

2. Belgium

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In the absence of an applicable international agreement or bilateral convention, the Belgian social security regime is applicable to any worker who provides services on Belgian territory for an employer established in Belgium, or for an employer established in another country, but with a place of business (*'siege d'exploitation/exploitatietzetel'*) in Belgium on which the worker depends (the latter applies if the worker receives their orders and remuneration from that operational office and is accountable for their activities to that office).¹

Table 1.2 Overview of relations between form of migration and entitlement to a particular social security service

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No (see country of origin)	No (see country of origin)	No (see country of origin)	Yes (depending on immigration regime)	No (see country of origin)	Yes*
Intra-corporate transfers	Yes	Yes	Yes	Yes (depending on immigration regime)	Yes	Yes*
Seasonal workers	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (depending on immigration regime)	Yes	Yes*
Temporary agency workers	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (depending on immigration regime)	Yes	Yes*
High-level professionals	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (if means test passed)	Yes	Yes*
Self-employed	Yes	Yes	No (does not exist for self-employed)	Yes (depending on immigration regime)	No (but entitled to sickness benefits)	Yes*

Note: * If children have legal residence in Belgium or an EEA country.

Source: Author's analysis, 2022.

1. Article 2§4 Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers (Law of 29 July 1981 containing the basic principles of social security for employees).

Description of the Belgian system

1. Overview of social security rights of short-term third-country-national migrant workers

As a rule, and in the absence of contrary provisions in an applicable international agreement, bilateral convention or EU Regulations in matters of social security, the Belgian social security regime applies to any worker who works on Belgian territory for an employer established in Belgium, or for an employer established in another country, but with a place of business in Belgium to which the worker is attached. The *Cour d'Arbitrage* (now *Cour Constitutionnelle*) defined the place of business as an establishment or centre of activity with a certain character of stability, where assignments and instructions are given to the worker, where communication between the parties takes place and where the worker contacts their employer (Cour d'arbitrage, Decision number 9 of 30.01.86).

Without provisions to the contrary in an applicable bilateral agreement (and outside the framework of European Regulations on Social Security, in other words, intra-EU posting), which generally provide for a period of 24 months before the social security laws of the host country apply, if a posted worker directly depends on their employer in their country of origin, Belgian social security legislation will not be applicable.²

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

There is no specific regulation depending on immigration regime or type of work authorisation, so the general rules set out above apply. Thus, seasonal workers will be compulsorily affiliated to the social security regime, as they will depend on an employer in Belgium. In the absence of the application of EU law on posting of workers or a bilateral agreement, posted third-country nationals will not be subject to Belgian social security (except if they are posted to a 'place of business' of the posting company). To the extent that temporary agency workers can be considered posted workers, the same conclusions apply (it is to be noted that non-EU posting of third-country nationals in general and through temporary agency work is exceptional because of the restrictive character of work authorisation in those cases).

2. Article 2§4 Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers (Law of 29 July 1981 containing the basic principles of social security for employees).

3. Conditions for obtaining different social security rights

Third-country nationals present in Belgium for short periods of work will have difficulty meeting the different waiting periods to access benefits.³ Moreover, authorised residence is needed to access benefits, except in cases of portability. In the case of child benefits, however, it is the authorised character of the child's residence that confers the entitlement to benefits, independently of the status of the parent worker. Specific limitations might also apply in function of the social risk concerned. For example, there is no right to unemployment benefits when the unemployed person does not comply with the law concerning employment of foreigners. This means that to access benefits, the person in question must have authorisation to work (except if the person has a right to residence that allows access to the labour market).

Third-country nationals with authorised residence in Belgium and who are not included in the population register (this means third-country nationals without long-term residence authorisation) have no access to means-tested social integration benefits (*Revenu d'Intégration Sociale/Maatschappelijke Integratie* – integrated social assistance benefits in cash). However, they have access to the subsidiary means-tested system *Aide Sociale/Sociale Bijstand* (Social Aid, a flexible benefits system which can be a combination of cash benefits and benefits in kind, with a margin of decision given to the local authority competent for social assistance – *Centre Public d'Action Sociale/Openbaar Centrum voor Maatschappelijk Werk*). But it is important to stress that the Federal authority can cancel single permit or authorisation to stay when the third-country national is deemed to have become a burden (*'charge'*) on the social assistance system. Foreigners without authorisation to stay have access only to emergency medical aid (although access to social aid is possible if it is impossible to return to their country of origin for administrative, medical or family reasons).

4. Portability of benefits

In the absence of bilateral conventions or application of EU rules, benefits in cash in case of industrial accident or occupational disease that occur in Belgium are exportable in case of return to the country of origin. Other benefits are not exportable.

3. For example, for unemployment benefits, between 312 and 624 worked days in function of different factors; for sickness benefits and invalidity pension there is a 12-month waiting period and a requirement of 180 worked days; for maternity and paternity benefits, there is a 6 month waiting period and a requirement of 120 worked days.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No specific social security measure seems to have been adopted for short-term migrant workers from third countries.

6. Enforcement and monitoring

Failure to comply with the employer's (or self-employed worker's) obligations in terms of registration and payment of contributions is subject to administrative fines and possible criminal prosecution. Compliance with social security legislation is controlled by the inspectorate of the social security administration.

When posting workers to Belgium, the employer must present a LIMOSA declaration, and the client or contractor in Belgium has to request certification that the declaration was presented from the worker (except for natural persons receiving services in a private context). With the LIMOSA declaration, the employer informs the Belgian authorities about several elements of the posting (nature of the activities, identities of posting employer, posted worker and end user, duration of the posting, among other things). If the worker cannot provide the LIMOSA document, the client is obliged to inform the social security administration. The posting company also has an obligation to appoint a contact person (through the LIMOSA declaration, or if not applicable, directly to the social security administration), from which the labour inspectorate might require documents (including those related to work authorisation).