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NOTICE

New rules in European Drivers Posting in Italy

Ministry of Labour aims to recover the delay so far accrued: a website has been created to supply instructions in English about rules and instructions to distribute documentation.

Last December 26, [as we previously informed our readers](#), the [legislative decree 2016 July 17, N° 136](#), was put into effect with [directive 2014/67/EU of European Parliament and of Council, 2014 May 15](#), concerning the application of [directive 96/71/CE](#) about workers posting within services supply.

According to [Ministerial Decree, approved in 2016 August, and published on the Italian Official Gazette only at the end of October](#), each European enterprise posting their own workers in Italy for a certain time, regardless the duration, is obliged to inform the Ministry of Labour, with advanced declaration, and to be able to abide by the minimum levels of working conditions required by provisions and by collective labour agreements for those workers supplying same services in the country where they have been posted.

In particular, if the posting is in Italy, it is regulated by legislation, administrative recommendations and provisions of the collective labour agreements with specific regard to minimum rates of pay (including overtime rates) and a series of rules protecting psychic-physical health of the worker.

In order to provide to European enterprises every possible information about how to proceed when posting in Italy own workers, the Ministry – formally on time, but severely late as far as the interest of enterprises is concerned – has finally launched a website in both languages: Italian and English: <http://www.distaccoue.lavoro.gov.it/Pages/Home.aspx?lang=eng>

In this website are described all the news which can help to follow the rules. In particular, the Ministry stresses on the respect of following components:

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Minimum rates of pay (including overtime rates)

Although Italy does not have a statutory minimum wage, wages are fixed in the national collective agreements for the different industrial sectors by the most representative trade union organizations at national level, in compliance with Article 36 of the Constitution which lays down the right to a fair wage, in proportion to the quality and quantity of the work

Maximum work periods and minimum rest periods:

the provisions and the sanctions regime concerning working time and rest periods are provided for by Legislative decree No 66/2003.

However, mobile workers, as drivers operating in goods transportation, will follow working and rest time limit as per legislative Decree 2007 November 19, N°234, concerning the introduction into Italian rules of those provisions of the Directive 2002/15 /CE about the working time organization of mobile road transportation workers.

This Directive reconfirms 48 h/weekly as working time limits – with a max of 60 h/w – provided in the total four-month period the weekly average is still of 48 h.

The Legislative Decree 234/07, however, allows a specific exception (up to an average of 58 h weekly in the semester, with a max extension up to 61 h) which falls under the union bargaining as established in the CCNL.

Minimum paid annual holiday: the provisions and the sanctions regime concerning working time and rest periods are provided for by Legislative decree N° 66/2003. **The worker is entitled to a minimum of 4 weeks of paid annual holiday.**

Conditions applying to temporary workers: conditions of hiring out workers through temporary work agencies are provided for by [Article 35 of the Legislative Decree N° 81/2015](#). **For their entire working period, agency workers are entitled to at least the same pay and the same conditions for equal work as those who are employed directly by the "user" company.**

The "user" company is committed jointly with the temporary staff provider to pay the worker's salary as well as the relative social insurance contributions (Article 35 of the above-mentioned Decree).

Health, safety and hygiene at work: the provisions and the sanctions regime concerning health, safety and hygiene at work are provided for by [Legislative Decree N° 81/2008](#).

Rules concerning the terms and conditions of employment of women who are pregnant or who have recently given birth, of children and of young people:

Legislative decree N° 151/2001 provides for maternity and paternity support and protection; the law of 17 October 1967, N° 977 provides for the protection of child and adolescent workers.

Equal treatment for men and women and other provisions on non-discrimination: Legislative decree N° 198/2006, contained in the Equal Opportunities Code, provides for equality and non-discrimination for equal rights between men and women

A Observatory on the application of the legislation is to be created

[The website of the Ministry](#) describes the conditions to be respected regarding the above themes and announces the imminent setting up of an Observatory, already contained in the [legislative Decree 2016 July 17 N° 136](#), and not yet put into effect.

The Observatory will provide to both employers posting their workers in Italy and posted workers, further supportive elements to the correct understanding of rules.



[The website](#) will also give guidelines to workers for the protection of their rights, mentioning the organizations they can address themselves.

The most important part of this website is the link to the application through which the employers must send the advanced declaration about posting workers as per [legislative decree 2016 July 17 N°136](#) and [ministerial decree of last August](#).

FINALLY SOME 'OF CLARITY

THE [CIRCULAR LETTER OF MINISTRY OF LABOUR DATED 22 DECEMBER](#) SHED LIGHT ON A SERIES OF MATTERS WHICH HAD CREATED UNCERTAINTIES IN THE WEEKS PREVIOUS TO THE ENTRY INTO FORCE OF LEGISLATIVE DECREE.

The [Circular](#) has indeed confirmed that, as far as goods international road transportation is concerned, the advanced declaration by foreign enterprises must be sent only if their workers are used, besides international transport towards Italy, also in cabotage operations on Italian territory.

Furthermore, following pressure from Italian Association of Road-Transport, the Ministry of Labour clarified that, in this moment, the model **UNI_DISTACCO_UE** and the subsequent application cannot be utilized, and instead a specific model called **UNI_CAB_UE** must be used.

The model **UNI_DISTACCO_UE** must be sent by employer using the application available on the portal of the Ministry ([cliclavoro portal](#)), registering himself as “Company” and acquiring credentials.

As far as European transportation enterprises are concerned, those using their employers in cabotage operations in Italy, once registered on cliclavoro Portal and acquired Company credentials, they can forward Model **UNI_CAB_UE** directly to mail address Cabotaggio.DistaccoUE@lavoro.gov.it

This declaration, and this is the other crucial difference in comparison with what decided by other European countries (France, Germany), must be sent at least 24 hours prior any posting operation is started; in other words 24 hours before any cabotage operation on Italian territory will begin.

This declaration will stay valid until the driver will be busy in the cabotage operation (at the moment: max three journeys, or max one week) and it must be repeated for any further trip to Italy where cabotage operations are expected.

Example: *the employer of a driver who leaves Wednesday from Frankfurt and delivers Thursday morning in Milan, loading again Thursday at 5 pm and goes to Verona, must do the mandatory declaration at least 24 hours prior 5 pm of Thursday and not on Tuesday morning which is 24 hours prior the departure from Frankfurt.*

FURTHER COMMITMENTS

There still are further commitments for those enterprises posting workers in Italy, regardless it is a real posting or cabotage operations.

- **maintain for inspection, all the documentation-hard or electronic copies in Italian- relating to the employment of the posted worker** (contract of employment, or other document containing the information set down in Articles 1 and 2 of Legislative decree No 152/1997), payslips, timesheets, documents that demonstrate the payment of remuneration as well as certification regarding legislation on applicable social security (form A1) and public registration of the establishment of the working relationship (for the entire period of posting and up to two years following its termination).
- **designate a liaison officer domiciled in Italy to liaise with the competent authorities.** Failing this, the registered office or company premises of the Italian employer will be considered the liaison office of the foreign posting company (for the entire period of posting and up to two years following its termination).



- **designate a person, not necessarily the same as the one above, who will have the role of legal representative, for the purpose of putting the interested social partners in contact with the service provider for possible collective negotiations;** this person does not have to be present at the workplace of the posted worker, but must be available if there is a duly motivated request (for the entire period of posting and up to two years following its termination).

Source: Assotir

U slučaju potrebe za dodatnim informacijama ili podrškom, slobodno nas kontaktirajte!

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