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# CROSS-BORDER REMOTE WORK FAQs

## COLOMBIA

**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.

*In general, an authorization or permit for a foreigner to work remotely from Colombia is not required. Hence, any foreigner could work from Colombia without a "work visa" as long as they respect the terms of the permit or visa used to enter and remain in the country, either as tourists or any other situation different than a 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.

*This depends on the activities that the person will be performing in Colombia on behalf of the foreign company. If they act as a representative of the foreign company in Colombia by contracting on behalf of it (except for preparatory and auxiliary activities), they could be understood as a permanent establishment (PE) of the foreign company in Colombia (OECD criteria).*

*In order to determine if the behavior of a person has triggered the Colombian PE regulation, it should be analyzed if there is (1) a fixed place with (2) a level of permanence in Colombia, (3) through which the activities of the foreign company have been developed. Once the services rendered by the foreigner deem a PE, both the worldwide income and the Colombian income of the PE will be taxable in Colombia.*

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?

*Under one of the following two circumstances could a foreigner be called to make social security contributions in Colombia:*

- 1. When the foreigner is considered an employee protected by Colombian Employment law, according to the territorial principle further explained.*

*Therefore, the foreign company must guarantee the payment of the social contributions through an online mechanism (Comprehensive Contribution Payment Form -PILA) offered by several providers in the country, as well as the tax withholding as those payments will be considered Colombian/national income.*

- 2. When the foreigner performing activities in Colombia perceives income derived directly or indirectly from a Colombian source. In such case they should pay social contributions according to the income source (either an employment contract, a civil contract or other source). In addition, the foreigner could be subject to tax withholding according to the type of contract executed in Colombia.*

**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.**

*As said before, Colombia follows a territorial principle regarding the employment regulation, which entails that the foreigner could be considered an employee in Colombia, subject to the protection of Colombian employment law, in the following two circumstances:*

- 1. When the foreigner could compromise the foreign company in Colombia (e.g., acting as PE), or when the services must be performed from Colombia regardless of the employee's nationality, according to the agreement between the parties of the employment contract.*
- 2. When the activities are initially performed in Colombia and subsequently executed abroad but the direction and subordination power of the*

*employer is performed from Colombia, regardless of where the employee is located or their nationality.*

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

*Yes, if the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules. Specifically, the teleworking regulation will apply, obliging the foreign company to pay energy and internet expenses, among other Occupational Safety and Health (OSH) responsibilities.*

**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 foreigner could be subject to tax withholding when they receive a Colombian income, which can occur if the foreigner is protected by Colombian employment law, under the territorial principle following the abovementioned rules.*

*In addition, and as Colombia follows the 183-day rule, if the person stays more than 183 days in a 365 year, they will be considered a tax resident in Colombia.*

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

*Only when the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules.*

*However, it is highly recommended to check if there is any OSH regulation of the "home country" applicable to the employee when working remotely abroad.*

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

*Only when the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules.*

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?

*Yes, as Colombia has a general approach to personal data protection; therefore, any data that the foreigner provides in Colombia will be subject to protection, under Law 1266 and 1581, and could be exchanged or transferred to third countries, following the Colombian regulation.*

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

*Yes, Law 2069 of 2020 brought the “digital nomads” concept to the country and mandated the government to regulate the matter (up until March 2021, it has not been done). This concept includes teleworkers, distance workers, or remote workers, regardless the type of contract executed for that purpose.*

**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)** *The nationality of the foreigner does not have impact on the above answers.*

**(b)** *When the foreigner interacts with the local market, following the territorial principle, the foreigner could be considered an employee covered by an employment contract regulated by Colombian law, as explained above.*



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