

When a company with activities relating to Public Works posts employees to France, it is required, with the exception of exhaustively listed exceptions, to affiliate to the CNETP [National Fund for Public Works Contractors in France and Overseas].

This situation gives rise to specific formalities vis-a-vis its relationship with the Fund.

WHAT IS POSTING ?

Posting, for a foreign company legally established outside France, consists in sending employees, with whom it is bound by an employment contract, to France on a temporary basis, to carry out work there (Art. L.1262- 1 et seq. of the French Labour Code).

Posting can be carried out :

- directly on behalf of an employer of foreign employees,
- for the benefit of establishments of the same company / companies belonging to the same group,
- by a temporary employment company established outside France.

CNETP MEMBERSHIP OBLIGATION AND REQUIRED CONTRIBUTIONS

- **As a matter of principle and in accordance with the provisions of the French Labour Code (Art. L.1262- 4 and D.3141-14), any foreign company carrying out a Public Works contract in France must, from the first day of posting of its employees in France, join and declare their posted staff to the CNETP.**

Indeed, the conditions of subjection to the Funds form part of the “social nucleus” that a foreign company posting employees to France is required to comply with and the application of the paid leave funds scheme to this foreign company is legally provided for.

In such a situation, all CNETP membership conditions apply identically to a foreign company posting staff to France (including in terms of declaration and payment), subject to certain adaptations aimed at simplifying the procedures to be carried out.

The foreign company will only be required to pay the CNETP contributions for paid leave, seasonal and weather-related unemployment and the OPPBTP [French Organisation for Prevention of Occupational Hazards in the Construction Industry] for the entire period of posting. In return, posted employees will be able to claim the benefits corresponding to each of these contributions.

The rates applicable to a foreign company are exactly the same as those applicable to a French company.

Other contributions that the funds collect (Professional Federations, APAS, etc.), which are mostly optional, are not payable, as a foreign company is not intended to benefit from the resulting services given its temporary operations in France.

- **By way of derogation from this rule of principle, 2 exceptions to the membership obligation of a foreign company posting staff are provided for (Art. D.3141-26 & 27) :**
 - if a foreign company is able to prove that posted employees benefit in their country of origin from leave rights equivalent to those provided for by French law;
 - if a foreign company is able to prove that in its country of origin there are institutions equivalent to paid leave funds and that it is up to date with its obligations vis-a-vis these institutions.

To this end, the UCF (Union des Caisses de France - Réseau des Caisses de congés payés) [French Union of Funds – Paid Leave Funds Network] has signed agreements with various European paid leave funds to organise exemption rules vis-a-vis French funds as soon as the foreign company can certify that it declares employees temporarily posted to France to a national paid leave fund and that it will continue to contribute to it for the entire duration of the posting.

3 agreements were signed with:

- ULAK (German Paid Leave Fund),
- BUAK (Austrian Paid Vacation Fund),
- CNCE (Italian Paid Leave Fund).

NOTE: the agreements concern only the paid leave scheme and not the seasonal and weather- related unemployment scheme.

COMPETENT PAID LEAVE FUND

The territorially competent Fund varies according to the geographical location of the foreign company (within the European Union "EU" or outside it) and according to the affiliation of posted employees to French social security.

In principle, European regulations for the coordination of social security systems allow workers from an EU Member State posted to another Member State to remain affiliated to their social security system of origin.

The rules for determining the relevant paid leave fund are as follows :

Foreign company in the EU / EEA *		Foreign company outside the EU / EEA *	
Application of the European regulation for the coordination of social security systems		Bilateral social security agreement	No bilateral social security agreement
If posted employee continued with social security of origin (possible for 24 months, with exceptions)	If posted employee affiliated to French social security	The employee remains affiliated to social security of origin	The employee is affiliated to French SS (Urssaf Bas-Rhin one- stop centre)
The competent fund is the CNETP if the project concerned is a public works project	The competent fund is the CI-BTP one-stop centre, i.e., the CIBTP Ile de France fund, regardless of the project's location	The competent fund is the CNETP if the project concerned is a public works project	The competent fund is the CI-BTP one-stop centre, i.e., the CIBTP Ile de France fund, regardless of the project's location

* EEA (European Economic Area): 28 EU Member States + Iceland, Lichtenstein, Norway and Switzerland

For the purposes of simplifying management and in order not to complicate the procedure for affiliation of foreign companies to the funds, a foreign company may maintain the first fund of affiliation for its future postings, even if it is required to operate within projects whose activity does not come under the aforementioned fund.

 In practice, a foreign company that has been affiliated to the CNETP under a posting for a Public Works activity must use this fund again for its further postings even if they concern a Building activity under a Building fund.

ADMINISTRATIVE FORMALITIES RELATED TO THE AFFILIATION OF A FOREIGN COMPANY

The applicable formalities are strictly identical to those of a national company, subject to some modifications to facilitate the procedures of a foreign company.

A foreign company must send the CNETP :

- the identification form that provides information on the actual activity of the company and checks whether it does come under the CNETP,
- the membership form,
- a K-Bis [business register] extract from the company if such registration exists in its country of origin,
- the form of commitment to pay charges to the social security body in the country of origin,
- a RIB (bank identity statement) of the company and of each of the posted employees.

SPECIFIC ASPECTS APPLICABLE TO PAID LEAVE ALLOWANCES PAID TO POSTED EMPLOYEES

Leave entitlement for posted employees will be calculated strictly according to the same methods as those applicable to French employees under the applicable legal and contractual provisions, whether in terms of generating or calculating paid leave entitlement.

Conversely, 2 specific aspects apply concerning:

- firstly, the time when payment of paid leave allowances to posted employees is made.

As an exception to the normally applicable rule which requires that the payment of the paid leave allowance be made at the end of the reference period concerned and by the earliest in May, the paid leave allowances of posted employees are paid to them at the end of their posting. By definition, posted employees are required to work temporarily in France and are supposed to return to their country of origin at the end of the posting ;

- secondly, the social security regime applicable to paid leave allowances paid differs.

Foreign companies employing posted workers are not affiliated to social security contribution collection bodies (including URSSAF), since affiliation to the social security system of origin continues. As a result, no social security charges, whether employee or employer charges, are deducted from paid leave allowances.

In addition, when the CNETP pays paid leave allowances to employees, it also pays their employer a contribution to the employer's social security charges relating to it so that the foreign company can make the necessary adjustments with the social security system of origin.

