



Social Information and Investigation Service

Ernest Blérotstraat 1 1070 Brussels

Belgium

www.siod.belgie.be - www.sirs.belgique.be

EMPLOYMENT OBLIGATIONS IN BELGIUM

Dear Madam

Dear Sir

As an employer you intend to send temporary staff to Belgium or as a self-employed you wish to fulfil an assignment in Belgium. This implies that you shall have to comply with certain legal obligations. Below you will find an overview of the main legal obligations.

OVERVIEW:

A/ Obligations as an employer

- Limosa
- A1 social security certificate
- Belgian wage and labour conditions
- Being able to produce comparable wage documents
- Employment authorisations
- Residence – registration at the municipality
- Well-being – Safety at work

B/ Obligations as a self-employed

- Limosa
- A1 social security certificate
- Residence – registration at the municipality
- Proof business management knowledge and professional skill certificate
- Professional card

C/ Obligations as an agency

D/ Obligation to pay taxes or not

E/ Labour inspection – possible sanctions – international contacts

A) Obligations as an employer posting workers to Belgium

A general overview of the obligations can be found on the following websites:

- the portal of the federal authorities:
http://www.belgium.be/en/work/coming_to_work_in_belgium/
and http://www.belgium.be/en/work/posting_workers_to_belgium/

- the Limosa site : <http://www.limosa.be/>
- and the Federal Public Service Employment, Labour and Social Dialogue:
<http://www.employment.belgium.be/defaultTab.aspx?id=6540>

The Belgian liaison office for posting workers to Belgium (Single Point Of Contact-SPOC)

The Belgian liaison office is the first point of contact for a foreign employer wishing to post workers to Belgium. Its task consist in providing information to employers and workers posted to Belgium on general issues in the field of labour law and to direct them, as appropriate, to the competent services.

Address co-ordinates of the Belgian liaison office:

FPS EMPLOYMENT, LABOUR AND SOCIAL DIALOGUE

Directorate General Individual Labour Relations

Ernest Blerotstraat 1

1070 Brussels

Phone: + 32 (0)2 233 48 22

Fax: + 32 (0)2 233 48 21

E-mail: iab@werk.belgie.be

1) Make a Limosa declaration before commencing the operations:

If you are a non-Belgian employer performing temporary or partial assignments in Belgium, you should first notify electronically the presence of your workers in Belgium. Immediately after the notification an acknowledgement L-1 will be delivered. This acknowledgement must be submitted to the Belgian user or client. For more information see

https://www.socialsecurity.be/foreign/en/employer_limosa/home.html _

and www.limosa.be

2) Dispose of an A1 document:

The European provisions in the field of social security stipulate that the Member State where the work is executed, is responsible for social security (= performances & contributions). An exception to this principle is the posting of workers. When posting workers, the social security provisions of the Member State from which the worker is transmitted remain further applicable. However, in order to be allowed to post workers you should comply as an employer to a certain number of conditions.

1. Normally perform substantial activities as an employer in the sending State, which will be assessed on the basis of the following criteria:

- The location of the registered office and headquarters of the company;
- The number of administrative employees working in the sending State;
- The place of recruitment of the posted workers;

- The place where most of the contracts with the clients are concluded;
 - The legislation applicable to the contracts with the workers and the clients;
 - The turnover achieved in the sending State.
2. The organic link between the employer and the worker must be maintained during the entire posting period;
 3. The worker is not posted to replace another worker;
 4. The planned employment duration in the other country must not exceed 24 months;
 5. The worker must have been subjected to social security insurance prior to the time of posting in the sending State.

EN: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:106:0005:0008:EN:PDF> (administrative commission)

EN: <http://ec.europa.eu/social/BlobServlet?docId=4944&langId=en>

A practical guide to the applicable legislation in the European Union, the European Economic Area and Switzerland (2013)

A valid posting can be proven by means of the delivery of an A1 form. You can obtain this form from the competent social security institution in your home State. You should make sure however that the posting form can be submitted at each inspection.

CAUTION: ask for the form in your home State in good time, it may take some time before it can be delivered. For more information see

EN: <http://ec.europa.eu/social/main.jsp?catId=857&langId=en&intPageId=972>

EN: <http://ec.europa.eu/social/main.jsp?langId=en&catId=868>

Commit to the core of Belgian wage and working conditions:

During the posting, as an employer you are required to comply to the rules applicable in Belgium for the protection of workers, including:

- the minimum wages : the gross wages of your worker may not be lower than the minimum wages applicable in Belgium in the sector . For this purpose, basically certain fixed indemnities intended as repayments or reimbursements of expenses actually incurred for accommodation, food and travel expenses may not be taken into account as minimum wages (Article 3 , 7 of the Directive 96/71/EC)

- The working hours: the maximum permitted number of working hours and the obligatory minimum rest breaks should be observed. There is a surcharge of 50 % (or 100 % on Sundays and holidays) to be paid upon the performance of overtime.

- Granting rest on the paid holidays applicable in Belgium and granting annual paid leave

In some sectors contributions shall have to be paid to the welfare funds, for example in the building sector, for additional information see

NL:

https://www.socialsecurity.be/foreign/nl/employer_limosa/infos/otherobligations/construction_sector.html

FR:

https://www.socialsecurity.be/foreign/fr/employer_limosa/infos/otherobligations/construction_sector.html

EN:

https://www.socialsecurity.be/foreign/en/employer_limosa/infos/otherobligations/construction_sector.html

DE:

https://www.socialsecurity.be/foreign/de/employer_limosa/infos/otherobligations/construction_sector.html

Additional information relating to the applicable labour law in the case of posting can be found on:

NL : <http://www.werk.belgie.be/defaultTab.aspx?id=6224>

FR : <http://www.emploi.belgique.be/defaultTab.aspx?id=6224>

EN : <http://www.employment.belgium.be/defaultTab.aspx?id=6224> .

4) At the request of the labour inspection : being able to submit comparable wage documents.

The foreign employer should be able to submit to the labour inspection services, at their request, a copy of the wage documents which are provided in the country where he is established and which are comparable to the pay slip and the individual account provided for by the Belgian legislation. Under these conditions an exemption can be granted for other social legislation documents according to the Belgian model (which shall no longer have to be kept). For additional information see:

NL: <http://www.werk.belgie.be/defaultTab.aspx?id=6196#AutoAncher4>

FR: <http://www.emploi.belgique.be/defaultTab.aspx?id=6196#AutoAncher4>

EN: <http://www.employment.belgium.be/defaultTab.aspx?id=6196>

5) Apply for an employment authorization:

In some cases, a foreign employer shall have to apply for an employment authorization for his non-Belgian workers and the workers themselves shall need a work permit. For additional information see:

Flanders: <http://www.werk.be/online-diensten/werknemers-buitenlandse-nationaliteit>

Wallonia:

http://emploi.wallonie.be/Emploi_Formation/Travailler/Obtenir_permis.html

Brussels Capital Region : <http://www.werk-economie-emploi.irisnet.be/fr/permis-de-travail>

German-speaking Community: <http://www.dglive.be/desktopdefault.aspx/tabid-269/>

6) Apply for residence documents:

If **non-EU citizens** wish to come to Belgium to work, they will have to apply for a visa 'long stay' to the Belgian Embassy competent for their country of residence. Additional information about the procedure and the required documents can be found on our website:

NL: https://dofi.ibz.be/sites/dvzoe/nl/Gidsvandeprocedures/Pages/In_Belgie_werken.aspx

FR: <https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Travail.aspx>

EN: <https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Working.aspx>

Should you require additional information you can always contact the info desk. (infodesk@ibz.fgov.be – phone: 032 2 793.80.00).

If **EU-citizens** come to Belgium to work, they should report to the municipal administration of their temporary place of residence. This does not apply for those staying at a hotel, a youth hostel or a campsite. You will then receive an acknowledgment of receipt or an 'Annex 3ter'.

Article 41bis of the Act of 15 December 1980 on the access to the territory, residence, establishment and expulsion of aliens.

NL :

https://dofi.ibz.be/sites/dvzoe/NL/Gidsvandeprocedures/Pages/Recht_op_verblijf_-_3_maanden.aspx

FR: https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le_droit_de_s_ejourner_-_de_3_mois.aspx

EN: https://dofi.ibz.be/sites/dvzoe/EN/Applicationguides/Pages/STAYING_less_than_3_months.aspx

7 Safety at the workplace:

The Act of 4 August 1996 concerning the well-being of the workers in the performance of their work and its implementing decrees apply to any employer

occupying workers in Belgium. This act is the transposition into Belgian law of the Framework Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work;

More information about well-being at work in the case of posting can be found at:

NL : <http://www.werk.belgie.be/defaultTab.aspx?id=38260> _
FR : <http://www.emploi.belgique.be/defaultTab.aspx?id=38260>
EN : <http://www.employment.belgium.be/defaultTab.aspx?id=38260>
DE: <http://www.beswic.be/fr/legislation/belgische-gezetgebung>

B) Obligations as a self-employed (without permanent establishment in Belgium)

1) Making a Limosa notification before the commencement of operations:

When you perform as a non-Belgian self-employed temporary or partial assignments in Belgium, you should first notify your presence electronically, reporting amongst others your identity data and the Belgian user. Immediately after your notification an acknowledgement L-1 will be issued. This acknowledgement should then be submitted to the Belgian client and to the inspection.

For additional information :

NL:

https://www.socialsecurity.be/foreign/nl/employer_limosa/home.html

FR:

https://www.socialsecurity.be/foreign/fr/employer_limosa/home.html

EN:

https://www.socialsecurity.be/foreign/en/employer_limosa/home.html

DE:

https://www.socialsecurity.be/foreign/de/employer_limosa/home.html

2) Hold an A1 document:

The European provisions in the field of social security stipulate that the Member State where the work is executed, is responsible for social security (= performances & contributions). An exception to this principle is the posting of workers. When posting workers, the social security provisions of the

Member State from which the worker is transmitted remain further applicable. These are determined on the basis of the following criteria:

- Available office space in the sending State;
- Possession of a professional card in the sending State;
- Possession of a VAT number and the payment of taxes in the sending State;
- Registration with a chamber of commerce or a professional organization.

EN <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:106:0005:0008:EN:PDF>

NL: <http://ec.europa.eu/social/BlobServlet?docId=4944&langId=en>

This may be proven on the basis of an A1 form. This form can be obtained from the competent social security institution in your home country. You must make sure however that the posting form can be submitted at each inspection.

CAUTION: ask for the form in your home country in good time, it may take some time before it is delivered. For additional information see:

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<http://ec.europa.eu/social/main.jsp?catId=857&langId=en&intPageId=972>

<http://ec.europa.eu/social/main.jsp?langId=en&catId=868>

(select your language)

3) Apply for residence documents :

A non-Belgian self-employed must apply for residence documents in the municipality where he resides if he comes to Belgium on order to pursue economic activities.

If **non-EU citizens** wish to come to Belgium to work, they must apply for a visa 'long stay' to the Belgian Embassy competent for their country of residence. Additional information about the procedure and required documents can be found on our website:

NL:

https://dofi.ibz.be/sites/dvzoe/NL/Gidsvandeprocedures/Pages/In_Belgie_werken.aspx

FR: <https://dofi.ibz.be/sites/dvzoe/fr/Pages/home.aspx>

EN: <https://dofi.ibz.be/sites/dvzoe/en/Pages/home.aspx>

Should you require additional information you can always contact the info desk. (infodesk@ibz.fgov.be – phone: 032 2 793.80.00).

If EU citizens come to Belgium to work, they should report to the municipal authorities of their temporary place of residence. This does not apply for those staying at a hotel, a youth hostel or a campsite. You will receive an acknowledgment of receipt or an 'Annex 3ter'.

Article 41a of the Act of 15 December 1980 on the access to the territory, residence, establishment and expulsion of aliens.

NL :

[https://dofi.ibz.be/sites/dvzoe/NL/Gidsvandeprocedures/Pages/Recht op verblijf - 3 maanden.aspx](https://dofi.ibz.be/sites/dvzoe/NL/Gidsvandeprocedures/Pages/Recht_op_verblijf_-_3_maanden.aspx)

FR: [https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le droit de s ejourner - de 3 mois.aspx](https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le_droit_de_s_ejourner_-_de_3_mois.aspx)

EN: [https://dofi.ibz.be/sites/dvzoe/EN/Applicationguides/Pages/STAYING less than 3 months.aspx](https://dofi.ibz.be/sites/dvzoe/EN/Applicationguides/Pages/STAYING_less_than_3_months.aspx)

4)Provide proof of entrepreneurial skills:

A self-employed from outside the European Economic Area must prove basic knowledge of business management. Moreover for a large number of regulated professions, such as contractor in building, painting, electricity , ... a proof of specific professional skills is also required.

Co-ordinates of the competent instances:

Flanders

Agentschap Ondernemen

Koning Albert II-laan 35 bus 12
1030 Brussels

Phone: 0800 20 555

<http://www.vlaanderenonderneemt.be/start/welke-ondernemersvaardigheden-moet-u-bewijzen>

Brussels

Brussels Economy and Employment

Dienst Economie

Kruidtuinlaan, 20
1035 Brussels

Phone.: 02 800 35 93

Phone: 02 800 33 61

<http://www.werk-economie-emploi.irisnet.be/nl/> (select your language)

Wallonia

Service public de Wallonie

Place Joséphine-Charlotte 2
5100 Namur (Jambes)

Phone. : 0800 11 901

<http://www.wallonie.be/fr/demarche/theme-list/12>

Foreign companies in the European Economic Area do not have to prove their entrepreneurial skills according to Article 5 of Directive 2005/36 of the European Parliament and the Council of 7 September 2005, if temporary and occasional work is executed without establishment in Belgium and if they:

1) are legally established in their country of origin to exercise the same profession;

and

2) have pursued that profession for at least 2 years during the ten years preceding the operations

The condition requiring a two years' pursuit of the profession shall be void if the profession is regulated in the country of origin.

5) Hold a professional card:

In order to work in Belgium as a **non-EU self-employed**, a foreigner usually needs a professional card.

Flanders

<http://www.vlaanderen.be/nl/ondernemen/vergunningen-en-regelgeving/beroepskaart-voor-vreemdelingen>

Brussels

<http://www.werk-economie-emploi.irisnet.be/nl/carte-professionnelle-pour-ressortissants-etranagers> (select your language)

Wallonia

<http://www.wallonie.be/fr/demarche/theme-list/12>

C) Obligations as an agency

1) For their workers posted to Belgium foreign employment agencies must comply with the same obligations as the employers posting workers to Belgium (see point A)

2) Obtain prior approval as an employment agency:

The provision (lending) of personnel is basically prohibited, except by a recognized agency. The activity of an agency in Belgium also requires prior

approval by the competent authorities (Walloon Region, Brussels Capital Region Flemish Community, German Community) depending on the region where the worker is employed. For additional information see:

Flanders:

<http://www.werk.be/online-diensten/bureaus-private-arbeidsbemiddeling/erkenning-van-uitzendbureaus>

Wallonia:

http://emploi.wallonie.be/Pour_Vous/agences_placement1.html

Brussels Capital Region:

<http://www.werk-economie-emploi.irisnet.be/agences-d-emploi-privees>

German-speaking community:

http://www.dglive.be/desktopdefault.aspx/tabid-274/5241_read-34546/

D) Tax obligations

Belgium has concluded treaties with several countries regulating the applicable taxation rules . These treaties can be consulted on www.fisconet.fgov.be.

For additional information on your specific situation, please contact the:

FPS Finance

General Administration of Taxation

International – Belintax

North Galaxy Tower A – 15

Koning Albert II –laan 33 box 26

1030 Brussels

Phone 0032 257 634 70 or

belintax@minfin.fed.be

E) Labour inspection and sanctions

1. Various social inspection services supervise the implementation of the social legislation for which they have been declared competent by the legislator.

For additional information regarding their coordinates, powers, means of action see: <http://www.siod.belgie.be/siodsirs/default.aspx?id=19872>

2. Non-compliance with the obligations set out in sections A, B and C can be sanctioned with criminal penalties, which, depending on the gravity of the infringement, can amount to 36,000 euros per worker involved Depending on the case, criminal or administrative prosecution is possible (administrative fines)
3. Penalties are mentioned in the Social Criminal Code of 2 June, 2010, Articles 101, 102 and Article 52 of the Act of 5 March 1952 concerning the surcharges on criminal fines .

Penalty Levels

sanctions

level 1	imprisonment	criminal law sanctions	administrative fines 60 to 600 euros
level 2		300 to 3000 euros	150 to 1500 euros
level 3		600 to 6000 euros	300 to 3000 euros
level 4 euro	6 months to 3 year and/or	3600 to 36000 euros	1800 to 18000

4. Non-compliance with certain obligations can also have other consequences. For some of which your client, the Belgian user, may equally be liable.

-the prohibited "provision" of staff. For additional information see:

NL: <http://www.werk.belgie.be/defaultTab.aspx?id=3470>

FR: <http://www.emploi.belgique.be/defaultTab.aspx?id=3470>

- -the joint liability for wages. For more information see:

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- NL: <http://www.werk.belgie.be/defaultTab.aspx?id=442#AutoAncher4>

FR: <http://www.emploi.belgique.be/defaultTab.aspx?id=442>

- -penalties for illegal employment of foreign workers from outside the EEA:

- <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30db7dee9586f8e148a0b246926c7f1726e8.e34KaxiLc3qMb40Rch0SaxuLbNz0?text=&docid=131162&pageIndex=0&doclang=NL&mode=req&dir=&occ=first&part=1&cid=6685127>

(select your language)

-false self-employed. For additional information see:

NL : <http://www.werk.belgie.be/defaultTab.aspx?id=42017>

FR: <http://www.emploi.belgique.be/defaultTab.aspx?id=42017>

5. The Labour inspection maintains close contacts with its foreign counterparts, as well for the verification of the A1 documents through SPOCs as for other information through IMI, the official communication platform of the European Union for competent supervising authorities: http://ec.europa.eu/internal_market/imi-net/index_en.html (select your language)

The exchange of information allows us to collect evidential material related to violations committed by foreign companies in Belgium as well as information regarding their status and activities in their countries of origin.

