Simplification of French Record-Keeping Responsibilities of Prime Instructors Regarding Compliance by Subcontractors With Obligations to Pay Social Charges

As of January 1, 2012, the prime instructor is no longer bound to request sworn statements from the subcontractor concerning compliance with tax and social provisions but instead a single statement certifying the declaration and payment of social security contributions.

The Social Security Finance Law for 2011, completed by the law of June 16, 2011 relating to immigration, integration and nationality, included in the legal definition of illegal work the failure to make the declarations relating to wages and to social security contributions and thereby extended the prime contractor's duty of vigilance to the verification of documents certifying the payment of contributions by their subcontractors and no longer just to compliance with their obligations with regard to declarations.

In the absence of legal provisions on the procedures to be followed for performing these new verifications, the publication of the implementing decree was eagerly awaited. Indeed, in the event of a breach, the prime contractor ran the risk of having to pay the amount of unpaid wages and contributions due to its joint and several liabilities along with its subcontractor and also being considered an accessory to the offence of illegal work. This offence is punishable by up to 3-years’ imprisonment and a 45,000 € fine for individuals and 225,000 € for legal entities. Additional sanctions may also be applied such as the confiscation or tools, products and stocks, a ban on participating in public contracts for 5 years or even the closure of the business.

The verifications and information to be gathered by prime contractors have been clarified by Decree n° 2011-1601 of November 21, 2011 (JO November 23, 2011).

Verifications by the prime contractor

Prime contractors which are established in France must obtain from their subcontractors, at the time of concluding any service agreement for an amount at least equal to 3,000 Euros, and every six months until the completion of the contract, a document certifying the performance of social declarations and the payment of social security contributions (attestation de fourniture des déclarations sociales et de paiement des cotisations et contributions de sécurité sociale) issued by the social security body in charge of collecting contributions less than six months old (Article D. 8222-5 of the Labour Code, as modified).

In practice, this document is called a certificate of vigilance (attestation de vigilance).
The bodies concerned are the URSSAFs for mainland France and the social security funds (caisses générales de sécurité sociale (CGSS)) for the overseas departments and also the agricultural mutual social funds (MSA) for employers who are subject to the agricultural regime.

Once the certificate has been obtained from the subcontractor, the prime contractor is bound to verify its authenticity with the competent body by electronically transmitting the security number which appears on the certificate or by directly contacting the body.

**Content of the declaration of vigilance**

Two additional items of information have been included in the new declaration of vigilance relating to the number of employees and to the total amount of remunerations declared on the last summary statement of contributions (bordereau récapitulatif de cotisations (BRC)) addressed by the subcontractor to the social security body at the same time as its payment.

It is also secured by a number delivered by the social security body (Article D. 243-15 of the Social Security Code, as modified).

**Conditions for the delivery of the certificate to the subcontractor**

The certificate is delivered when the subcontractor has paid its contributions on the date they are due. For subcontractors who experience difficulties in meeting payments, the certificate will be delivered to them if they have subscribed to and complied with a plan to pay off the contributions which remain due.

The Decree specifies that the opposition of the contributions due by a subcontractor before the courts of the judicial order does not prevent the delivery of the certificate. However, the certificate cannot be delivered when such opposition takes place after a verbalization for undeclared work (Article D. 243-15 of the Social Security Code, as modified).

**Subcontractors abroad**

When the subcontractor is established abroad in a country which has signed a social security agreement with France, the prime contractor must obtain a document from the subcontractor certifying that it is in compliance with European or international laws as well as a document issued by the body which manages the mandatory social security regime specifying that the subcontractor is up to date with its social declarations and the payment of the related contributions.

All of these documents must be drafted or translated into French.
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