

Employee requests to work overseas temporarily

Key factors to consider

The onset of Covid-19 has led to an unprecedented need and demand for remote working. In light of the current situation, some employees are now asking whether it is possible to conduct their work remotely for an extended period of time in another country. This guide covers the key legal issues that employers should bear in mind when considering such requests.

Dual employment / additional employment rights

- Employees working abroad may benefit from the mandatory employment protections of the host country. Each country will have its own rules as to when local employment rights apply but common considerations include length of time lived and worked in the host country and where/how the employment relationship is managed on a day-to-day basis.
- These rights could potentially be more favourable to employees than those in the UK, but even if not, the application of two different sets of employment laws can give rise to practical challenges, for example, when conducting any disciplinary or dismissal procedure.
- Where a worker is posted from one undertaking/establishment to another within the EEA, the employee may be entitled to the protection of the same "floor of employment rights" including pay which is available to other workers employed in the host country under the EU Posted Workers Directive. Whilst the Directive does not apply to temporary postings, local legislation implementing the Directive may provide for a broader scope of application.





Immigration

- Employers need to ensure that employees working abroad are doing so legally. Breach of immigration requirements can have severe consequences for the individual as well as the company. Employees could be barred from a country, detained or even imprisoned. The company can be banned or have its operations restricted, and its executives could be personally liable via fines or imprisonment.
- Employees subject to immigration controls in their "home" country should also check to ensure that their temporary departure does not affect their eligibility to return to their home country or their eligibility to apply for other types of work authorisation in the future.
- Some countries have implemented emergency COVID-19 legislation that will affect the normal immigration position so it is worth checking the position.

Employee registration requirements

- Some countries have obligations to register those working remotely and employed by a foreign legal entity with a state authority (which are separate to immigration requirements). Such requirements can also apply to local nationals working temporarily in another location.

Regulated roles


- If an employee is working in a regulated role, there may be additional restrictions on them carrying out their work abroad and controls the employer need to apply.

Income tax and social security

- Tax advice should be sought to understand where and how the employee will be taxed when working abroad (and what the employer's obligations are in this regard). In general terms, where the employee remains tax resident in their home country, they will remain subject to tax in their home country. However, the employee could also find themselves subject to tax in the host country resulting in double taxation.
- Similar considerations apply in respect of social security obligations. Employers may find themselves subject to penalties for failure to make the relevant social security payments. The longer the employee works in the host country, the greater the risk.

Risk of Permanent establishment finding

- Employees working in another country may create a "permanent establishment" for their employer in that host country resulting in the employer's profits being subject to corporation tax in that host



country. The longer the employee works in that country, the greater the risk. This will give rise to greater legal and practical issues if the employer does not already have established operations in the host country. For further information, please click [here](#) for the Bloomberg Tax & Accounting and Baker McKenzie Special Report on Transfer Pricing Considerations for Remote Workforces.

Benefits and allowances

- In some countries, there may be obligations on the employer to enrol the employee into local statutory benefit plans (e.g. pension, retirement or medical plans). Employees may also be entitled to receive specific allowances based on their work location.
- Employees are also likely to only be covered by full medical plans in their home country of employment. Coverage outside of that is often limited to emergency and limited "new" issues.
- Employers should also review the terms of any insurance policies they provide the employee to check whether they are still covered when working in a host country.

Data protection implications

- If an employee's role involves processing personal data, careful consideration should be given to whether additional safeguards need to be put in place to ensure data protection compliance.

Health and safety

- Employers should ensure that they understand and observe local health and safety laws. For example, the company may find that is under an obligation to provide homeworking equipment in certain countries.

August 2020

For further information, please contact:

Lily Collyer

+44 20 7919 1751

lily.collyer@bakermckenzie.com

John Evason

+44 20 7919 1181

john.evason@bakermckenzie.com

Paul Harrison

+44 20 7919 1320

paul.harrison@bakermckenzie.com

Monica Kurnatowska

+44 20 7919 1870

monica.kurnatowska@bakermckenzie.com

Christine O'Brien

+44 20 7919 1189

christine.o'brien@bakermckenzie.com

Stephen Ratcliffe

+44 20 7919 1691

stephen.ratcliffe@bakermckenzie.com

Carl Richards

+44 20 7919 1454

carl.richards@bakermckenzie.com

Kim Sartin

+44 20 7919 1351

kim.sartin@bakermckenzie.com

Julia Wilson

+44 20 7919 1357

julia.wilson@bakermckenzie.com

www.bakermckenzie.com

Baker & McKenzie LLP
100 New Bridge Street
London EC4V 6JA
United Kingdom
Tel: +44 20 7919 1000
Fax: +44 20 7919 1999
Managing Partner: Alex Chadwick
alexander.chadwick@bakermckenzie.com

©2020 Baker & McKenzie. All rights reserved.
Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional services organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.