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CROSS-BORDER REMOTE WORK FAQs

BELGIUM

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A work authorisation is not required for nationals from the European Economic Area and Switzerland. Other nationals require a single permit (if longer than 90 days) or a work permit (if less than 90 days). The employer will have to request the permit from the administration of the competent Region (Brussels, Flanders or Wallonia). Requesting a single permit can take up to 4 months; requesting a work permit usually takes several weeks up to more than a month.

The access to the single permit procedure is restricted to certain categories of workers, which are enshrined in the regional regulations. Most important for the majority of employers, are the categories of highly skilled workers and managerial employees. This means

that the employees have to fulfil certain conditions of higher education degrees and higher wages or they have to take up certain leading functions within the company. The specific conditions to be fulfilled and the necessary documents which have to be submitted are laid down in legislation of the Regions, but in general the following documents will be necessary for posting non-EEA workers:

- copy of the passport of the worker
- copy of the degree(s) of the worker
- recent criminal records of the worker
- recent medical certificate of the worker
- employment contract between the posting company and the worker
- proof of health insurance coverage
- proof of the payment of the administrative fees
- power of attorney for the agent of the foreign employer

These documents have to be submitted together with the regional application form (signed by the employer and the employee). These application forms will only be in Dutch or French. Submitting English documents is allowed, but documents in other languages should be translated by an official translator.

IS THERE RISK OF “PERMANENT ESTABLISHMENT” CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER’S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

The term “Belgian establishment” is broadly understood to mean any fixed place of business through which a foreign company carries out all or part of its business activity in Belgium. The threshold is very low. A dependent agent is enough, even if he is not entitled to conclude contracts in the name of the enterprise. Where a foreign undertaking performs services in Belgium, for the same or related projects, through one or more natural persons who are present and perform those services in Belgium, for a period exceeding 30 days in any twelve-month period, the activities carried out in Belgium in connection with the performance of those services also constitute a Belgian permanent establishment. In contrast, if the remote worker only continues to work for the employer and does not “come into contact” with the local market (e.g. no provision of services) there will not be a permanent establishment.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

The National Employment Office has decided not to take into account the (temporary) remote work in Belgium during the COVID-19 pandemic in order to determine the applicable social security rules. Under normal circumstance for EEA nationals, temporary remote workers can remain under the social security rules of the country where they come from for (in principle) 24 months if there is an A-1 declaration.

For non-EEA nationals, the bilateral social security treaties that Belgium has concluded with other nations should be consulted. If there is no treaty, the Belgian administration will have to discuss with the foreign administration which system will be applied, in order to avoid a double application of social security systems.

Other Belgian payroll requirements will be applicable. E.g. the obligation to draft certain social documents, i.e. pay slips and an individual account. If there was a valid declaration of a posting of workers (LIMOSA) the other social documents (internal work rules, register of employees, etc.) do not have to be drafted for the first 12 months.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Belgium will apply almost all its labour law provisions immediately to the remote worker, except for the rules concerning the concluding and termination of employment contracts, including non-compete clauses laid down in the Employment Contracts Act. After 12 months, the rules concerning the general obligations of employers and employees, the liability and the suspension of employment contracts will also become applicable.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

*Yes, remote work should be covered by the rules for structural telework in Collective Bargaining Agreement no. 85 or the rules for Telework during the pandemic, laid down in CBA no. 149.
See: <https://www.vow.be/node/229>*

WHAT IS THE EMPLOYEE’S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The applicable tax will depend on the double tax treaties that Belgium has concluded with most countries. If such a treaty states that the Belgian income tax applies and there is a permanent establishment in Belgium,

the foreign employer will have to withhold the Belgian taxes on the remuneration of the employee. However, Belgium has signed several tax treaties with its neighbouring countries to avoid the consequences of a temporary change of location due to the pandemic.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

The worker should be covered by an insurance for occupational accidents (concluded by the employer) in the country of the applicable social security system. This means that, as long as the Belgian social security system is not applicable for this worker, the employee should normally be compensated by the foreign insurance. However, the Belgian legislation will be applicable concerning the obligations of the employer relating to an occupational accident, e.g. the duty to make a report on the accident (which then needs to be given to the insurer).

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

This worker remains covered by the health care system of the country of the applicable social security system (see above). However, the remote worker can have access to immediate health care services: EU citizens will have such access (and will be insured) with a European Health Insurance Card. Non-EU citizens might not be insured (this will depend on their own insurance).

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

The GDPR applies to processing companies with an establishment in the EU and to the processing of personal data of data subjects who are in the EU, by a controller or processor not established in the Union, where the processing is related to:

- *the offering of goods or services to such data subjects in the EU, regardless of whether a payment is required by the data subjects; or*
- *the monitoring of their behaviour, insofar as this behaviour occurs in the EU.*

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

In most circumstances the remote work might be seen as a posting of workers situation (which is broader than the EU concept). In this case, the act of 5 March 2002 on posting of workers applies, which allows Belgium to apply most of its labour provisions.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Citizenship can e.g. have an impact on the application of certain provisions of bilateral treaties on the applicable tax or social security system.

b) This could mean that there is a permanent establishment in Belgium.



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