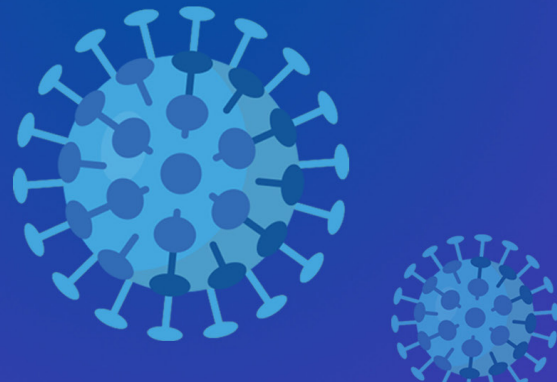




COVID-19

Information for frontier workers and posted workers



30 March 2020¹
#coronavirus

Information for the attention of frontier workers and posted workers affected by the restrictions on free movement of people being imposed by a number of EU Member States as a result of COVID-19

Are you a frontier worker? You are a frontier worker if you work in a Member State different than your Member State of residence (meaning that you go to work in one country, and return regularly to the country where you reside). In case of unemployment, different rules on unemployment benefits apply for those frontier workers who do not go back, in principle, to their place of residence at least once a week.

Are you a posted worker? You are a posted worker if you are temporarily sent by your employer situated in one Member State to work in another Member State in order to carry out a service. For the purpose of your social security coverage, you are considered posted in case you are sent by your employer to carry out any work related activity in another Member State on your employer's behalf, or also if you are self-employed and went abroad to pursue a similar activity to what you normally pursue in your Member State of origin.

This document aims at informing you about the general rules applicable to your work contract and potential measures that you may have to take regarding your health insurance and social security coverage. It does not constitute legally binding information as regards your specific situation.

This document is not addressed to EU citizens who reside and work in a Member State of which they are not nationals². Such EU citizens are entitled to the same treatment as nationals in all respects. Please read in this respect the recent Guidelines for border management measures to protect health and ensure the availability of goods and essential services³.

In particular, Member States must not deny entry to EU citizens residing on its territory. They may be subject to the same limitations in their rights as nationals (including their right to move within or exit the Member State). Member States can also take appropriate measures such as requiring EU citizens to undergo self-isolation or similar measures, provided they impose the same workers are contained in the Communication from the Commission on the implementation of the Green Lanes under the Guidelines for

1. The Commission services are constantly monitoring the situation as it evolves and are assessing whether further information may be needed in due course. This document will be updated regularly in order to take into account developments as they happen.

2. Such EU workers benefit from the safeguards of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

3. C(2020) 1753 final.

border management measures to protect health and ensure the availability of goods and essential services⁴.

The Guidelines concerning the exercise of the free movement of workers outline measures Member States should take to ensure that mobile workers, in particular those in critical occupations to fight the coronavirus pandemic, can reach their workplace⁵.

The Commission urges Member States to establish specific burden free and fast procedures for border crossings to ensure a smooth passage and invite Member States to take specific measures ensuring a coordinated approach at EU level.

Some countries are putting in place administrative arrangements and guidance between their public authorities in order to simplify procedures in the field of social security for the benefits of mobile workers⁶. The Commission is encouraging such practice and will identify together with Member States best practices than can be extended to other Member States.



IF YOU ARE A FRONTIER WORKER

According to the *Guidelines for border management measures to protect health and ensure the availability of goods and essential services* and the *Guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak*, Member States should not prevent the crossing of frontier and seasonal workers and should establish specific burden free and fast procedures to ensure their smooth passage.

If you are a frontier worker who is affected by the restrictions imposed by the Member State of your employment as a result of the COVID-19 pandemic, you can find below some information in relation to employment conditions and social security coverage during this period.

What is the applicable law to your contract?

Under EU law (Article 8 of Regulation (EC) No 593/2008 on the law applicable to contractual obligations) the law applicable to individual employment contracts is normally the law of the Member State where the work is habitually carried out. In other words, if due to the restrictions of exit or entry you, as a frontier worker, cannot perform your obligations under the employment contract, the law of the Member State where you habitually work will determine the legal consequences of the impossibility to work. According to Article 7 of Regulation (EU) No 492/2011 on freedom of movement of workers within the Union you should have access to the same social and tax advantages granted by the Member State of your work as those granted to national workers whose movement rights are restricted.

If you are a frontier worker, who cannot go to work in the other Member State and have to telework from your home Member State, do you become a posted worker?

No. You will not be considered as a posted worker under the Posting of Workers Directives⁷. That means that your home Member State's basic employment conditions will not become applicable to you, as there is no service provision/ service recipient in your home Member State. Your employment contract will continue to be governed by the law

4. https://ec.europa.eu/transport/sites/transport/files/legislation/2020-03-23-communication-green-lanes_en.pdf

5. C(2020) 2051 final

6. See for example:

Belgium: https://www.international.socialsecurity.be/working_in_belgium/en/archives.html

France: <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/covid-19-situation-des-travailleurs-frontaliers>

Germany: <https://www.bmas.de/DE/Presse/Meldungen/2020/corona-virus-arbeitsrechtlicheauswirkungen.html>

Netherlands: <https://pers.svb.nl/coronavirus-en-wonen-of-werken-over-de-grens-de-sociale-verzekeringverandert-niet/>

7. Directive 96/71/EC <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0071> and

Directive 2014/67/EU <https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1584454887016&uri=CELEX:32014L0067>

of your Member State of employment as before, unless you agreed with your employer differently. This means in practice that you do not have to introduce any specific request or form in this respect. According to Article 45 TFEU and Article 7 of Regulation 492/2011 on freedom of movement of workers within the Union you should have access to the same social and tax advantages granted by the Member State of your work as those granted to national workers whose movement rights are restricted. As to partial redundancy, frontier workers enjoy the same rights as resident and national workers⁸. Please note also that some countries have already agreed between them and introduced the relevant administrative arrangements to confirm that teleworking would not change the designation of the competent country⁹.

If you are a frontier or a seasonal worker and become wholly unemployed during this period

If you are a **frontier worker** and during this period you become wholly unemployed, you should contact the unemployment insurance institution in your Member State of residence. You will be entitled to unemployment benefits from the Member State of residence under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in the Member State of residence. In case you are a frontier worker who does not go back, in principle, to your place of residence at least once a week, you may search for employment in either the Member State of residence or the Member State of last employment. You should contact the unemployment insurance institution of the Member State in which you decide to look for employment. You will be entitled to unemployment benefits from this Member State under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in that Member State.

If you are a **seasonal worker** and during this period you become wholly unemployed¹⁰, you should contact the unemployment insurance institution of the Member State in which you are insured. If you also normally pursue an activity in the Member State of residence, this should be the Member State where you are insured. In this case, you will be entitled to unemployment benefits from the Member State of residence under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in the Member State of residence.

Which social security legislation applies to you in view of the national restrictions on border crossing and the recommendations to telework due to the COVID-19 pandemic?

In the current scenario, the European rules on the coordination of social security continue to apply. However, the rules offer certain flexibility for workers concerned to remain insured in the Member State where they were insured prior to the COVID-19 pandemic outbreak. The following scenarios and proposed solutions may be applied depending on the situation the workers find themselves in:

If you are a frontier worker working exclusively in a Member State other than the Member State of residence

You are currently insured in the Member State of employment. If you are now unable to work in your ordinary Member State of employment, and for a temporary period, you have to work from home, this situation should in principle not lead to a change in the applicable legislation as regards your social security coverage, since that situation is temporary. You will continue to be entitled to all social security benefits from the Member State of employment.

8. By virtue of Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011.

9. For example, guidelines were issued by Belgium, France, Germany and the Netherlands. Reference available in footnote 5 above.

10. This means you become unemployed in both Member State of seasonal employment and also in your Member State of residence.



IF YOU ARE A WORKER WHO PURSUES AN ACTIVITY IN TWO OR MORE MEMBER STATES

If you are working in both the Member State of employment and the Member State of residence and you are insured in the Member State of employment because your activity in the Member State of residence is not substantial (less than 25% of your working time)

You are currently insured in the Member State of employment. Now that the activity in your Member State of residence is going to increase, it may become substantial (understood as more than 25% of your working time over a period of 12 months). In that case, the legislation of your Member State of residence could become applicable under Article 13 of Regulation (EC) No 883/2004 only if the average working time over a period of 12 months exceeds 25% of your total working time in all Member States. Therefore, the fact that for the next few weeks you will be performing a substantial activity in your Member State of residence, this should not have an impact on your social security situation. You should already be in possession of a Portable Document (PD) A1 issued under Article 13 of Regulation (EC) No 883/2004 by the competent institution in the Member State of employment.

If you are a worker who is working in both the Member State of employment and the Member State of residence, and you are insured in your Member State of residence because already currently your activity in the Member State of residence is substantial (over 25% of your working time)

You are currently insured in the Member State of residence. You should already be in possession of a PD A1 issued under Article 13 of Regulation (EC) No 883/2004 by the competent institution in the Member State of residence. The border restrictions and the teleworking should not have an impact on your social security coverage.

What if the above scenarios are not applicable to your case and as a result of the COVID-19 pandemic, you may end up with a change in the Member State of social insurance?

If your situation is not covered by the above scenarios, and as a result this may lead to a change in your Member State of social security insurance, you may ask your employer to submit a request to the competent authority of the Member State whose legislation you wish to continue to be applied, to continue to be subject to its legislation. The employer should substantiate this request that it is in your best interest to remain insured in the Member State where you are currently covered¹¹.

What if I fall ill while I am either still working in the Member State of my employment, or while I was teleworking from my Member State of residence?

If you work in one EU country and live in another, you are entitled to medical treatment in both countries.

You are most likely already registered in the country where you work and received an S1 form from your health insurance authority (if not yet done, you should register and request such a form, and submit it to any health insurance authority in the country where you live). This form gives you the right to get healthcare in the country where you live, under the same condition as nationals who are insured in that country.

Information on the PD A1 and national contact points

For more information about the PD A1, please consult:

<https://ec.europa.eu/social/BlobServlet?docId=11366&langId=en>

For details of the social security institution responsible for issuing the PD A1, please consult:

https://europa.eu/youreurope/citizens/work/social-security-forms/contact_points_pd_a1.pdf

¹¹. Please see also Part 2 of the guidelines concerning the exercise of the free movement of workers for more information on the possible use of exception agreements.

IF YOU ARE A POSTED WORKER

Do you have to follow rules of the host Member State relating to work?

If you are in the Member State where your employer sent you to provide the services (the 'host Member State') and you will continue to work there, the legislation of the host Member State regarding the basic employment conditions (minimum wage, maximum working and minimum rest time, rules regarding health, safety and hygiene at work etc.) will continue to apply. In case it is not allowed to go to the workplace due to COVID-19 restrictions, you have to respect the rules of the host Member State. However, you will remain entitled to social security benefits from the Member State where you pay social security contributions, and not from the host Member State.

Which social security legislation applies to you in view of the national restrictions on border crossing and the recommendations to telework due to the COVID-19 pandemic?



If you are a posted worker and your activity started before the outbreak of the COVID-19 pandemic

If you are a posted worker and your activity in the other Member State started before the outbreak of the COVID-19 pandemic, you should not be affected by any national restrictions on border crossings, if you are already physically in the Member State to which you were posted. You should continue the posting period as specified on the PD A1 and you will remain insured in the Member State where your employer is established or in which you are normally insured, as a self-employed person.



If you are a posted worker and your activity started before the outbreak of the COVID-19 pandemic, but you move to another Member State for example, during off periods

If you are a posted worker and your activity in the other Member State started before the outbreak of the COVID-19 pandemic, you may still be affected if you exit the Member State to which you are posted, and want to re-enter at a later stage. This is the case if your activity is carried out in a Member State which imposes national entry restrictions on persons coming from outside the country or from certain affected regions. Therefore, before exiting the Member State to which you are posted, you should check with the relevant authorities whether you will be granted access on your return. If you are denied entry and therefore are unable to continue your posting period, your employer should contact the competent institution which issued the PD A1 for further instructions.



If you are a posted worker and your activity was planned to start after the outbreak of the COVID-19 pandemic

If you are a posted worker and your activity was planned to start in the other Member State after the outbreak, the start of your posting period may be delayed due to national entry restrictions in certain Member States. In this case your employer, or you as a self-employed person should contact the competent institution of the Member State which issued the PD A1 for further instructions.



If you are a seasonal worker and your activity was planned to start during or after the outbreak of the COVID-19 pandemic

If you are a seasonal worker and your activity in the Member State where the seasonal work is carried out was planned to start during or after the outbreak of the COVID-19 pandemic, the commencement of your seasonal period of employment may be delayed due to national entry restrictions in certain Member States. In this case, you should contact your employer in the Member State of seasonal employment for further instructions.¹²

Restrictions to free movement imposed by the Member State in the context of the current COVID-19 crisis

Under Article 45(3) TFEU and Directive 2004/38/EC, limitations to the right to free movement of workers can be introduced on grounds of public policy or internal security, including in case of risk posed by a contagious disease. However, the justification for the restrictions is to be narrowly construed¹³ and the restrictions must be necessary, proportionate and be based on objective and non-discriminatory criteria.

Questions about the EU? Europe Direct can help: europa.eu/european-union/contact_en

12. Please see also Part 3 of the guidelines concerning the exercise of the free movement of workers for more information concerning seasonal workers.

13. See to that effect Joined cases 115/81 and 116/81 Adoui and Cornuaille, EU:C:1982:183

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