

New regulations on social security have come into force

With effect from 1 May 2010, Regulation No 883/2004 and Implementing Regulation No 987/2009 on social security systems have come into force. These regulations supersede the former regulations in this field.

In order to simplify and make the EU provisions on the member states' coordination of social security systems clearer, the European Parliament and the Council have adopted Regulation No 883/2004. The new regulation will make it easier for the EU citizens to exercise their rights to free movement within the European Union. As the new Regulation will only include EU citizens, it will not extend to the EEA countries and Switzerland unless a specific agreement has been made. The former Regulation No 1408/71 will remain in full force and effect for third country citizens who work within the EU.

Persons covered

This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors. It shall also apply to the survivors of persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals of a Member State or stateless persons or refugees residing in one of the Member States.

Transitional provisions

The new Regulation EC 883/2004 contains a transitional provision applicable for ten years whereupon people who are already subject to the social security scheme in a Member State, in accordance with the rules of Regulation EEC 1408/71, will continue to be subject to the former Regulation as long as no substantial changes occur. However, the persons concerned can request that he/she be subject to the rules of the new Regulation.

Employees who are posted can, pursuant to the new Regulation, apply for inclusion in the social security scheme of the home country up to 24 months (contrary to 12 months pursuant to Directive 1407/71).

Substantial changes

In accordance with the former Regulation, posted employees who work in more countries in the event that the employee work regularly in the country of residence, are covered by the social security scheme in that country. In order to sustain the social security coverage in the country of residence, at least 25 % of the work must be carried out in the concerned country. The consequence hereof is that more employees will be covered by the social security scheme of the country in which the work is carried out.

So far, international transport employees have been covered by the legislation of the country in which the employer resides, unless the employee mainly worked in the country of residence, which typically accounts for 50 % of the employees. As Regulation No 883/2004 removes the particular regulation regarding transport employees, the concerned employees will be subject to the ordinary provisions, including the 25 % requirement.

The common practice that the country of residence and the country in which the work is carried out can make an agreement on whether the employee remain covered by the social security scheme of the country of residence up to five years, is expected to sustain. However, it is notably that some countries have approved coverage by the social security scheme up to three years.

In the future, it will not be possible for employees to be covered by the social security scheme in different countries which, in particular, will imply changes for people who are both self-employed and employed. In

the future, the EU Member States will have access to collect welfare benefits and debt from the employee and the employer on behalf of another Member State.

Conclusion

The new rules on social security systems have, among others, impact on the companies that have employees working in one Member State but reside in another Member State or companies that have posted employees in other EU countries.

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