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Judgment in Case E-12/10 *EFTA Surveillance Authority v Iceland*

RULES REGARDING RIGHTS AND OBLIGATIONS OF FOREIGN UNDERTAKINGS THAT POST WORKERS TEMPORARILY IN ICELAND AND ON THEIR WORKER'S TERMS AND CONDITIONS OF EMPLOYMENT FOUND INCOMPATIBLE WITH THE EEA AGREEMENT

Icelandic rules require foreign undertakings which post workers temporarily to Iceland to pay regular wages for sick leave. In addition, Icelandic law imposes an obligation on undertakings to take out accident insurance for posted workers.

In a judgment delivered today, the EFTA Court held that by maintaining in force these rules, Iceland was in breach of its obligations following from Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

The Court found that Article 3(1) of the Directive sets out an exhaustive list of terms and conditions of employment that host EEA States are entitled to require undertakings established in other EEA States to observe when they post workers to their territory. Included in that list is the “minimum rates of pay, including overtime rates”. The Court held that since the sickness pay is not set at a minimum rate, i.e. neither as a flat rate of minimum compensation, nor calculated on the basis of a minimum wage, but corresponds to the regular wage the worker receives under his employment contract, the entitlement could not fall within the notion of “the minimum rates of pay”.

The Court also found that the provision on accident insurance concerns the terms and conditions of employment and, consequently, is a matter to which Article 3 of the Directive applies. However, the Court found that this obligation falls outside the matters listed in Article 3(1) of the Directive, and is thus contrary to the Directive.

Finally, the Court held that the Icelandic rules on sickness pay and accident insurance could not be justified under the exception for public policy, as Iceland failed to establish that maintaining them are necessary to counteract a genuine and sufficiently serious threat to a fundamental interest of society.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is not an official document. Please note that the Court may not comment on the case.