

10<sup>TH</sup>  
ANNIVERSARY  
IN 2021

# CROSS-BORDER REMOTE WORK FAQs

## CANADA

**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.

*Typically, a foreign national requires a work permit to undertake “work” activities in Canada. However, under the Government of Canada’s Temporary Foreign Worker and International Mobility Programs policy guidance found [here](#), certain activities that are incidental to a person’s visit to Canada are not classified as “work”, and will therefore not require a work permit. For example, “long distance work” (either by telephone or internet) done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada, is not characterized as work requiring a work permit. A person is considered to be a temporary resident if they hold a **Temporary Resident Visa**, either as a visitor, student, or worker.*

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.

*Foreign companies that are non-resident in Canada can become resident if they are deemed to be a “permanent establishment”. A permanent establishment can be deemed where the company has an agent/employee in Canada that habitually exercises an authority to conclude contracts on behalf of the company (“Agency Permanent Establishment”). In light of the current travel restrictions that may potentially bar foreign nationals from leaving Canada, the Canada Revenue Agency (“CRA”) has provided guidelines that provide relief from the assessment of a permanent establishment based on an Agency Permanent Establishment. The relief guidelines can be found [here](#).*

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?

*Typically, foreign employers are required to withhold the following payroll deductions in Canada: Canadian Pension Plan (“CPP”); Employment Insurance (“EI”); and, Federal, Provincial or Territorial income tax. However, there are limited exceptions to these withholding obligations for certain non-resident/foreign employers. Foreign employers may apply for a “non-resident employer certification” and will not have to withhold and remit tax on the payments to non-resident workers who are working in Canada for a limited time, if the workers are exempt from tax in Canada under a tax treaty. Additionally, the foreign employer will be exempt from withholding CPP contributions if the foreign employer’s worker comes from a country that has a social security agreement with Canada. Finally, foreign employers may also be exempt from EI deductions if the unemployment insurance laws of the worker’s home country require premiums to be paid on the same employment income. Details and requirements for these exemptions can be found [here](#).*

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.

*This depends on the province in which the remote worker is located given that employment standards vary by province. In Ontario, for example, section 3(1) (a) indicates that the Employment Standards Act, 2000 (the “ESA”) applies to all employees whose work is to be performed in Ontario and their employers. However, the fact that some work is performed in Ontario may be insufficient to bring the employee under the*

*jurisdiction of the ESA. For example, if the employee’s work in Ontario is merely a continuation of the work performed in another jurisdiction, then the laws of the other jurisdiction may apply rather than the ESA.*

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

*Currently, due to COVID-19 restrictions, foreign nationals departing from any country other than the United States are prohibited from boarding an aircraft for a flight to Canada when:*

- a) they are not covered by any of the exemptions in the Orders (consult **Travel restriction exemptions** for those Departing from a country other than the U.S.), or*
- b) they are travelling for an optional and discretionary purpose*

*Foreign nationals departing from the United States are prohibited from entering Canada when they are travelling for an optional or discretionary purpose.*

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?

*Under the Canadian income tax system, an individual’s liability for income tax is based on his or her status as a resident or a non-resident of Canada. An individual who is resident in Canada during a tax year is subject to Canadian income tax on his or her worldwide income from all sources. Generally, a non-resident individual is only subject to Canadian income tax on income from sources inside Canada. The term resident is not defined in the ITA and is highly factually specific. In any event, according to the CRA’s **guidance**, if a non-resident employee performs their duties of employment remotely while in Canada, the non-resident employer would be subject to Canadian withholding, remitting, and reporting obligations.*

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

*This depends on the province in which the remote worker is located given that eligibility for workers' compensation varies by province. In Ontario, for example, a non-resident worker or non-resident employer must have a substantial connection with Ontario in order to come within the scope of the Workplace Safety and Insurance Act or the Workers' Compensation Act. A guide setting out the factors to consider whether a non-resident worker will qualify for coverage under workers compensation legislation can be found [here](#). In most cases, the key consideration is the amount of time that the worker spends working in Ontario.*

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

*This depends on the province in which the remote worker is located given that eligibility for healthcare coverage varies by province. In Ontario, for example, in order to be eligible for healthcare coverage, a worker must be physically present on Ontario for 153 days in any 12 month period, must be physically in Ontario for at least 153 days of the first 183 days immediately after the employee began living in the province, and the worker must make Ontario their primary place of residence. Additionally, the worker must be one of the following: a Canadian citizen, an indigenous person, be a permanent resident of Canada, have applied for permanent residence in Canada, have a valid work permit and work for an Ontario employer, or hold a temporary resident permit.*

## 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?

*In Canada, the Personal Information Protection and Electronic Documents Act ("PIPEDA") is a federal statute governing the collection, use and disclosure of personal information by private sector organizations.*

*While PIPEDA generally applies to personal information an organization collects in Canada, it does not apply to employee personal information, except for employee personal information of federal works, undertakings, and businesses.*

*Currently, the provinces of British Columbia, Alberta, and Québec have adopted generally applicable privacy legislation that has been deemed substantially similar to PIPEDA that may apply.*

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

*In order to mitigate the effects of travel restrictions and international tax consequences that have arisen as a result of the prevalence of remote work during the COVID-19 pandemic, the CRA has published relief guidelines that are applicable to foreign remote workers in Canada. The relief guidelines can be found [here](#).*

### **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.**

*If a remote worker is a Canadian citizen, the above answers could change depending on the circumstances of their presence in Canada (i.e. if their presence is on a temporary, or permanent basis). If the remote worker is engaged in the local labour market, almost all of the answers above would change. In these circumstances, and in order to ensure compliance with local tax withholding, payroll and benefits requirements, it would be advisable for the foreign company to utilize the services of a PEO.*



Robert Bayne  
Partner,  
**Filion Wakely Thorup Angeletti LLP**  
rbayne@filion.on.ca  
+1 416 408 5524

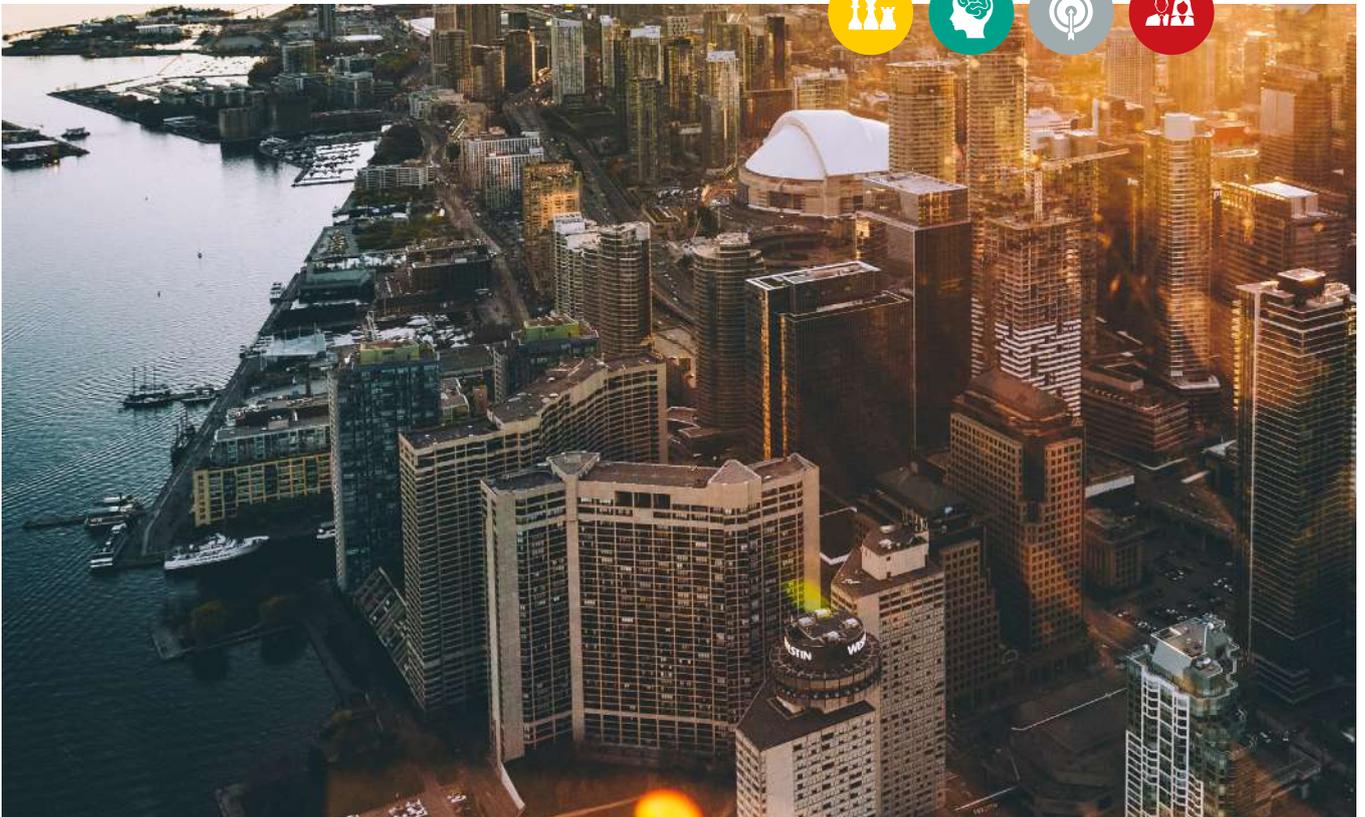
## CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

**Filion Wakely Thorup Angeletti LLP**  
333 Bay Street, Suite 2500  
Toronto, Ontario,  
Canada M5H 2R2  
+1 416 408 3221  
[www.filion.on.ca](http://www.filion.on.ca)

**L&E Global**  
Avenue Louise 221  
B-1050, Brussels  
Belgium  
+32 2 64 32 633  
[www.leglobal.org](http://www.leglobal.org)

May 2021



This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.