in all countries.



Notifications can be difficult as the host country websites are not all in English. How can we tackle this? And what do we do about having a local representative who speaks the country language? Can Newland Chase help?

If you want to process notifications in-house, then the local language indeed can be very challenging. Investing in a good translator program may not give you perfect results, but can help. Alternatively, you can consider enlisting the support of a service provider with the relevant expertise.

Newland Chase can assist with filing PWNs in all countries. Where you have no appropriate options within your company to act as liaison, we are also able to arrange a local liaison in most countries (where allowed by law), through our local offices and network partners.



What is the purpose of an A1 certificate?

As a general rule, someone is subject to the Social Security (SS) system of the country where they are carrying out their activities. However, the EU Social Security Regulations allow for the traveller, under certain circumstances, to remain on their home country SS. The A1 certificate is proof that the traveller will continue to be subject to their home country SS system while travelling.



Is an A1 certificate required for business meetings or attending conferences?

Yes. The EU Social Security Regulations automatically apply in all EU and EEA countries (no implementation in national legislation is required). There is no distinction between business visitors and (short- or long-term) workers who are temporarily carrying out activities for their employer in another country. Therefore, an A1 certificate should be obtained for business meetings and attending conferences..



If my employee has an EU passport but lives outside of EU, an A1 certificate cannot be obtained. Is there a legal way of obtaining a waiver for the A1 certificate if a person is not resident in the EU?

For people employed outside EU+ (or UK), regardless of their nationality, the existence (or not) and details of a bilateral agreement between the sending and hosting countries determines if the person can remain on home country SS during their work-related travel to EU+, or if SS contributions need to be paid in the host country.

To view this webinar on-demand, please click here: [Posted Worker and A1 Certificates: 2021 Trends](#)

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