

6. Denmark

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Social security in Denmark is very detailed and complex. Rules are found in a number of national laws, each with its own scope of application and monitoring entity. Denmark is not a party to Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 to third-country nationals residing and working in another EU Member State. The right to social security is significantly reduced for third-country nationals working in Denmark, regardless of their usual place of residence and work. In general, any third-country national working in Denmark must be able to support themselves during the stay and third-country nationals are not allowed to receive public social benefits.

Box 1 Summary of the table

(1) In Denmark all employers and employees, regardless of nationality, must pay monthly small contributions to a public Labour Market Pension, ATP, unless exempted by EU regulation (not for TCN) or bilateral agreement. The ATP funds belong to the employee.

In addition, in companies covered by a collective agreement, employers and employees must make monthly deposits to the employee's private pension funds, unless exempt in the agreement, unless exempt by EU regulation (not for TCN) or bilateral agreement.

(2) Unemployment insurance in Denmark is membership based and requires payment of membership fees and seniority. Foreign workers are eligible for membership and for outpayments in case of unemployment, should they choose to become a member.

(3) With regard to posted third-country nationals from an employer established in an EU Member State, Denmark has not ratified Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 to nationals of third countries, who are not already covered by these regulations solely on the ground of their nationality (cf. preamble (19) in Regulation 1231/2010).

Table 1.6 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions (1)	Unemployment insurance (2)	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers (from an employer outside the EU)	No	No	No	No	No	No
Posted workers (from an employer established in the EU)	Yes	Yes – if part of their 'pay' is set out in collective agreements, according to the Posted Workers Directive	No	No	Yes	No
Intra-corporate transfers (N/A for Denmark)	N/A	N/A	N/A	N/A	N/A	N/A

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions (1)	Unemployment insurance (2)	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Seasonal workers (N/A for Denmark)	N/A	N/A	N/A	N/A	N/A	N/A
Temporary agency workers (a third-country national employed by a Danish temporary work agency, a third-country national employed by a temporary work agency established in another EU Member State)	Yes	When working for more than 6 months, employer and employee contributions to the public labour market pension ATP, unless exempted by bilateral agreements. Perhaps for private contributions laid down in collective agreements at the Danish user entity or the Danish temporary work agency	No	No	Yes	No
High-level professionals	Yes	When working for more than 6 months, employer and employee contributions to the public labour market pension ATP, unless exempted by bilateral agreements. Perhaps for private contributions based on collective agreements in force at the Danish company.	Yes, but the criteria for membership seniority must be fulfilled. High-level professionals receive up to 6 months residence permit after termination for reasons not related to the employee, to look for new employment in Denmark.	No	Yes	No

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

During Covid-19 all social security rights were extended, including the right to unemployment benefits and basic social assistance. In addition, the virus was acknowledged as an occupational disease if the criteria for employer liability were fulfilled.

These changes did not affect third-country nationals, as they are generally not covered by Danish social security rights.

Description of the Danish system

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

In general, any third-country nationals working in Denmark must be able to support themselves during the stay and they are not allowed to receive public benefits.

Health services are free for persons legally residing in Denmark, including third-country nationals with a residence permit. Health services are likewise free for persons working in Denmark, but residing in another EU/EFTA Member State or Switzerland. For all other workers, including workers posted to Denmark from employers established outside the EU, health services are not free, and they must take out their own health insurance.

Insurance against occupational injuries and diseases is mandatory on any employer for all persons performing work under their instructions. This includes third-country nationals in any capacity.

Public pensions – that is, old age retirement pensions and early retirement pensions – are governed by the Act on Social Pensions.¹ Public pensions are residence-based. Public pensions for persons not born in Denmark require permanent residence of at least 10 years between the ages of 15 and retirement age, five of these years immediately before the retirement age/time of application. Third-country nationals who have resided and worked in Denmark on a short-term basis or for a limited time would not meet the requirements for public pensions in Denmark. As a supplement, Denmark has entered into several bilateral agreements primarily concerning the right to public social pensions under the Act on Social Pensions, including old age retirement pension and early retirement pensions.

Public pensions likewise include a premium based Labour Market Pension, ATP. All employers and third-country-national employees must make small monthly deposits to ATP, calculated on the basis of hours worked. The deposits belong to the employee.

The right to Basic Cash Benefits, Family Benefits and Start-help Benefits are not available to third-country nationals on short-term stays in Denmark from a country outside the EU.² It is a criterion for the work permit and residence permit of third-country nationals that they and their family members do not receive social benefits during their stay. In this case the residence and work permit can

1. Statutory Act no. 234 of 12 February 2021 on social pensions, <https://www.retsinformation.dk/eli/lta/2021/234>

2. Statutory Act no. 241 of 12 February 2021 on Active Social Policy, <https://www.retsinformation.dk/eli/lta/2021/241>

be revoked and the third-country national will lose the right to stay and work in Denmark.³

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

According to Articles 1 and 2 of Protocol No. 22 on the position of Denmark, annexed to the TEU and the TFEU, Denmark is not bound by certain Directives. Denmark is not party to the Seasonal Work Directive (Directive 2014/36/EU) preamble consideration No. (55), the Single Permit Directive (Directive 2011/98/EU) preamble consideration No. (34), the Directive on Intra-corporate Transfer (Directive 2014/66/EU) preamble No. (48), and the Directive prohibiting employment of illegally staying third-country nationals (2009/52/EC) preamble no. (39). These directives are not implemented in Denmark.

For posted workers, Denmark is not a party to Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 as regards third-country nationals residing and working in another EU Member State. This means that posted third-country nationals from another EU Member State are not part of the coordination of social security services.

Third-country-national workers and third-country-national temporary agency workers posted to Denmark from a company established in another EU Member State are thus covered by the social security system in the country of residence and work, that is, the country in which the employer or temporary work agency is established.

3. Conditions for obtaining different social security rights

Health services (hospitals and family doctors) are free for persons legally residing in Denmark, including third-country nationals with a temporary residence permit, and for persons working in Denmark, but residing in another EU/EFTA Member State or Switzerland. For all other workers in Denmark, including workers posted to Denmark from employers established outside the EU, health services are not free. The right to health services is linked to the Personal ID Number (*CPR-nummer*). The *CPR-nummer* is revoked if the conditions for the work and residence visa are no longer met, for example, if the job is terminated. Only if the scheme allows the third-country national to stay longer in Denmark, for example, to look for new employment, is the CPR number extended, and thus the right to health services.

Pension contributions to the Public Labour Market Pension, ATP, are required for anyone working in Denmark for more than 9 hours per week. There is no

3. Ministry of Justice overview of Danish reservations to EU legislation, <https://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Oversigt%20over%20vedtagne%20retsakter,%20der%20er%20omfattet%20af%20Danmarks%20retsforbeh....pdf>

seniority requirement. Additional Labour Market Pension contributions provided by collective agreement may come with seniority requirements, but this depends entirely on the provisions in the collective agreement.

It is a condition of short-term work and residence permits in the Aliens Act that third-country nationals do not receive any public benefits under the Active Social Policy Act. This includes Basic Cash Benefits (Basic Security), Family Benefits (Children's Benefits) and Start-up Benefits.⁴ If a third-country national or family member receive social benefits during their short-term stay, the residence and work permit can be revoked. To illustrate, if the third-country national has been granted a residence permit based on the Positive Lists, Pay Limit Scheme, Special Individual Qualifications, or as a Guest Researcher, the third-country national and their family are not allowed to receive any benefits under the Active Social Policy Act. Children can attend daycare/kindergarten (partly self-financed), school and secondary education on equal terms with local children.

Employers must insure their workers against accidents at work. The Workers' Compensation Act⁵ provides broad duty to cover all persons performing work for a Danish employer, regardless of their status. The scope of the act extends to illegal aliens, unpaid or unregistered workers, self-employed, workers employed elsewhere, and even friends lending a hand.

Unemployment insurance is membership based and financed by the state, as well as by membership fees. Anyone legally residing in Denmark can become a member of an unemployment insurance association. To be eligible, a person must have one year of membership seniority, and must document an accumulated income over the preceding three years of €31,117 (2019). Becoming eligible for unemployment insurance when working in Denmark on a short-term visa is possible, but often redundant. Furthermore, short-term visas are most often connected to the specific job, and a visa is revoked two weeks after the last day of work, if the position is terminated. If working in Denmark under the Positive List scheme for highly educated workers, the pay limit scheme, the researcher scheme, the fast-track schemes, including intra-group postings, and when the contract of work is terminated for reasons not related to the worker, an additional six months of residency can be granted for the purpose of finding new work. During those six months the third-country national could be eligible for unemployment insurance payments.

4. Statutory Act No. 241 of 12 February 2021 on Active Social Policy, <https://www.retsinformation.dk/eli/lta/2021/241>

5. Statutory Act No. 376 of 31 March 2021 on Insurance for Workers' Injuries, <https://www.retsinformation.dk/eli/lta/2020/376>

4. Portability of benefits between host country and country of origin

Only unemployment insurance benefits depend on seniority and a certain amount of work. Seniority and work performed in Denmark can be transferred to the unemployment insurance system in the country of origin. Whether the country of origin will accept the transferred status depends on national rules. Benefits cannot be transferred to a country of origin outside the EU, however, as unemployment benefits in Denmark require that the unemployed person be actively seeking work in Denmark and can take positions offered with a day's notice.

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

This issue was not discussed. Short-term migrant workers in Denmark during Covid-19 continued to be covered in the same manner as normal.

6. Overview of enforcement and monitoring

Social security measures are enforced by various public authorities, depending on the type of measure in question.

Pension contributions are monitored by the trade union that is party to the relevant collective agreement. If pension contributions are lacking the question is assessed by the Labour Court as a question of breach of agreement (cf. the Act on Labour Court, section 9).⁶ In case of a breach of agreement the Labour Court will issue discretionary penalties payable by the company to the trade union (cf. the Act on Labour Court, section 12).

Questions related to workers' compensation are monitored by the Labour Market Insurance Authority (AES), which is an independent entity managed by the Public Labour Market Pension. Insurance premium payments are automatically claimed by the AES, when employers register work performed in the entity. Employers not paying the premiums can be required to pay a penalty fee (cf. the Workers Compensation Act, section 82(2)). The same applies to those not registering work accidents, or not complying with a duty to give information about incidents (cf. section 82(3)). The AES rules on all matters regulated by the Workers Compensation Act (cf. section 40). If a penalty is not paid, the matter will be submitted to the police for further investigation and/or retrieval of the penalty.

Matters related to access to public health services, basic social assistance, and/or children's benefits are decided by the local municipality. Decisions can be appealed to the Social Services Appeal Board (*den sociale ankestyrelse*) (<https://ast.dk/>).

6. Statutory Act on a Labour Court and Industrial Arbitration Courts, No. 1003 of 24 August 2017, <https://www.retsinformation.dk/eli/lta/2017/1003>

Unemployment benefits, which are membership based, are monitored by the Unemployment Benefit Associations. Rulings can be appealed to a public administrative appeals board, the Centre on Complaints on Unemployment Benefit (CKA) (<https://ast.dk/>), part of the Danish Agency for Labour Market and Recruitment (STAR) under the Ministry of Employment (<https://www.star.dk/en/>).