

## LIMOSA

### AIM

On April 28, 2006, the Belgian federal government agreed a legal framework for an electronic system for the monitoring and control of foreign employees in Belgium, which was implemented in the Finance Act of December 27, 2006 (published in the Official Gazette on 28 December 2006 - hereinafter the “Act”). It is supplemented by the Royal Decree of March 20, 2007 (published in the Official Gazette on 27 March 2007 - hereinafter the LIMOSA RD).

The aim is twofold: first, to enable the federal government to establish a clear picture of the foreign employment situation in Belgium and, second, to contribute to combating social security fraud and enable better checks on the application of Belgian law in cases of foreign employment

Proper LIMOSA declarations are intended to make administrative obligations in Belgium much easier, with regard, inter alia, to the following:

- drawing up the labour regulations and documents for part-time employees and keeping them up to date;
- personnel registers;
- individual wage/earnings records;

### WHAT

LIMOSA entails mandatory declarations of the persons falling under the Act (*rationae personae*). The declaration has to be made either by the employer or the host company, or both.

This mandatory declaration is part of a larger LIMOSA project. The Belgian government hopes that LIMOSA will create a better framework for the correct employment of foreign workers in Belgium. Special attention will be paid to their rights and conditions of employment.

Foreign employers who comply with the mandatory LIMOSA declaration enjoy certain benefits. They no longer have to draw up certain Belgian social (workforce) documents (the ‘employment organisation’ aspect) for the relevant assignment.

More specifically, labour regulations are concerned, as is the personnel register and the regulations for checking up on part-time employees. These employers also no longer have to prepare individual (salary) accounting and salary settlements (slips) for each pay period, provided they can submit similar salary documents that have been drawn up in accordance with the law of the country of origin. This way, double salary administration will be avoided.

## **FOR WHOM**

Generally speaking, a declaration must be made for the employment of employees who temporarily or partially work in Belgium but

- normally work in a country other than Belgium, and
- are recruited by an employer not established in Belgium.

The regulations are also applicable to self-employed persons who

- temporarily carry on business in Belgium and
- do not have a permanent residence in Belgium.

In other words, the mandatory LIMOSA declaration applies to all employees who are temporarily or partially employed in Belgium by a non-Belgian employer.

Trainees are also obliged to declare their presence. A person is considered to work as trainee if he does all or part of his traineeship in Belgium as part of a foreign study programme or vocational training. Persons coming to Belgium and working under so-called remunerated traineeships as part of a company programme are not considered trainees within the scope of the Act. They are deemed to be employees.

In the case of successive occasional employment periods in Belgium, a separate declaration is required for each assignment.

For employees who are simultaneously employed by a foreign employer in two or more countries and carry out a substantial part of their activity in Belgium, a one-time notification can be made for 12 months with the possibility of an extension. No notification is needed where an employee works in two or more countries, of which one is Belgium, but is employed by separate employers (i.e. in Belgium by a Belgian employer).

Self-employed people have to notify the social security authorities themselves.

## *EXEMPTIONS*

In addition, not everyone who does cross-border work requires to make a declaration.

For example, there is no mandatory declaration in the following situations<sup>1</sup>:

- employees who live abroad and work only for a Belgian or for a foreign employer in Belgium for an indefinite period (cross-border workers);
- employees such as sales representatives who normally work for a Belgian employer in different countries.

There are also various exemptions from having to make a declaration, depending mainly on the reason why the worker comes to Belgium and the length of his stay.

- **International transport** (except for cabotage activities)
- **Scientific congresses**

Employees and self-employed persons are exempt if they attend scientific congresses and do not stay in Belgium for more than 5 days per month for that purpose.

- **Meetings in a closed circle**

Employees and self-employed persons are exempt if they attend meetings in a closed circle in Belgium for up to a maximum of 5 days per calendar month. This concerns a wide range of meetings: discussions on strategy, negotiations with a customer regarding a contract, evaluation interviews, etc.

For example, the following will be exempt:

- the European manager of a French multinational if he travels to the Belgian subsidiary to conduct evaluation interviews with regional managers in Belgium for two days;
- an Italian manager who follows a two-day training course in Antwerp.

- **Installation and assembly of goods**

Employees and self-employed persons are exempt if they are sent to Belgium for the initial assembly and/or first installation of an item. They must be qualified and/or specialist employees of the company or self-employed person delivering the item. The works may not last longer than 8 days. Moreover, this derogation is not applicable to activities in the construction industry.

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<sup>1</sup> See the accompanying grid.

- **Urgent repair or maintenance work**

Specialist technicians of foreign companies are exempt if they come to Belgium to carry out urgent repair or maintenance work to machinery or equipment delivered by their employer or by a self-employed person to the company where the repair works or maintenance is to be done. These technicians may not stay in Belgium for longer than 5 days per month.

- **Self-employed business people**

Self-employed businesspeople are exempt from having to make a declaration if they do not stay in Belgium for business purposes for more than 5 days per month.

Self-employed company directors and representatives are also exempt if they take part in board meetings and company general meetings for up to a maximum of 5 days per month.

- **Sportspersons**

If they come to Belgium to participate in international sports competitions, they may stay in Belgium only for the duration of the sports competition and for a maximum of 3 months per calendar year.

- **Artists**

Artists of international fame are exempt on condition that their stay in Belgium is required for these activities and does not amount to more than 21 days per quarter. This exemption also applies to accompanying staff who are essential for the show and come to Belgium as employees.

Self-employed artists and their self-employed accompanying staff who do not have their main place of residence in Belgium are exempt if they perform vocational activities and do not spend longer than 21 days per quarter in Belgium for this purpose.

- **Scientists**

Scientists/researchers of a foreign university or scientific institution who normally reside abroad are exempt if they participate in a scientific programme at a host university or scientific institution in Belgium. In order to be exempt, however, they may not stay in Belgium for longer than 3 months per calendar year for this purpose.

- **Government personnel (civil servants)**

Employees who are in the employ of a foreign public service as either a statutory or a contractual staff member are exempt.

- **International institutions**

Employees of public law international institutions established in Belgium are exempt. The institution's constitution must nevertheless be regulated by a ratified convention.

- **Diplomats**

Members of a diplomatic or consular mission are exempt.

- **Posted apprentices and posted self-employed apprentices**

A LIMOSA declaration is not necessary for several categories of apprentices. The following apprentices are exempt for the duration of their work placement:

- o apprentice students who do an obligatory work placement in Belgium as part of their studies or vocational training;
- o self-employed apprentices who do a work placement in Belgium as part of their studies and have a statutory residence permit;
- o self-employed apprentices who do a work placement in Belgium that has been approved by the competent authorities in their country of origin as part of a mutual exchange programme.

Please note that, according to the Royal Decree of 20 March 2007 (published on 27 March 2007), the periods referred to in the Act are to be calculated on a calendar basis (i.e. a calendar month, quarter, year). As such, where, say, a meeting in a closed circle takes place in Belgium (for which the participants are exempt for up to a maximum of 5 days per month), and it starts on March 27, 2007, the participants will be exempt in that month (up to March 31, 2007) and a new period of 5 days will start on April 1, so that the meeting may last until April 5. Please note that only the actual meeting days will count (not weekends, days of arrival, etc.).

## **WHEN**

The declaration has to be made before activities commence on the Belgian territory (as an employee, self-employed person or trainee). If employment on the Belgian territory lasts longer than initially reported, a new notification will have to be sent.

## **HOW**

A LIMOSA declaration is made via a web application (via [www.socialsecurity.be](http://www.socialsecurity.be)). The electronic declaration is fast and easy and the certificate is created at once.

Submitting a declaration on paper is also possible and the certificate will be sent by post or fax.

If the posting does not take place, the declaration must be cancelled.

Content of the declaration:

- Identification of the employee (in Belgium and the country of origin)
- When the person concerned is going to start working in Belgium
- What activities/services the person is going to perform in Belgium
- Place where the person concerned is going to work
- Identification of the client
- Identification of the employer
- The weekly employment time for the employee and time frame

Content of the declaration by the client (see above):

- Identification of the Belgian client
- Where the activities will be performed
- Who is working
- Identification of the foreign company

## **BY WHOM**

The new legislation provides that the foreign employer or his delegate *must*, before the commencement of work activities, give notice that employees of theirs are being posted to Belgium. Notice is basically given electronically (but can also be given by fax or letter). If the employees of the service provider cannot produce the “declaration document” applied for by their employer when commencing work, the client will have to make the necessary notifications.

Self-employed persons have to notify the social security authorities themselves. In principle, acknowledgement of the notification will be issued, and the service provider (contractor) has to provide copies to his clients (the users of the services).

## **EVIDENCE**

Please note that every person concerned needs to be in possession of a declaration notification whenever starting work in Belgium.

## **PENALTIES**

The employer or organisation that sends the employee to Belgium has to make the declaration, but a third party can also do this on their behalf.

The LIMOSA declaration is a legal requirement. Non-compliance can result in criminal or administrative penalties for the employer or his appointee or agent, the posted self-employed person or the institution at which the student is studying. The penalties laid down in the Finance Act are imprisonment (8 days–1 year) and/or fines (EUR 500–EUR 2,500) per infringement (employee) up to a maximum of EUR 125,000.

The party for whom or on whose premises the work is carried out in Belgium is also liable to prosecution if he fails to declare the absence of a certificate to the government. The penalties for failing to declare the absence of a certificate are fines (EUR 250–EUR 2,500) per infringement (employee) up to a maximum of EUR 125,000. If the offence is repeated within a year of conviction, the above maximum amounts can be doubled.

An administrative penalty can be imposed if there is no criminal prosecution.

## **TRANSITIONAL MEASURES**

Foreign employees, self-employed persons and apprentices must therefore declare their activities in Belgium in advance to the government **as of April 1, 2007**. For activities that have already started, there is a transitional period of six months. For example, for an activity that started on March 31, 2007, the first obligatory declaration should be made by September 30, 2007. As for subsequent contracts, the first contract after April 1, 2007, must be declared.

## **INFORMATION**

For further information, please contact Stefan Nerinckx on +32 2 710 78 84 – [stefan.nerinckx@lawfort.be](mailto:stefan.nerinckx@lawfort.be) or any other member of our employment law department ([www.lawfort.be](http://www.lawfort.be)).

## **LAWFORT**

Lawfort can act as an authorised agent for the purposes of making the necessary declarations, especially for clients for whom we already deal with immigration and payroll matters. In cases where your service provider is unable to produce a LIMOSA declaration document to you, we can also act to assist you in this respect.

LIMOSA registrations are charged at a fixed fee of EUR 100 per declaration. If you would like to engage us, we would be glad to send you our service agreement together with the necessary questionnaires we have drawn up in this respect.



We will send you the document issued by the authorities and keep a copy in our records. Furthermore we will track the dates and notify you whenever the 12 month period has elapsed. Finally, the different applications would be harmonised (work permit-Certificate of Coverage-LIMOSA).

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