

Posting of Temporary Agency Workers in Europe Country Fact Sheet - Belgium

Country:	Belgium
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National Regulation and provisions applicable to posted temporary agency workers

I. Employment and Working Conditions for posted temporary agency workers coming into your country

If any of this information is not available or unclear in current legislation please indicate in the box. If you know of practical examples please give details below.

Element of national regulation	Qualitative information on your country
<p>Definition of a posted temporary agency worker according to national legislation and collective labour agreements in the TAW sector.</p> <p>Does a temporary agency worker posted into your country have the same legal status as a temporary agency worker employed directly? If not please explain.</p>	<p><i>Posted workers: workers who carry out work in Belgium and either usually work in the territory of one or more countries other than Belgium, either have been hired in another country than Belgium (art. 2 of the Act of 5 March 2002).</i></p> <p><i>Yes. An employer who posts his workers to Belgium must, for work carried out in Belgium, comply with the working, wage/salary and employment conditions laid down by Belgian law, administrative regulations or agreements which are subject to the provisions of penal law (art. 5(1) of the Act of 5 March 2002).</i></p> <p><i>However, this rule is without prejudice to the application of any foreign working, remuneration and employment conditions that are more favourable for the worker concerned.</i></p>
<p>Relevant and applicable provisions on equal treatment & equal pay for temporary agency workers.</p> <p>Do these apply to posted temporary agency workers?</p>	<p><i>See article 10 of the Act of 24 July 1987.</i></p> <p><i>During the period of temporary work, the temp is entitled to the same wage/salary as that which he would have earned if he had been taken on by the user as a permanent employee.</i></p> <p><i>Yes. However, this rule is without prejudice to the application of any foreign working, remuneration and employment conditions that are more favourable for the worker concerned.</i></p>



<p>Maximum work periods per day and per week for posted temporary agency workers.</p> <p>Is night work permitted for posted temporary agency workers? If so how many hours are allowed?</p>	<p><i>These matters are provided for in the Labour Act of 16 March 1971 and the Act of 5 March 2002.</i></p> <p><i>In Belgium, working time may not exceed eight hours a day. Moreover, daily work must in principle be performed between 6 am and 8 pm (because of the ban on night work).</i></p> <p><i>However, daily working time may be increased as follows:</i></p> <ul style="list-style-type: none"> - <i>9 hours if the worker does not work more than 5½ days a week (work schedule in which the worker, in addition to his weekly day of rest, has at least half a day's rest);</i> - <i>10 hours if the workers are absent from home for more than 14 hours a day because of the distance between the workplace and their place of residence or stay.</i> <p><i>In Belgium, working time may not exceed 40 hours a week.</i></p> <p><i>In principle, night work is prohibited. "Night work" means any work performed between 8 pm and 6 am. This rule applies without distinction between male and female workers. There are a number of derogations from this principle.</i></p>
<p>Minimum rest periods per day and per week for posted temporary agency workers.</p>	<p><i>These matters are provided for in the Labour Act of 16 March 1971.</i></p> <p><i>If working time exceeds six hours, the worker must be granted a break. The duration and conditions for granting breaks are laid down by a collective agreement concluded at sectorial level or company level. If there is no collective agreement, the worker should be granted a quarter of an hour's break no later than the moment when the length of work reaches six hours.</i></p> <p><i>Interruption of work means the minimum rest period which the worker enjoys between two work sessions.</i></p> <p><i>Per 24-hour period, i.e. between two daily work sessions, each worker is entitled to an interruption of work of at least 11 consecutive hours.</i></p> <p><i>It is prohibited to employ workers on Sundays. "Sunday" means the astronomical day from 0 to 24 hours (Saturday midnight to Sunday midnight). There are derogations from the prohibition on</i></p>



	<p><i>working on Sundays. These derogations make it possible to employ workers on Sundays in particular sectors or for the performance of particular activities.</i></p>
<p>Applicable minimum rates of pay hourly, weekly or monthly. Is this decided by a collective agreement or by law? How is it enforced?</p>	<p><i>In Belgium, the minimum wage of gainfully employed persons is fixed by collective agreements.</i></p> <p><i>In principle, the minimum wage scales are laid down per sector by the competent joint committee. The collective agreements concluded within these committees include provisions designed to determine the general basis for calculating wages/salaries according to the various levels of qualifications and posts. These scales indicate the gross wage/salary.</i></p> <p><i>For workers posted to Belgium, only the collective agreements that have been declared to be generally binding (i.e. those subject to penal law) are applicable.</i></p> <p><i>The determination of the joint committee to which a particular undertaking belongs depends on that undertaking's principal activity. To find out to which joint committee the undertaking belongs, please contact the Social Legislation Inspectorate.</i></p> <p><i>If the undertaking belongs to a sector for which the joint committee has not laid down any minimum wage scale, the level applicable is the average minimum monthly income that has been determined at inter-professional level (i.e. applicable throughout the private sector).</i></p> <p><i>From 1 September 2010 this is:</i></p> <ul style="list-style-type: none"> - €1,415.24 for workers aged 21 and over - €1,452.80 for workers aged 21½ with six months' seniority - €1,469.48 for workers aged 22 with twelve months' seniority <p><i>For temporary agency workers see article 10 of the Act of 24 July 1987:</i></p> <p><i>During the period of temporary work, the temp is entitled to the same wage/salary as that which he would have had if he had been taken on by the user as a permanent employee.</i></p>
<p>Applicable wage supplements, sick pay, social security, overtime and night work rates & allowances for temporary agency workers.</p>	<p><i>See article 10 of the Act of 24 July 1987</i></p> <p><i>During the period of temporary work, the temporary agency worker is entitled to the same wage/salary as that which he would have earned if he had been taken on by the user as a permanent</i></p>



	employee.
<p>Applicable provisions and legislations on health & safety at work.</p> <p>Whose responsibility is it to ensure these provisions/laws are enforced (user company or temporary agency)? Which organisation is responsible for the health and safety of the workers?</p>	<p><i>Chapter IV of the Welfare Act of 4 August 1996 – Act of 24 July 1987 on temporary work, temporary agency work and supplying workers to user companies – Royal Decree of 15 December 2010 providing measures on health and safety at work of temporary agency workers.</i></p> <p><u>User Company</u></p> <ul style="list-style-type: none"> - <i>During the period of temporary work, the user company is responsible for the application of the dispositions of the legislation regarding regulation and protection at work that are applicable to the workplace.</i> - <i>In accordance with the collective labour agreement of 10 December 2001 on welcoming temporary agency workers, the user company has to provide the temporary agency workers with information regarding safety in the company at the very beginning of the assignment (equipment and facilities, ...).</i> <p><u>Temporary work agency</u></p> <ul style="list-style-type: none"> - <i>The temporary work agency has to ensure, “as a good father”, that work is carried out under good conditions with regard to health and safety of workers.</i> - <i>The temporary work agency is responsible for the medical examination aimed to check the capacity for work of the temporary agency workers.</i>
<p>Minimum paid annual holiday (no. of days, rates) posted temporary agency workers are entitled to.</p>	<p>Coordinated laws of 28 June 1971 on the annual holidays of workers - <i>Act of 5 March 2002.</i></p> <p>For blue-collar workers, the number of vacation days is determined by the number of days worked (or considered as equivalent) that were declared to the National Social Security Office in the previous year. If the total number of days worked (or considered as equivalent) amounts to 231 or more, the blue-collar worker is entitled to 20 days’ statutory holiday.</p> <p>White-collar workers are entitled to 2 days’ vacation per month worked (or considered as equivalent) in the previous year, which accounts for 4 weeks’ vacation (under the 5 day week system).</p> <p>Temporary agency workers have the same rights than the standard workers.</p>



Main, general provisions of collective labour agreements concluded in the TAW sector that are relevant to posted temporary agency workers	Act of 24 July 1987 Act of 5 March 2002 Collective labour agreement Joint Committee 322
Specific provisions on posted temporary agency workers in the collective labour agreements in the TAW sector	

II. Conditions for temporary work agencies to post a temporary agency worker in your country

Element of national regulation	Qualitative information on your country
Requirement to obtain a license	<i>In Belgium, temp agencies are subject to prior authorisation without which a temp agency cannot lawfully engage in temping activities. The rules relating to authorisation conditions and procedures fall within the competence of the different Regions (Flemish Region, Walloon Region, Brussels Capital Region).</i> <i>Flemish Region: Decree of 10 December 2010 on private employment agencies in the Flemish Region</i> <i>Walloon Region: Decree of 3 April 2009 on registration and license of private employment agencies</i> <i>Brussels Capital Region: Order of 26 June 2003 regarding the joint management of the labour market in the Brussels Capital Region</i>
Requirement to establish in the receiving country	<i>No obligation for EU agencies</i>
Mandatory Declarations	
Sectoral bans for temporary agency work activities	<i>In particular cases, it is prohibited to make use of temping services. This applies when there is a strike or lock-out in the user's undertaking. Temping is also forbidden or limited to certain situations in a limited number of sectors:</i> <ul style="list-style-type: none"> - <i>Removals and furniture storage (blue-collar workers)</i> - <i>Building industry</i> - <i>Inland water transport</i> - <i>Public sector</i>
Applicable reasons for use of temporary agency work services	<i>Temping is possible only for the execution of types of temporary work permitted by law. The cases of temporary work permitted by law are as follows:</i> <ul style="list-style-type: none"> - <i>for the replacement of a permanent employee</i> - <i>to meet the demands of a temporary increase in work</i>



	- to ensure the execution of exceptional work
Applicable minimum and maximum length of temporary agency work assignments	See scheme annex I
Restrictions on labour contracts to be offered to posted temporary agency workers	Royal Decree of 18 December 2008 on employment of foreign workers in Belgium The Bulgarian and Romanian nationals do not yet benefit from the free movement of workers. In principle they still need to obtain a work permit when they want to work in Belgium.
Which services (if any) do you provide for the posted temporary agency workers? Are these workers charged any fees for these services?	None

Additional Information – Useful public sources

Do you know the country of origin of the posted temporary agency workers in your country/organization? If so please give details.	The public authorities have access to these data thanks to the Limosa declaration.
Useful websites (Labour inspectorate, Ministry of Labour, Trade Union information etc...)	Employers federation www.federgon.be Ministry of Labour www.werk.be www.emploi.wallonie.be www.bruxelles.irisnet.be www.werk.belgie.be http://www.employment.belgium.be/defaultTab.aspx?id=6224 Trade Unions www.abvv.be/interim www.aclvb.be www.csc-interim.be
Contact people from the national social partner associations in the TAW sector	Paul.Lootens@accg.be Pascale.Wirken@accg.be
Relevant publications	www.federgon.be

If you have any questions on this factsheet, please contact the European Sectoral Social Partners:

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