

10TH
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CROSS-BORDER REMOTE WORK FAQs

DOMINICAN REPUBLIC

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.

So far, our legislation has not considered, let alone analysed this possibility. In our country, there is a work visa, but in this case, it could not be feasible. To obtain a work visa, it is necessary to initiate the application for employment in a company with a permanent establishment. In which case, that company has to comply with the 80/20 requirement. That is to say that 80% of the employer's employees must be Dominicans; only 20% can be foreigners. In this case, this would not be feasible.

Usually, foreigners enter the country with either a tourist visa or a business visa. However, if you are going to work in the country for a foreign company, in

principle, you would not be able to claim that you are a tourist or that you are about to do business in the country.

Therefore, the only possible way is to obtain a residence visa. These residence visas will be issued in favor of persons interested in residing permanently in the country. Persons who have the following reasons, will qualify for this type of visa:

- *family ties (family reunification by marriage / direct dependency), per Investors Law 171-07.*
- *pensioners, retirees or rentiers, according to Law 171-07.*

We will analyse the possibilities of residence for investors, pensioners or retirees, and rentiers in the present case.

Investment Residence in Investment Quality –
this type of visa is intended for foreign-minded investors. One of the requisites will be an investment from abroad, of a minimum amount of US \$200,000.00, or its equivalent in national currency. The processing time is forty-five (45) working days.

Residence for Investment in Quality of Retired or Pensioned –

this type of visa is intended for foreign pensioners or retirees. One of the requisites, is evidence that the person has a pension of a minimum amount of US \$1,500.00 per month. Likewise, an additional amount of US \$250.00 is required for each direct dependent included in the application. In none of the cases, does income earned by wages apply. The processing time is forty-five (45) working days.

Residence for Investment in Rentier Quality –

this type of visa is intended for a foreigner who enters the Dominican Republic to establish residence in the country and is a beneficiary of a monthly income or permanent income of a minimum amount of US \$2,000.00, from a company or agency of foreign origin. The processing time for this procedure is, in principle, forty-five (45) working days.

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 concept of permanent establishment is provided by the Tax Code of the Dominican Republic and its Regulation 139-98. The term “permanent establishment” is defined by Regulation 139-98 as a fixed place of business in which a foreign company, person or entity, performs all or part of its activity, such as management headquarters, offices, branches and business consulting services, provided they exceed six (6) months within an annual period. For those reasons, we consider that there is no risk for the company to be regarded as 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?

We only see the possibility for the employee to contribute personally to the Social Security System of

the Dominican Republic. Since the company would not have a permanent establishment, the company cannot fulfill that requirement.

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.

Dominican labour law is characteristically territorial. For instance, suppose an employee is working in the Dominican Republic. In that case, it could be understood that Dominican law will apply to that employee, unless the foreign law is more convenient for the employee.

Since the employee is teleworking, one could argue that the work is not being performed in the Dominican Republic, but rather the location agreed upon by the parties in the employment contract.

In any case, we understand that it will be essential to determine whether or not the company knew that the employee was usually, working from the Dominican Republic.

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

The Ministry of Labour has issued two resolutions about telework: Resolution No. 23/2020, dated 12 November 2020, and Resolution 27-2020, dated 11 December 2020. Neither resolution makes a distinction between foreign and Dominican employees.

Nevertheless, the requirements imposed by those resolutions (the legality of which is questionable) provides that the telework contract must, among others:

- *specify the place or places where the employee will work;*
- *that the employer must communicate the contract to the Directorate General of Labour of the Ministry of Labour; and*

- *the use of controls for video surveillance of the employee is prohibited.*

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?

In principle, the remote employee will not be obliged to file an income tax return, as his income will not be considered as originating from a Dominican source. If the company operates in the Dominican Republic, the employee could be obliged to file an income tax return, and the company could be obliged to withhold the income tax.

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

Possibly, but it would depend on several factors, among them, whether the company knew that the employee was usually working in the Dominican Republic.

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

In principle, no. It is unlikely that the employee can enroll in the Dominican Social Security System. Therefore, the employee would not be covered by the Dominican Social Security and Health system, unless the employee contributes personally.

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 principle, no. The law applicable to the employment contract would apply.

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

The only regulations that exist are the two telework resolutions previously mentioned, and they do not provide any express order regarding the foreign worker. Also, the 80/20 regulation (80% of the employees of a company operating in the Dominican Republic must be Dominicans) would complicate any work activities of a foreigner in the Dominican Republic. Finally, we are not currently aware of any relevant litigation concerning this matter.

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) If the citizen is Dominican, several points would change, but everything will depend on the specific circumstances of each case. Also, much would depend on whether the company knew that the employee was working from the Dominican Republic. In any case, if the employee is a Dominican citizen, he would have an obligation to report income taxes on the income he receives.

b) If the company interacts directly in the Dominican market, it will likely apply Dominican law to that contractual relationship. However, if it interacts indirectly, say for example, it sells products through a distributor in the country, then, in principle, Dominican law will not apply. Of course, each particular case would have to be analysed carefully.



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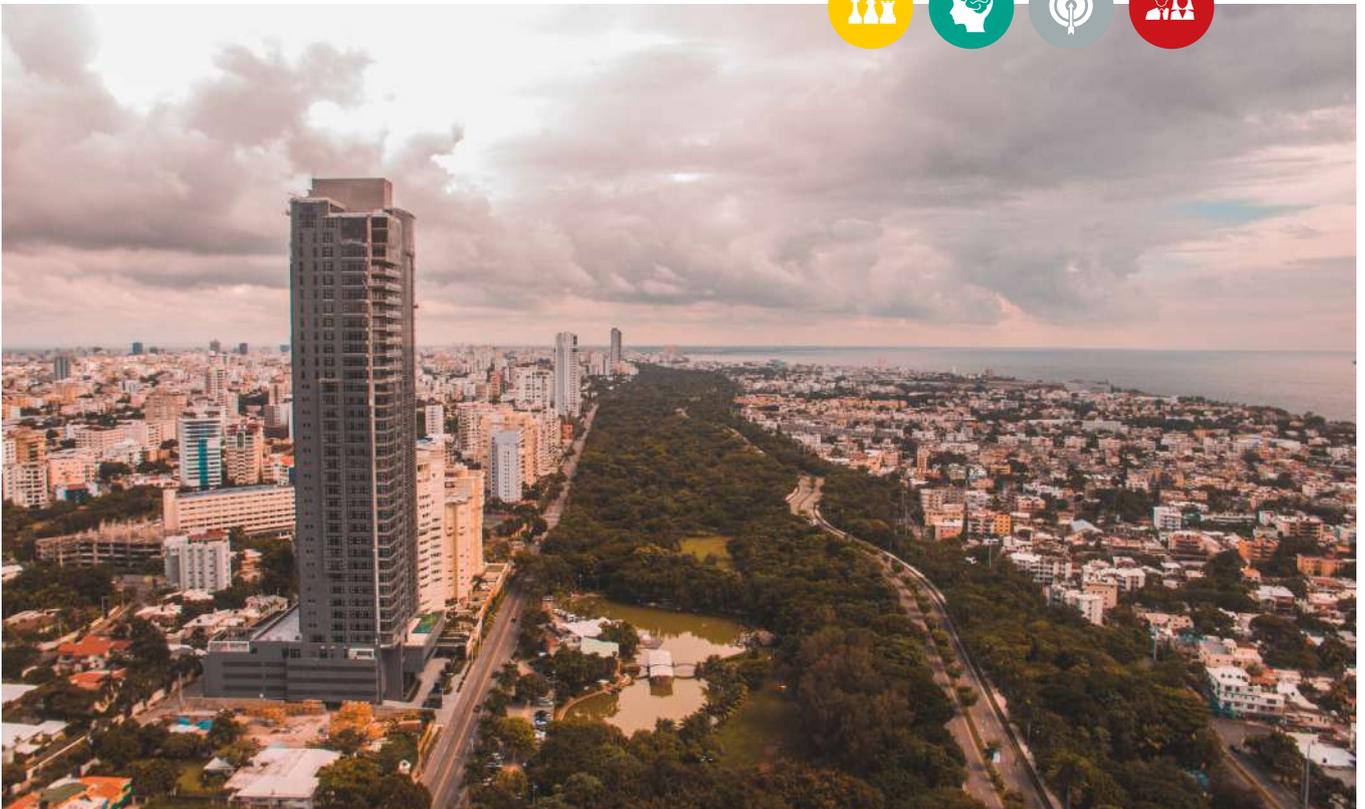
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