



INSIGHTS

Working from home abroad



GLOBAL 01.06.21 ⌚ 3'

Many employees are currently working from home because of COVID-19, but for some, that can mean working from abroad. This could be, say, because they have a second residence abroad and decide to spend some time there, or they want to live as 'digital nomads' and embrace a different working lifestyle, including time abroad. Employers are also starting to thinking about integrating remote working into the way they work beyond COVID, as part of a broader project to redefine their workplaces for the longer term.

From an employer's point of view, however, there are certain legal implications to working abroad that need to be thought about before their employee can take a flight to their preferred destination and set up to work. These factors vary according to the country the person wants to work in and so it's important to research this based on precisely where the employee wants to go. But the basic



considerations you need to have in mind for wherever your employees want to go
are these:

KEY CONSIDERATIONS FOR WORKING FROM HOME ABROAD

Business immigration



You will need to check whether visas, work permits and/or residence permits are required. Even if the employee is exempt from these, you should keep track of how many days they spend in the country or zone* and make sure that they stay within rules of the exemption in terms of the activities they carry out.

If permits and authorisations are needed, you will need to find out whether it's necessary to have a local sponsor, for instance, and what the salary conditions are.

* An example of a 'zone' is the Schengen Area of Europe, which includes 26 countries



Social security

Social security is very often linked to the place where the work is physically carried out, although it is worth checking whether there are any exceptions to this rule, for instance a bilateral social security convention providing special rules between two countries or cross-border employment with the European Economic Area (EEA), Switzerland and the UK, EU Regulation 883/2004 and the Trade & Cooperation Agreement (between the EEA and the UK) set out the position. Exceptions may apply for temporary postings or where there is simultaneous employment in two or more countries.

In the EEA, Switzerland and the UK, you should exercise caution when an employee resides in a Member State other than their 'normal' state for work. If they work remotely partially from home for at least 25% of their working time, they are no longer subject to the social security regime of the 'normal' work state but to that of the state of residence. Most member states, however, have chosen to 'neutralise' days of teleworking at home from abroad provided this is solely linked to the COVID-19 restrictions.



The paperwork

Check whether any forms need to be completed, such as social security forms (e.g. A1 Form for the EEA, Switzerland and the UK or a Certificate of Coverage for 'third countries') and health insurance cards to give your employee access to healthcare. You should check whether you need to notify local authorities about your employee. You also find out which documents you need to keep and which ones the authorities request to see.



Employment law

Check if any national employment laws apply to your employee in the new country. There may be some national employment laws that apply regardless of the law that applies to the employment contract. This could well be the case for the minimum working hour rules, health & safety standards, public holidays, annual leave entitlement, non-discrimination rules – and possibly other rules, especially after being in the country while. You should also check if there are mandatory requirements for teleworking, such as health & safety requirements, rules to do with contractual documentation, the provision of equipment, reimbursement of costs, travel costs, etc.

For obvious reasons, there may also be local sanitary measures in place under COVID-19, that need to be respected.



Data privacy

Check whether any additional personal data privacy measures or measures to protect confidential information need to be taken.



Tax

There can be a risk that an employee's activities mean the business is considered having a permanent establishment in the new country – which could result in foreign corporate tax liability. This will depend on the facts and be examined on a case-by-case basis, but you should check the rules about this.

For personal income tax, you will need to check whether there is a double tax treaty between the home and host country, as working abroad may have tax consequences (e.g. foreign taxation or split taxation). Key to this is the place where the employee is resident, the number of days spent out of the country of tax residence (involving keeping track of the employee's whereabouts) and the country where the employer paying the employee's salary is located. A change in an employee's personal tax status may also have consequences for the employer, for example, there could be different withholding taxes.



Working from home abroad – what rules apply where?

In what follows, we take a country-by-country look at what employers need to think about when someone asks to work temporarily or partially from abroad. By **temporarily**, we mean where the employee normally works in country A, but, for example, s/he has a holiday home in country B and wants to work there during July, August and September. By **partially**, we mean where the employee is based in country A but resides in country B, and the employee now asks to work for, say, two days per week from home in country B. In our survey, we have assumed the employee does not provide services to other companies in country B and we focus on certain rules that apply in the destination country, rather than rules that might apply in the home country.

You can use the search function below to select the countries whose rules you need to know about. If a country you are seeking is not listed, do get in touch and ask us about it (see contact details towards the end of this page).

Note: The law is complex and fact-dependent. The table below provides a starting point but should not be treated as legal advice. You should always take specific advice on the facts of your case before proceeding.



- Mandatory rules apply
- No mandatory rules apply



Kazakhstan



Kazakhstan Rules Comments

Contact: Yekaterina Khamidullina, Senior Associate AEQUITAS Law Firm
y.khamidullina@aequitas.kz

Dismissal		Local rules will apply if Kazakhstan law applies to the employment contra
Health & Safety standards		The procedure for teleworkers' compliance with health and safety requirements is determined by the employer's acts.
Immigration laws		
Mandatory notification to local authorities/ formalities		Notification of local labour authorities is not required for telework.
Minimum vacation rights		
Minimum wages		Local rules will apply if Kazakhstan law applies to the employment contra
Night work		Night work is considered to be from 22:00 to 6:00. Night work is paid in an increased amount not less than one and a half times the normal rate of pa
Non-discrimination		Kazakhstan rules apply from day one.

NOTE: The Kazakhstan Labour Code generally covers employees, posted employees, employers and parties located in Kazakhstan, unless otherwise provided by legislation or international treaties.

If the parties have not expressly chosen the applicable law in the employment contract, it will be necessary to analyse each specific situation taking into account the employee's citizenship, the country where the work is performed, and other specifics in order to determine whether Kazakhstan law will apply to the employment relationship.

Public holidays		If Kazakhstan law applies to the employment contract, work on weekends and public holidays requires the employee's written consent or request. The employee must be given another day off or paid an increased amount (not more than one and a half times the normal rate of pay).
Rules concerning telework		Under Kazakhstan law, the employer must either provide the teleworking employee with the means of communication or reimburse the employee for the use of his or her own equipment in an amount established



Social documents



Teleworkers are entitled to full social security rights.

Sunday work



If Kazakhstan law applies to the employment contract, work on weekends and public holidays requires the employee's written consent or request. The employee must be given another day off or paid an increased amount (not more than one and a half times the normal rate of pay).

Working hours/overtime



Overtime pay will be required if Kazakhstan law applies to the employment contract. For employees engaged in telework, there must be a fixed record of working hours.

Share

made with



This content is not available in your country.

AUTHORS



Sophie Maes

Partner - Belgium
Claeys & Engels



Ius Laboris

