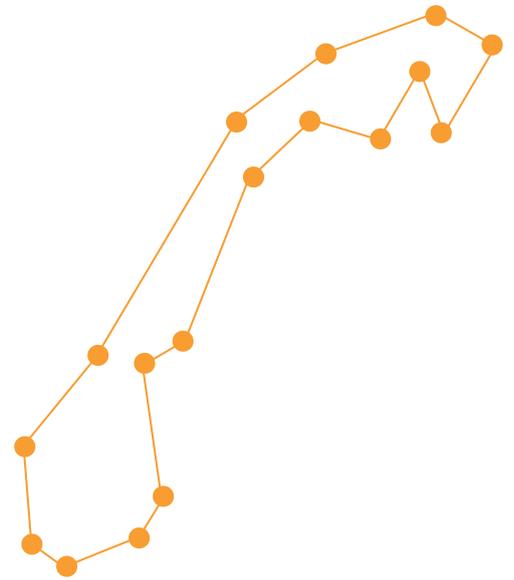




COUNTRY
STUDY



NORWAY

Transnational Monitoring and Enforcement of Posted Work: The Case of Norway

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Mapping National Enforcement Capabilities

The Labour Inspection Authority in Norway consists of a central office - the Directorate, seven regional offices and 16 local offices throughout the country. The Norwegian labour market consists of approximately 2.7 million persons. As shown in Table 1, the number of inspections has declined from 2015 to 2016. According to the annual report from the Labour Inspectorate, the focus has shifted from “as many inspections as possible” to more long-termed work to reveal organized crime and shady networks within the labour market. The Labour Inspectorate receives tips and information from trade unions, enterprises and the public.

Table 1: Number of employees, inspections and labour costs in the Labour Inspection Authority

Main figures ¹	2014	2015	2016
Number of employees	631	642	662
Number of inspections (total)	17 434	17 939	15265
Labour costs per full-time equivalent (NOK)	679 776	696 381	707 552
Average labour cost per full time equivalent in Norway (NOK) ²	n/a	n/a	673 794

According to the annual report from the Labour Inspectorate the main inspection activity in 2016 was directed to high-risk branches as construction, hotels and restaurants, transport and cleaning. In total 5 803 inspections (more than one third of the total) were conducted in these branches and would include control with foreign workers (also posted workers). In additions, the statistics from 2016 show that further 2022 inspections are labelled “social dumping” and “work-life-crime”.

There is no general minimum wage in Norway. Wages are subject to collective agreements or if no such exist, agreement between the employer and the employee as part of the written employment contract. Although there is no general minimum wage in Norway, minimum rates of pay have been introduced in certain sectors (extension of collective agreements):

- Construction sites (for construction workers)
- The ship-building industry
- The agriculture and horticulture sectors
- Industrial and private cleaning
- Fish processing enterprises
- Electricians
- Freight transport by road
- Passenger transport by tour bus
- From 2018: Hotels and restaurants

The Labour Inspectorate is given the authority to check wages for employees within areas covered by extended collective agreements (minimum rates). All enterprises that carry out work on construction/building sites and provide cleaning services, including both Norwegian and foreign enterprises, are required to provide their employees with an HSE card (health and safety-card). The purpose of the HSE card is to identify the individual employee and state the person’s employer. In this way, the HSE card helps to provide a better overview of the organisations present on the workplace. The HSE card is not valid as an ordinary identification document. Furthermore, cleaning enterprises need to be approved by the Labour Inspectorate in order to operate, (from December 2012) and a separate register of enterprises that are publicly approved is established. The labour inspectors will, when visiting a work-place, check whether the firm is registered or not.

The Norwegian Labour Inspectorate controls health and safety regulations, HSE-cards in construction and cleaning, wage-slips in areas covered by extended collective agreements, working time and housing (when the employer is responsible for this). Giving guidance about working conditions and regulations is also a very important task for the inspectors. This is why they are very conscious about their role; i.e. not to be misjudged as a kind of police. This is sometimes a delicate balance between being “good cop and bad cop”. When they suspect illegalities outside their own jurisdiction, the inspectors provide information to other authorities: police (illegal employment), tax office (taxation). Otherwise, the inspectors are very conscious



1. Collected from the annual report (2016) from The Labour Inspectorate.
2. Calculation done by Fafo.

about informing workers about their rights and the functioning of the Norwegian labour market. The Inspectorate has translated important facts about different regulations in several languages. These leaflets are handed out at the workplaces and can also be accessed online.

In Norway there is a separate group of inspectors dedicated to “social dumping”. An important task for these inspectors is controlling working conditions for posted workers, but also for foreign workers employed by Norwegian companies or foreign companies established in Norway. Their work is concentrated to some risk-branches, like construction, cleaning, shipyards, transport and farming. During 2016 the group has also conducted several inspections in the public sector, related to the use of subcontractors and temporary agencies. The “social dumping”-inspectors have got special training, and they normally have in-depth knowledge about one of the risk-branch. In general, there are always two inspectors working together. This is partly to secure the inspectors’ safety, but also because the inspections have become more comprehensive. During the inspections, they talk to both the workers, safety inspectors and the employer. These inspections are always unannounced. In total, the numbers from 2016 show that 54 per cent of the inspections were unannounced. This is on level with inspections in 2015 (annual report from the Labour Inspectorate).

Ten years ago, the first Service Centre for Foreign Workers (SUA) was established in Oslo. After this additionally four centres have opened in different places in Norway. This is done in cooperation between the Labour Inspectorate, the Police, the Tax authorities and the Norwegian Directorate of Immigration (UDI). They work together towards foreigners arriving in Norway for employment purposes, with the aim of providing them appropriate guidance and a shortening of the time used for processing their applications. Those who can use the services at the offices are persons from EU/EEA-countries who come to work in Norway, with their family members, persons from

countries outside EU/EEA who are going to apply for residence permit in order to work in Norway, with their family members and employers.

Further, so-called labour crime-centres are established in seven cities around the country. These are practical cooperation- and investigation-centres between labour inspectors, police, tax-authorities, and the welfare authorities (NAV). Two of the centres were established in 2017, with a grant of NOK 25 million (approx. € 2.6 million) for this purpose. The centres conduct joint inspections, and might bring with them persons from the fire-department, custom service, the food safety authority, municipal treasurer and others. In 2016, 18 per cent of inspections from The Labour Inspectorate were done in cooperation with other authorities. A main challenge for these centres is the exchange of sensible information from one authority to another, due to sensitive personal data issues. All the authorities are now working to make the cooperation easier in the field of confidentiality.

Transnational Cooperation

The Labour Inspection Authority in Norway cooperates with Denmark and Sweden on a high level (not inspectors). Recently agreements were signed, also on high level, with Lithuania, Bulgaria and Poland. The plan is to get an agreement with Romania at the turn of the year. There are some contact and seminars between the “ground floor”, i.e. inspectors from different counties, also including a few common inspections. These activities are financed by EEA Grants³. The plan is to establish a new cooperation project with these countries that in the first phase will last for three years (from 2018), also financed by the EEA Grants. Some of the Norwegian inspectors point out that it is very important that information and better knowledge about the Working Environment Act and central regulations is a part of bilateral contacts.

3. The EEA Grants and Norway Grants represent the contribution of Iceland, Liechtenstein and Norway to reducing economic and social disparities and to strengthening bilateral relations with 15 EU countries in Central and Southern Europe and the Baltics.



In the area of posting of workers, in 2016 Norway sent out 9 and received 3 Internal Market Information System (IMI) requests⁴. Since 2017, all the region-offices are also able to use the IMI-system (Table 2), and this will probably increase the numbers substantially. Some of the inspectors complain about the fact that information exchange via IMI is sometimes very formal and gives little real knowledge about the firm or the relevant regulation in the other country. There have also been incidents where information could not be handed out because of confidentiality. On the other hand, this system makes it much easier to reveal letter box companies, and has given useful information also in other areas, for example information about the owners of the companies.

Table 2: Developing mutual cooperation / „architecture“ of cooperation

IMI liaison office(s) for posting module	Other institutions involved in IMI posting module	IMI requests sent/received in 2016	Transnational enforcement of sanctions	Bilateral agreements and joint inspections
The Labour Inspection Authority's seven regional offices	None	sent 9 received 3	No information	4 bilateral agreements and 3 joint inspections

Issues specific to the cross-border regulation of posting

It is obligatory to be registered to do business in Norway, in Brønnøysund Register Centre. There is little difference between temporary and permanent cross-border service provision in Norway. The procedures for temporary service provision in Norway are very similar to those for establishing a permanent business. A Norwegian organisation number would therefore generally be required in order to provide services in Norway. Foreign citizens without a Norwegian personal identity number must apply for a Norwegian D-number.

The duration of the business and the form of organization will help determine in which country the taxation should take place. The tax liability for posted firms and workers is handled by The Central Office for Foreign Tax Affairs (SFU). The Labour Inspectorate does not automatically get access to information concerning enterprises and workers

collected by the tax office, and they do not normally make use this register in order to decide which work-places to visit. This explains why inspectors do not follow any register to find the posted workers, and the inspections will therefore cover both posted workers and other employees. When arriving to a workplace, the inspectors hand over a form (see Appendix 1) for the workers to fill out, so that they can detect the employees' status. This form is translated to a whole range of languages.

Inspectors report that the workers often do not know whether they are posted or not. Some workers move between employers from one project to the other, and sometimes they might be registered as self-employed. The status of the employees is also changing from being posted to not being posted. For these workers, the change of status does not necessarily mean any change of their working situation.

There is some uncertainty about the numbers of service providers and posted workers, but calculations indicate that there were around 46 000 posted workers in Norway in 2016. The Labour Inspectorate has officially made a request to the Ministry of Labour and Social Affairs to get a similar register of posted workers as in Denmark (RUT). This was done in connection with the national implementation of the Enforcement Directive. The response of the Ministry was that this will be considered on a later stage.

Other main tasks when it comes to posted workers are problems related to covering of expenses to housing and board, payback of parts of the wages when returning to the home-country and bad housing-facilities. A problem for the inspectors is that the workers very often are loyal to their employer, usually because they fear to be returned home and lose their job if they talk to the authorities. This might also be explained by the fact that a lousy pay in the eyes of a Norwegian may still represent decent pay for a posted worker.

If a construction project lasts more than 30 days, pre-notification must be sent to the Labour Inspectorate. This will give inspectors an overview



4. http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_en.htm#t_1_3

of the activity locally. Inspectors also do their own research by driving around detecting projects (especially in construction).

The normal reaction for breaches on the Working Environment Act and the General Application Act (extension of collective agreements) are instructions (decrees) to correct the wrongdoing. The employer is given a time-limit for this. In cases where the corrections are neglected, the inspectors can give a coercive fine. In cases with acute danger of health and safety, or if the workers fail to show their HSE-cards, the inspectors can close down/shut the work and/or the workplace.

From 2014, the labour inspectors can give penalties for serious or repeatedly violations of the regulations. The amount will be determined after a specific assessment in the individual case. The fine is maximum NOK 1,404,510 million (approx. € 1.4 million) (2017). It is hard, and often impossible, to collect fines from foreign employers. A last, but not least, reaction is petition for the police. The numbers of petitions has declined during the last years, probably due to a closer cooperation in daily life between labour inspectors and police officers. Some of the crimes centres have recruited former police-officers to work for them. The payments of the fines are made to the state. A suggested proposal has been made that when other countries 'authorities are helping out with the collection of the fines, they can keep the money.

The Enforcement Directive

The Enforcement Directive was implemented in the Working Environment Act from 1st of July 2017§ 1-7 (4). So far, there is therefore no practical experience with these regulations. The implementation implies that the Ministry may lay down rules on:

- necessary provisions to ensure compliance with the rules, including provisions for cooperation with authorities in other EEA countries.
- protection and compensation for retaliation from employer,
- criteria for deciding whether the posting is real,
- compensation for housing,
- requirements for documentation.

The regulation of posted workers has also been changed, meaning that at the work-places should be access to:

- pay slips, time-sheets indicating the beginning, end and duration of the daily working time;
- proof of payment of wages or copies of equivalent documents.

The Labour Inspectorate shall enforce and make the decisions necessary for the implementation of the provisions. There is a new regulation on mutual assistance in collection and notification of financial administrative sanctions:

- Decisions on financial administrative sanctions and fines imposed by the competent authority or court of another EEA State are binding in Norway.
- The Norwegian National Collection Agency may request the competent authorities of another EEA States to claim monetary requirements as provided for in the Working Environment Act.

The Ministry of Labour and Social Affairs has not proposed any new provisions regarding liability in subcontracting chains in connection with transposition of the Enforcement Directive. The reason is that there is already solid responsibility for wages in the areas covered by the general application of collective agreement. Chain liability was introduced in 2010, and it is based on the German system. This means that all contractors in the chain are liable to employees further down in the chain for unpaid wages and holiday pay. All employees are covered, not only posted workers. The scheme covers minimum wages, overtime pay and holiday pay. If the agreed wage is higher than the minimum wage, contractors will only be liable for the minimum wage. It is for the individual employee to decide whether he or she has a claim against the contractor. Employees making a claim might be assisted by trade unions or legal advisors, but the Labour Inspectorate cannot provide any help besides of guidance on the provision. They cannot impose payment of wages as this is deemed to be a matter of civil law.





Conclusions

The Labour Inspectorate in Norway has for many years been active in monitoring labour conditions and wages for foreign workers in Norway, especially in the construction sector. These inspections include posted workers, but this group is not subject to separate controls. The Inspectorate does not have automatic access to registers over posted workers coming to Norway. When it comes to the transnational monitoring and enforcement, this is still in the beginning, and it is so far limited experiences with the IMI-system.



Appendix 1:
FORM USED BY LABOUR INSPECTORS IN NORWAY – handed out to workers

Employee/Arbeidstaker

Self-employed person/Selvstendig næringsdrivende

Personal details – to be completed by all/ Personopplysninger – fylles ut av alle

First name/Fornavn:		Middle name/Mellomnavn:	Surname/Etternavn:
Mobile phone/Mobilnr:		Norwegian ID-no./ Norsk identitetsnummer:	
E-mail/E-post:		Address in Norway/Adresse i Norge:	Address abroad/Adresse i utlandet:
Date of birth/Fødselsdato			
Day/dag	Month/Måned		
Nationality/Statsborgerskap:			

To be completed if employee/ Fylles ut dersom arbeidstaker

Employer (Who pays your salary)/Arbeidsgiver (Hvem betaler lønn)		Do you have a written contract of employment/Har du skriftlig arbeidsavtale? Yes/Ja <input type="checkbox"/> No/Nei <input type="checkbox"/>
Name and mobile phone no. for immediate superior/Navn og mobilnr til nærmeste leder?		Employed from/Ansatt fra
Worked at this site from/ Arbeidet på dette arbeidsstedet fra	Contact person at this site/Kontaktperson på dette arbeidsstedet	
Average number of working hours per week/ Gj.snittlig antall timer per arbeidsuke	Working hours per day/Arbeidstid per dag	Do you get paid for all hours worked/Får du betalt for alle timene du arbeider: Yes/Ja <input type="checkbox"/> No/Nei <input type="checkbox"/>
Gross hourly wage/Brutto timelønn:	Gross weekly wage/Brutto lønn per uke:	Gross monthly wage/Brutto lønn per måned:
Does the employer provide accommodation/Holder arbeidsgiver bolig Yes/Ja <input type="checkbox"/> No/Nei <input type="checkbox"/>	Does the pay slip show tax withheld/Viser lønns slippen skattetrekk Yes/Ja <input type="checkbox"/> No/Nei <input type="checkbox"/> Vet ikke/Don't know <input type="checkbox"/>	How many times in a year do you come to Norway for work/Hvor mange ganger i året er du i Norge på arbeid

To be completed if self-employed/Fylles ut dersom selvstendig næringsdrivende

Name of enterprise/Navn på foretak:		Organization no./Organisasjonsnr
Principal/Oppdragsgiver		Do you use sub-contractor(s)/Bruker du underleverandør: Yes/Ja <input type="checkbox"/> No/Nei <input type="checkbox"/> How many?/Antall <input type="text"/>
Start-up date for this contract/ Startdato dette oppdraget	Estimated date of completion/Forventet oppdragtid	Number of employees on the contract/Antall ansatte på oppdraget



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