

EMPLOYMENT UPDATE

Working remotely from abroad: guidance for employers

An increasing number of employees are requesting to work remotely from abroad on a full-time basis following the impact of the COVID-19 pandemic. This guidance note assesses the risks associated with remote working from abroad and summarises some practical tips for employers.

Key risks to be considered

Taxing the employer - permanent establishment

Subject to local rules, an employee working abroad can create a 'permanent establishment' for the employer. If so, the profits attributable to that establishment would be subject to corporation taxes in the relevant host country. The risk will be higher where the employee's role involves negotiating and concluding contracts on behalf of the employer.

Mandatory employment restrictions

It is possible that the employee may become subject to the jurisdiction of the relevant host country and start to benefit from local mandatory employment protection such as greater dismissal rights or paid annual holiday.

Immigration

Employers should firstly consider if the employee is able to legally work in the relevant host country. For example, an employee may need to obtain immigration permissions from the relevant host country (including in the EEA and Switzerland). Employers should be cautious of implementing a policy which only allows employees to work abroad where they already have the legal right to do so – this could be indirectly discriminatory to employees of certain nationalities that are less likely to have legal rights to work in another country.

Tax and social security

Employers should continue to deduct income tax under the PAYE system and deduct the employee's National Insurance Contributions. However, local advice should be sought as to whether tax contributions could also be payable in the relevant host country. Generally, the threshold to be considered a resident for tax purposes is 183 days in a 12-month period.

If you would like any further advice or assistance on this new guidance, please contact our Employment Lawyer, Jamie Feldman (jamie.feldman@northridgelaw.com).

Steps to be taken by employers

- › **Policy:** consider adopting a formal policy on, and process for, overseas working. This could include:
 - › *Legality:* only accept requests where the role can be effectively and lawfully performed remotely.
 - › *Timing:* consider allowing working abroad for shorter periods as the risk is likely to be smaller.
- › **Local advice:** take local expert advice on the employment, tax and social security obligations in the relevant host country.
- › **Document overseas working arrangements:** Employers should agree the terms of any overseas working arrangement in writing, specifying:
 - › *Taxes:* the employee will be liable for any additional income taxes and personal tax declarations in the relevant host country.
 - › *Jurisdiction:* having taken local advice, the jurisdiction that will apply to the overseas working arrangement.
 - › *Authority:* the employee does not have the authority, without written consent, to enter into contracts with local customers while in the relevant host country.
 - › *Working arrangements:* the local working hours and holidays that the employee is entitled to take.
 - › *Property:* the employee takes responsibility for ensuring that they have the necessary technology and arrangements to work effectively.
- › **Insurance:** check any relevant insurance policies e.g. employers' liability and company property policies.