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CROSS-BORDER REMOTE WORK FAQs

FRANCE

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.

Unless being an EU national or fitting into a limited specific category of exceptions, such as those provided by the Brexit withdrawal agreement or the EU–UK Trade and Cooperation Agreement, work authorisations are required for all work (even remote work) in France and regardless of whether or not such work interacts with the local market.

There are numerous types of visas that can be applied for through French consular services. It is important to apply for the one that is most appropriate for an individual's personal and professional situation. During the COVID-19 pandemic, only the "Passeport Talent" visa (European Blue Card) allows for entry into France.

Once the elements of the dossier have been provided to the immigration authorities, the standard processing time for a visa is a minimum of 3-6 weeks. The required elements vary from one type of visa to another. There are minimum remuneration requirements in addition to the standard identification elements (birth certificates, ID, diplomas, CV, marriage and divorce certificates, etc.).

Please note that not all visas grant the right to work.

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.

There is little to no risk that the remote worker's activities would generate a permanent establish consequence, unless they yield an important commercial activity on the French territory. However, as explained below in more detail, there are significant social contributions, employment rights and administrative consequences risks.

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?

From a purely theoretical standpoint, French social security/payroll/employment dues and rights may begin to become due from the very moment the work is performed on French soil, unless an A1 Form (that would demonstrate that the remote worker is subject to another social security scheme, for a limited period of time) is provided.

From experience though, we can advise that the risk increases with time:

- *it is low-to medium for the first 6 months;*
- *at one year, the risk is probable;*
- *at two years, there is a very high risk.*

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.

When the employee can demonstrate that the work was effectively performed from France and that the employment relationship contains numerous “links” with France, the contract can easily become subject to French law, if there was no other formal agreement excluding this. However, even if a formal agreement should provide that another law applies, this may be overridden by the performance of work on French soil. Only a secondment (detachment) can offer some greater security on the applicable law.

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

The French State has not yet taken any specific measures concerning remote foreign workers. The extensive legislative debates and ministerial initiatives regarding telework only concern national employees. This is a rapidly evolving legal subject that could therefore, change in the coming months and years.

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?

It is very difficult to evaluate the employee’s exposure to local income tax. The general rule though, is that if the individual spends more than 183 days per year in France, they are subject to taxation in France. However, it is possible for some individuals to owe tax in France even without reaching 183 days per year. Indeed, article 4A of the General Tax Code provides that those who are “fiscal residents” must pay income tax, regardless of where they spend their actual time.

Payroll should be handled through a local provider that can calculate the appropriate withholding of income tax. When this is not possible for technical reasons, the employee is responsible for declaring their income and paying the appropriate amounts to the French State.

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

If French law is found to apply to the relationship, it is quite probable that an employee working remotely could bring a claim. Indeed, under French law, the employer’s obligation to ensure the health and safety (mental and/or physical) of their employees, extends to situations where an employee works remotely. The accident may be considered a workplace accident/ occupational illness.

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

As explained above, unless the remote worker is provided with an A1 Form (that would demonstrate that he/she is subject to another social security scheme, for a limited period of time), the performance of work on French soil would require affiliation with the French national healthcare and insurance system (“sécurité sociale”).

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 France is part of the European Union, the GDPR applies. Accordingly, GDPR regulations will extend to personal data and company information that, in any way, “passes” through the European Union. Moreover, France has its own ‘layer’ of data privacy requirements laid out by the CNIL - the French data protection agency. These rules are very likely to apply to the remote worker in France and therefore, the hiring company.

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

There is ongoing and developing litigation in France regarding foreign remote workers, who are requesting the application of French labour and employment laws to their contract. In the absence of a formal agreement, such as a secondment, these claims can be successful and may lead to social, employment and administrative consequences.

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 remote worker is a French citizen, the likelihood that a claim for the application of French law to the employment relationship would be successful, significantly increases.

b) Similarly, interaction with the local market is sure to draw attention to the situation and expose the employer to greater risks.



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