

# CLIENT ALERT

## Remote Working Abroad: 10 Tips for Global Employers

Nov.30.2020

Almost one year after the appearance of the novel coronavirus, the COVID-19 pandemic continues to set agendas for countries and multinational companies. More and more countries and jurisdictions have re-introduced lockdowns and restrictions on activities outside the home. Non-essential shops, bars and restaurants are closed again or have limited opening hours. Employees who may have begun the process of returning to the office are obliged to work from home again to the maximum extent.

As remote working arrangements continue to be extended, requests from employees to work remotely outside their country of employment are becoming more and more common, especially during the upcoming holiday season.

What questions should global employers ask before allowing employees to work from their home country? What are the risks? How can companies avoid unpleasant surprises? Here are 10 tips for global employers relating to remote working abroad and expatriate work arrangements as the next wave of COVID-19 restrictions goes into effect:

- **Keep track of where your employees are.** As a result of the extended work from home situation, there is a risk that employees do not inform their employers where they may be temporarily working such as at a second home in a different country. Since different laws may apply depending on where the employee is working (see below), employers must be aware of the location where their employees are working. Employers should implement an application process for remote working abroad and survey employee work locations periodically.
- **Verify the immigration status of expatriate employees.** As a response to the COVID-19 pandemic, many countries have made changes to their immigration policies and procedures, including extensions of current work permit periods or an application process for extensions. It is also important for employers to be aware if a work permit is required for those employees who are working remotely abroad. Employers should check local immigration rules, including possible COVID-19 exceptions. For planning purposes, companies should be aware of the processing time for work permits, especially given potential delays on account of the pandemic. In some EU countries, the processing time can be more than 3 months.
- **Be aware of the applicable local labor and employment laws.** For example, in Europe, if employees work in the EU, even temporarily or for very short periods, the employer must comply with the essential provisions protecting the workers' rights such as working time, remuneration, public holidays and annual leave, well-being at work, posting of workers, non-discrimination, etc. This is regardless of the choice of law in the employment contract. Employees are not likely to assert their rights under local law until major issues arise, such as during an internal code of conduct or compliance investigation, or when the employer dismisses or attempts to terminate an employee. Nevertheless, employers should understand which laws apply before taking any action.
- **Check which social security laws will be applicable** to the temporary employment abroad. Possible reporting obligations should also be checked in advance.

- **Re-affirm and review compliance obligations.** An employee's move to a new work location, even temporarily, could change the risk profile for the employee and the employer. The company should involve the relevant stakeholders to assess the risks, which may be dependent on the nature of the work involved (if there are any concerns with such work being done in a different jurisdiction), personal and corporate tax situation, trade and supply chain requirements, code of conduct and ethics compliance requirements. For example, a company may need to review an employee's access to information and software subject to export controls when the employee works remotely abroad. US export laws might be violated if the employee accesses information about items on the export control lists while abroad or downloads software on those lists while abroad. And while U.S. law does not treat remotely running software on a U.S. server as an export to that remote destination, various foreign countries may see that as an import of software that may be subject to local import restrictions. The employer should also consider reinforcing training requirements.
- **Confirm rules on permanent establishment/tax presence.** Before allowing employees to work remotely outside the country of employment, the employer should confirm if the employee's presence could be considered a permanent establishment (tax presence). Local tax authorities may have issued additional guidance to address cross-border work arrangements during the pandemic. For example, in China, a change to home office situation in China during the pandemic is not deemed as establishing a permanent establishment if the arrangement is temporary or sporadic in nature.
- **Make employees aware of the possible impact on their personal tax situation and check that a change in their work locations does not trigger new withholding or reporting obligations.** Employers are generally not obliged to inform the employees about the applicable personal tax principles, but companies often have withholding obligations on personal income tax and social security. Therefore, we recommend flagging the possible impact of working in another country/region during a longer period on personal income tax situation to employees and ensuring that employees' moves do not subject the employer to new or different withholding and remittance obligations in the company's home country or the remote work jurisdiction.
- **Verify the company's insurance.** Do the current policies provide sufficient coverage to remote workers, including those working remotely abroad? Are employees working from home (and abroad) covered in case of an occupational accident? If the employees are benefitting from a group insurance and/or hospitalization insurance, the employer should check whether these benefits continue to apply abroad.
- **Review and update internal policies.** Given the rush to implement work from home arrangements at the beginning of the pandemic, it may be time to review and update those policies, including adding a policy regarding remote working abroad. Also, the employer may include as part of the company's internal rules practical details concerning application on remote work abroad, costs and cost reimbursements, allocation of liabilities for such remote work arrangements, travel/quarantine restrictions, etc.
- **Be cautious while transferring personal data.** Check local data protection rules and guidelines in advance. In the EU, the General Data Protection Regulation (GDPR) provides the general legal framework, but recent jurisprudence and legal developments have made it more challenging to transfer data abroad, and local rules of the individual EU member country may also be applicable. Outside the EU, many countries, such as in Japan, Singapore, and South Korea, have also implemented strict data protection laws that affect transfers of employees' personal information overseas.

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