

# Labour Act amended: daily allowances on business trips 3/5/21



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The Labour Act has been amended with effect from 5 January 2021 to adopt requirements of relevant EU directives.<sup>1</sup> The new rules affect foreign employers posting employees to work in Latvia and Latvian employers posting staff to work abroad, as well as temporary employment agencies. The amendments strengthen the definition of a “posting” and the rules companies must follow when posting their workers. This article also explores key changes to daily allowances on business trips.

## The amendments

Among other things, an employer posting an employee to work in another EU or EEA country, regardless of the law governing their employment contract and employment relationship, is now required to provide the employee with employment terms and working conditions consistent with the national legislation or any collective agreement recognised as generally binding in the host country. This applies also to employment pay levels and reimbursement of daily allowances on business trips.

The amendments provide that –

1. for worker posting purposes the concept of employment pay and mandatory elements (not only the minimum wage and extra pay as before) must be determined in accordance with the host country’s national legislation or practice. Thus, an employer posting an employee to Latvia must meet requirements of the Labour Act and other legislation applicable in Latvia as well as the terms of any generally binding collective agreement concluded in the particular industry;
2. expenses incurred on business trips must be reimbursed subject to restrictions set by the Labour Act.

## The Labour Act’s restrictions on daily allowances on business trips

The case law<sup>2</sup> and public interpretations from government agencies have so far stated that a full daily allowance is an integral part of a posting regardless of its length or the host country. The amendments restrict the compensation as follows:

1. The employer is required to pay a daily allowance at 30% of the statutory rate. In Latvia this is prescribed by the Cabinet of Ministers’ Rule No. 969, Procedures for Reimbursing Expenses Incurred on Business Trips (“Rule 969”);
2. Unless the employment contract or collective agreement provides otherwise, the employer is not required to pay a daily allowance at 30% of the statutory rate if –
  1. the posted worker is offered three meals a day, or
  2. the employment pay due to the posted worker is the same as what a comparable

employee receives in the host country.

However, if the employment contract or collective agreement provides for a 30% daily allowance on business trips, the employer is still required to pay it. Any daily allowance the employer pays on business trips will be treated as reimbursement of expenses and not part of the employment pay.

This daily allowance restriction is also governed by Rule 969, with paragraph 13 requiring that only a 30% daily allowance be paid on all business trips if -

1. the employee is provided with hotel accommodation and
2. at least three meals a day, and
3. there is the CEO's permission.

So, without the CEO's permission (approval) no daily allowance is due, or if one is paid, it is taxable in full.

## Tax treatment

The above also affects the tax treatment of daily allowances on business trips, which were non-taxable income before 5 January 2021 subject to the limits set by Rule 969. The excess was treated as taxable income and taxed as part of employment pay. Under the new rules, all amounts paid over the limit set by the Labour Act are treated as a benefit for the employee and not as compensation equal to the daily allowance, so full payroll taxes will be charged.

Information on daily allowances and hotel accommodation rates in various countries can be found [here](#).

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<sup>1</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of provision of services, and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the EU

<sup>2</sup> The Supreme Court Civil Division's ruling SKC-2425/2014 of 30 September 2014