

10TH
ANNIVERSARY
IN 2021

CROSS-BORDER REMOTE WORK FAQs

CHILE

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.

Generally, foreigners are prohibited from engaging in remunerated activities, even if they are paid abroad by a foreign employer. In very qualified cases, the Immigration Department may authorise foreign tourists to apply for a special permit to work in the country for a period not exceeding 30 days, extendable for equal periods until the expiration of the tourist visa. Foreigners may remain in Chile on this condition for a maximum of 180 days. For this work authorisation and for each extension, a fee must be paid, according to the applicant's nationality. The entire processing occurs online and may take 1 week.

If the foreigner is required to stay in Chile for more than 180 days, he/she must apply for a residence visa, which

takes at least 1 full year to be processed, and in the meantime he/she may request a work authorisation with a visa, in process.

As a general rule, when the employer is a foreign entity, a local employment agreement must be executed, and the foreign employer must appoint a representative in Chile (typically a payroll firm provider) to manage the employment contract, regarding obligations due in Chile.

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.

According to the Chilean Income Tax Law, there will be a Permanent Establishment (PE) in Chile in case (i) there is a place of business in Chile in which the foreign company permanently develops its business activity; or (ii) there is a representative in Chile with powers to close agreements related to the business of the company in Chile, or to negotiate its essential terms and conditions.

However, if the foreign company only performs ancillary or preparatory activities in Chile, there is no PE. Therefore, it will be important to consider the following factors:

- what is the foreign company's main activity and the purpose of having the employee in Chile?
- which specific activities will the employee be carrying out in Chile?
- if the employee will have the competence to represent the Company in Chile?

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?

Remote workers rendering services in Chile are subject to all local payroll obligations. In case of a work/residence visa, the foreign employee must be subject to the Chilean social security system as well.

However, foreign professionals or technicians can choose to be exempted from contributing to the Chilean social security system (pension/retirement and health contributions) and maintain an affiliation and coverage in their home country. Other payroll requirements and labour accident insurance always apply.

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.

The remote worker will be subject to local labour laws to the extent that he/she is entering into an employment contract, even with a foreign entity. It is assumed by law that any individual (national or foreign national employee) performing services in Chile under labour control, direction and subordination, must be covered by a local labour contract, even if the employer is based abroad.

As mentioned, when the employer is a foreign entity, a local employment agreement must be executed, and the foreign employer must appoint a representative in Chile (typically a payroll firm provider) to manage the employment contract, regarding obligations due in Chile.

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

The new Remote Work and Telework Law ('Remote Law') entered into force effective July 2020. The Remote Law does not distinguish between foreign and Chilean employees; however, it is applicable to those who have an employment agreement in force. Under the Remote Law, employers must afford any cost arising from the employee working remotely.

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?

If any of the circumstances referred to above regarding the PE are met, the company may be deemed to have a permanent establishment and will be taxed in Chile for the income attributed to that permanent establishment, without any limit.

As for the employee, as long as he/she continues to be a resident or is domiciled in Chile, he/she will be subject to the Second Category Tax on his/her employment income, on a worldwide income basis. Thus, the remuneration will be taxed in Chile. Please note that the Second Category Tax is a progressive tax that levies income from dependent work, and its rate varies from 0% to 40%.

If a Double Tax Convention is in force between Chile and the country where the company is located, the remuneration may also be taxed in that country; the employee will then be able to use the tax paid abroad as a credit in Chile. However, if there is a remnant of credit at the end of the year, the remnant will not be refunded nor carried forward to be used in future years.

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

Yes, that claim must be addressed with the local representative appointed by the foreign employer.

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

All employees, even when working remotely, are entitled to health benefits as established by law. The legal health contribution (7% deducted from the employee's gross salary) must be declared and paid by the employer and is administered by the National Health Fund (Fonasa) or a private health insurance company (Isapre).

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?

Law 19,628 on the Protection of Private Life establishes that personal data includes data relating to any information concerning natural persons, identified or identifiable, and does not make a distinction between Chileans and foreigners. The processing of personal data can only be carried out when such law, or other laws, authorise it, or the holder - in this case the foreign worker - expressly consents to it. In order to grant the authorisation, the employee must be duly informed as to what is, or will be, the purpose of the storage of his personal data and its possible communication to the public, and must grant his authorisation in writing.

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

No.

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.

On the whole, the answers would be the same. Any disparity would be related to immigration issues and mandatory social security contributions, in the country.



Ricardo Tisi
Partner,
Cariola Díez Pérez-Cotapos
rtisi@cariola.cl
+562 236 040 28

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.

Cariola Díez Pérez-Cotapos

Av. Andrés Bello 2711, Piso 19.
Santiago,
Chile
+562 2360 4000
www.cariola.cl

L&E Global

Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
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.