

## COMPETENCES OF THE NATIONAL LABOUR INSPECTORATE IN MATTERS CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES.

### 1. Legal basis for NLI activities in cases concerning the posting of workers in the framework of the provision of services:

- The Act of 13 April 2007 on the National Labour Inspectorate (inter alia Art. 10(1) point 16),
- The Act of 10 June 2016 on the Posting of Workers in the Framework of the Provision of Services (inter alia Chapter 4 of the Act – tasks and powers of the National Labour Inspectorate – Articles 9-23)

### 2. The fields of National Labour Inspectorate's activity

- posting of workers from the territory of the Republic of Poland
- posting of workers to the territory of the Republic of Poland

### 3. The scope of National Labour Inspectorate's activity

- a) **inspection activities** in relation to entities posting employees from and to the territory of the Republic of Poland,
- b) **information activities** regarding the rules and conditions of posting employees TO the territory of the Republic of Poland (addressed to foreign employers posting employees to Poland and to employees posted to work in Poland),
- c) **activities within cooperation with relevant authorities** (exchange of information in the IMI system, performance of tasks in cases concerning notification of a decision on imposing an administrative fine or penalty and in cases concerning enforcement of these penalties – imposed by foreign institutions on Polish employers who post employees outside the territory of the Republic of Poland),
- d) **additional activities:** receiving notifications on the posting of workers (notifications on the change of data covered by such a notification or motivated notifications), running a website on the conditions of and regulations on the posting of workers.

### 4. Source of information on NLI activities – important primarily from the perspective of posting employers and workers posted to and from Poland

- a) a website on the posting of workers hosted by [www.biznes.gov.pl](http://www.biznes.gov.pl) at the address:  
[Chcę delegować pracownika | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#) – in Polish  
[Posting of workers to Poland | Biznes.gov.pl - Information and services website for entrepreneurs](#) – in English

[Jak delegować pracowników do państw Unii Europejskiej, Europejskiego Obszaru Gospodarczego i Szwajcarii | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#) – in Polish

[Kontrola delegowania pracowników na terytorium Polski | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#) – in Polish

[Checks on the posting of workers to the territory of Poland | Biznes.gov.pl - Information and services website for entrepreneurs](#) – in English

- b) A helpdesk of the National Labour Inspectorate relating to, among others, the issue of posting. NLI experts provide free legal advice at the phone number 22 11 35 28, daily from 9.00 a.m. to 3.00 p.m. Information about the above helpdesk is also available on the website about the posting of workers.

## 5. Competence of NLI in inspections carried out in the field of posting of workers

- ✓ inspections in matters concerning the posting of workers are included as a permanent task in the NLI programme of activities for the given year,
- ✓ they are executed on the basis of internal guidelines and instructions for labour inspectors,
- ✓ these inspections are carried out by labour inspectors who specialise in the issues of posting and have the appropriate training,
- ✓ these activities are supervised by both the national coordinator – in the Chief Labour Inspectorate (an employee of the Legality of Employment Department) and the national coordinator at the level of territorial units (currently a labour inspector from the District Labour Inspectorate in Wrocław),
- ✓ each year, the National Labour Inspectorate's internal training plan (which is developed centrally) includes improvement training for labour inspectors dealing with these issues, in order to update their knowledge of the changing legal regulations and inspection methodology and the authority's strategy in this area.

### 5.1. Inspections of the issue of posting of workers from the territory of Poland.

- **The basis for the inspection:**

- a) **a request** for information received from the competent authorities of other EU/EEA Member States or Switzerland, sent through the IMI system (a vast majority of inspections);
- b) **a labour inspector's own findings:**
  - ✓ in connection with a substantiated suspicion of failure by the inspected entity to comply with the mandatory provisions of the law of the country of posting,
  - ✓ mandatorily – **on the basis of notifications** from other authorities, institutions and organisations,
  - ✓ mandatorily – **in the case of examining complaints of employees posted** from the territory of the Republic of Poland to work in another EU/EEA Member State or in Switzerland.

- **Entities subject to inspection**

- a) **employers posting** employees from the territory of the Republic of Poland to work in other EU/EEA Member States and Switzerland (including temporary work agencies directing employees to employers-users abroad),
- b) **entities which are not employers**, which entrust work on a basis other than an employment relationship (e.g. under civil law contracts) and direct such persons to perform work abroad within the framework of the services provided there,
- c) **outside the scope of the National Labour Inspectorate inspections** are the so-called **self-employed** – who within the framework of their registered one-person business carry out work abroad (a service) and do not themselves commission work to other natural persons. In the case of a request from a foreign competent authority, **the labour inspector may make findings** on the circumstances covered by the request, but outside of the normal course of inspection – referring to the provisions of the Act on the Posting of Workers.

- **The scope of a labour inspector's findings**

- a) is usually determined by the request of the foreign competent authority and the questions formulated therein
- b) in the case of so-called inspections carried out on the basis of own findings, the scope of inspection is determined, for example, by the content of the complaint lodged by the posted employee.

It covers an examination of the circumstances relating to:

- **the posting enterprise, including:**
  - legality of conducting business activity (entry in the Central Registration and Information on Business [CEiDG] or the National Court Register [KRS]),
  - carrying out by the company of a real activity of a significant character in the territory of the Republic of Poland (other than administrative or management activity of an internal character),
  - having an entry in the register of entities providing temporary work agency services (entry in the National Register of Employment Agencies [KRAZ]);
- **persons posted to work temporarily abroad, including:**
  - the existence of a legal bond between the posting entrepreneur/employer and the person temporarily posted to work abroad,
  - confirmation in writing of the type and terms of the employment contract,
  - provision of written information on the terms and conditions of employment during the period of the posting (Art. 29<sup>1</sup> § 2 and 3 of the Labour Code),
  - period of posting (performance of temporary work abroad),
  - registration with social insurance and obtaining for the posted employee a certificate of applicable legislation (A1),
  - payment of social security contributions,
  - correctness of the determination of remuneration for work or other benefits due to the employee in connection with the posting (wages at the appropriate level in accordance with the legislation of the host country, overtime payments in accordance with the legislation of the host country, payments for business trips carried out during the posting, rates of allowances or reimbursement of expenses for transport, accommodation and meals),
  - payment of wages and other benefits due to the worker during the period of posting,
  - the timeliness of payment of wages and other benefits due to the worker during the period of posting,
  - observance of the rules on working time,
  - observing holiday leave provisions,
  - maintaining employee records,
  - preventive medical examinations,
  - circumstances and causes of work accidents,
  - observance of health and safety at work regulations.

Determinations made by labour inspectors may also cover issues that are generally outside the competence of the National Labour Inspectorate (e.g. regarding the payment of social security contributions, the issuing of A1 forms (competence of the Social Insurance Institution [ZUS]), or significant activity and turnover (competence of tax institutions).

- **National Labour Inspectorate's powers with regard to inspections:**
  - the right to demand from the posting entity subject to NLI inspection information or the provision of relevant documents – failure to provide such information is treated as an offence punishable by a fine from PLN 1,000 to PLN 30,000;
  - the right to demand information from institutions competent in social security and tax matters. Upon a written request of the NLI in this matter, these institutions are obliged to provide information within 10 working days of receiving such a request.
- **What the National Labour Inspectorate does not do**

The National Labour Inspectorate does not assess the correctness of the actions of an employer who posts an employee outside the territory of the Republic of Poland from the perspective of the legal regulations of the host country. The National Labour Inspectorate is not authorised to issue legal

measures (notices, decisions) which aim at regulating irregularities (e.g. related to the payment of remuneration due for the period of posting, the amount of which results from the regulations of the country of posting or collective labour agreements). In the case of inspections of the posting of workers from the territory of Poland, the task of the NLI is to collect relevant information and to send it to a foreign institution.

- **On cooperation with a foreign competent authority.**

In Poland the system of cooperation with foreign competent authorities is centralised. The tasks of the liaison office are performed in the Chief Labour Inspectorate by employees of the Legality of Employment Department. When we receive a request from a foreign competent authority, sent via the IMI system, it is examined in the CLI with regard to its content. We assess whether, due to the questions asked, there is a need for findings (inspections) at the level of the relevant district labour inspectorate. If so, a request is sent to the district labour inspectorate to make findings within the scope of the request.

If the requested information:

- is available from the level of the Chief Labour Inspectorate,
- includes data from public registers or NLI resources (e.g. on inspections previously carried out),
- relates exclusively to matters within the scope of ZUS or tax institutions (in such a situation, the request for information belonging to the competence of these institutions is sent from the Chief Labour Inspectorate),

as a rule, we do not send the request to a local NLI unit.

**We are very careful about deadlines!** Compliance with the deadlines set for the exchange of information in the IMI system is our priority (25 days – for a standard request, 2 working days – for a so-called URGENT request) – also in the period of the coronavirus pandemic. Even in a situation when we do not have complete information within the scope of the request, so-called partial information is sent to the foreign competent authority with a declaration that supplementary information will be sent as soon as possible.

### **Inspections of the issue of posting of workers to the territory of the Republic of Poland**

All the information in this respect, including sanctions applied by the National Labour Inspectorate, is available on the website concerning the posting of workers hosted in the information and services website for entrepreneurs [www.biznes.gov.pl](http://www.biznes.gov.pl) – both in Polish and English.

[Kontrola delegowania pracowników na terytorium Polski | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#) (in Polish),

[Checks on the posting of workers to the territory of Poland | Biznes.gov.pl - Information and services website for entrepreneurs](#) (in English)

### **Trends in the posting of workers:**

We observe that more and more often foreigners from the so-called third countries are posted to work in other European countries, once they have been entrusted with work in Polish companies. This concerns not only those foreigners who have a work permit in Poland and are legally residing here, but also those who obtained the right to work in Poland under a special simplified procedure addressed to the citizens of 6 countries of the so-called former Eastern Bloc: Armenia, Moldova, Georgia, Russia, Belarus and, above all, Ukraine. The basis for their employment in Poland is not a work permit, but a statement on entrusting work to a foreigner, which is entered

into the register of statements kept at the relevant labour office (i.e. within the public employment services, where e.g. unemployed persons are also registered). On the basis of this document, they obtain a visa, which entitles them to enter and stay in the territory of Poland, the purpose of which does not exclude the right to work (it is not a visa from the so-called negative catalogue, e.g. a tourist visa) and they obtain the right to perform work in Poland for 6 months within the subsequent 12 months. In the practice of the NLI, there are also such cases when a foreigner who was formally entrusted with work by a Polish employer goes immediately from their country of origin to the host country. They are formally linked with the employer in Poland by an employment relationship and have the right to work legally in Poland, although in fact they have not worked in Poland for a single day and they did not intend to perform work in the territory of the Republic of Poland. In such a situation, it is up to the authorities in the host country to assess whether such an employee may be regarded as posted. In such cases, the National Labour Inspectorate recognizes that the statement on entrusting work in Poland was registered under false pretences and notifies the labour office of this fact in order to revoke the document issued.

Information on the terms and conditions of employment of foreigners on the basis of statements on entrusting work to foreigners entered in the registers of the labour offices is available in the information and services website for entrepreneurs at:

[Jak zatrudnić obywatela Armenii, Białorusi, Gruzji, Mołdawii, Rosji lub Ukrainy | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#) (in Polish)