



Secondment and intra-group mobility of salaried workers, third country nationals

1. Secondment

Operations as part of a transnational service provision, carried out by firms who send salaried workers to Luxembourg, as long as there exists a working relation between the sending firm and the posted worker for the duration of the secondment.

It consists in a **temporary affectation** of the worker by the employer to a different working place as mentioned in the work contract. During the period of secondment the working relation between the employer and the worker must be **maintained**.

The article L.141-1 of the “*Code du travail*” states three hypothesis covering employees sent to the territory of the Grand-Duchy.

Art. L.141-1 (2) By secondment we understand as in paragraph (1) preceding, the following operations carried out by the concerned firms, for as long as there exists a work relation between the sending firm and the posted worker for the duration of the secondment:

- 1. the secondment of a salaried worker, even if for a short or preset period, in the name and under the direction of the firms as stated in paragraph (1) of the present article, on Luxembourg territory, as part of a contract concluded between the sending firm and the recipient of the provided service based in Luxembourg or carrying out their activity in Luxembourg;*
- 2. the secondment, even if for a short or preset period, of a salaried worker on Luxembourg territory to an institution belonging to the sending firm or to a firm belonging to the same group as the sending firm;*
- 3. the secondment, without prejudice of the application of Titel III of the present book, by an intermediate firm or as part of a service provision of a salaried worker to a using firm based or carrying out their activity in Luxembourg and even so for a short or preset period.*

The secondments concerned by points 1. to 3. preceding must be carried out as part of a contract of service provisions relative to a precise object or activity limited in time and ending with the execution of the object of the contract.

By **posted worker**, we understand all salaried workers normally working abroad and carrying out their work on Luxembourg territory for a preset period for the execution of the service provision for which the contract of service provision was concluded. The foreign worker is sent to Luxembourg for a limited period of time, with maintenance of a relationship of subordination with the sending firm.

Normally =

- firm based in the EU: no minimal seniority required before secondment
Conforming to the directive, the concept of « regular and usual work » does not go with a residence or employment condition of a preset duration of time in the member State where the service providing firm is based.
- firm based outside the EU: minimal seniority of 6 months – open-ended work contract (article 48§4 modified law on free movement of people and immigration)

Preset duration of time =

The limited duration of time is considered by the duration, the frequency, the periodicity and the continuity of the service provision as well as in relation to the nature of the activity that is the object of secondment (article L.141-1 §3 of the “Code du travail”).

Contract of transnational service provision =

Concluded between the sending firm and the recipient of the service provision based on carrying out its activity in Luxembourg and concerning the precise object or activity limited in time and ending with the execution of the object of the contract.

The modified law of 29 August 2008 on the free movement of people and immigration makes a distinction between firms based outside the EU and those based inside the EU, as contrary to the “Code du travail”.

The article 48 of the above-mentioned law is about the firms based outside the EU posting third country nationals to Luxembourg:

1. The temporary secondment must be part of a **contract concluded between the sending firm and the recipient of the service provision** carrying out its activity in Luxembourg.
2. It is the **sending firm** that requests the authorisation of secondment by specifying the workers to be posted, the nature and duration of the work and the exceptional circumstances that allow to admit that the local labour market will not be affected.
3. The sending firm has to prove that the worker to be posted has been linked to them by an open-ended work contract for at least 6 months before the secondment.
4. To be able to issue an authorisation to stay, following documents concerning the worker’s stay must be enclosed: valid passport, birth certificate and police record.
5. The sending firm will receive a **collective authorisation of secondment** for the preset duration of time to accomplish the service provision as well as the authorisation to stay for the posted workers.
6. The commission for salaried workers **can** be consulted in case of an application for an authorisation of secondment to check if the local labour market is affected.
7. A copy of the collective authorisation is forwarded to the “*Inspection du travail et des mines*” (ITM) and the “*Agence pour le développement de l’emploi*” (ADEM).
8. The authorisation of secondment can only be renewed in exceptional circumstances duly proved if the service provision could not be finished during the initially set period of time. It is the sending firm that must apply for the renewal that has to be duly motivated.
9. The posted workers that are authorised to reside in Luxembourg must apply for a residence permit within three months of their arrival.

The article 49 of the above-mentioned law is about firms based in the EU posting salaried workers that are EU nationals as well as third country nationals in Luxembourg.

As part of a contract of transnational service provisions, the firm based in another EU member State, a member State of the European Economic Area agreement or the Swiss Confederation can freely post its salaried workers, no matter what their nationality is, as long as the posted workers have **the right to work and reside** in the country in which the sending firm is based.

The salaried worker that is a third country national regularly and usually employed by a European service provider is not subject to a new authorisation to work if he/she comes to Luxembourg temporarily for a service provision. For a service provision of more than three months, he/she must be in possession of an authorisation to stay as a “salaried worker of a community service provider” completed by the name and social reason of the provider and the recipient in the Grand-Duchy of Luxembourg, that will be **issued to him/her automatically**, meaning that the administration will only check if the obtaining conditions are satisfied.

2. Intra-group mobility

<p>A posted worker = salaried worker <u>normally</u> working abroad who is sent to Luxembourg to an institution belonging to the sending firm or to a firm belonging to the same group as the sending firm for a <u>preset period of time</u> to execute the service provision for which the <u>contract of service provision</u> was concluded.</p> <ul style="list-style-type: none">• Contract of service provision between the sending and the hosting firm.• Precise activity limited in time.• Maintenance of the working relationship between the employer and the posted worker.• Maintenance of the relationship of subordination with the sending firm that posts. <p>The salaried activity carried out under an authorisation of secondment does not entitle the bearer to an authorisation to stay as a « salaried worker » conforming to article 43 of the modified law.</p>	<p>Transferred worker = salaried worker linked to the transferring firm by an <i>open-ended</i> work contract and employed by the firm for a certain time to carry out preset tasks so as to have accomplished a certain <u>professional experience</u> of which the hosting firm will benefit.</p> <ul style="list-style-type: none">• Open-ended work contract between the transferring firm and the salaried worker.• Conclusion of a new work contract between the hosting firm and the salaried worker for a <u>specific task</u> and a <u>preset duration of time</u>.• Suspension of the work relation between the employer and the transferred worker.• Relationship of subordination with the hosting firm. <p>The salaried activity carried out under an authorisation of transfer does not entitle the bearer to an authorisation to stay as a « salaried worker » conforming to article 43 of the modified law.</p>
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