

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

# CROSS-BORDER REMOTE WORK FAQs

## GERMANY

**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 principle, every employee who would like to work in Germany (remotely or not) requires a residence title and a work permit before entering Germany. This does not apply to persons who are: i) of German nationality; ii) a European Union national; iii) a national of a European Economic Area member state (Iceland, Liechtenstein, Norway); or iv) a national of Switzerland.*

*However, working remotely from Germany for a foreign company is only possible for citizens of the states of Andorra, Australia, Israel, Japan, Canada, Republic of Korea, Monaco, New Zealand, San Marino, the United Kingdom of Great Britain and Northern Ireland and the United States of America. For citizens of all other countries, a local (i.e. German) employer is necessary,*

*unless working remotely for a foreign company meets the requirements of a so-called posting of worker, or the employee has been working in Germany for already two years. There are different types of residence permits for employment purposes available for foreign national employees (e.g. regular residence permit for employment purposes, Blue Card, ICT-card, mobile ICT-card, Vander-Elst visa, etc.). However, the residence title for employment purposes at issue, must be determined on a case-by-case basis.*

*Depending on the type of visa and the citizenship of the employee, it may be mandatory to apply for a visa to enter Germany, at the German embassy in the applicable country, before the employee travels to Germany. Only for nationals of those countries for which the European Community has abolished the visa requirement, is a visa not required in order to enter Germany. Please note that even though those nationals are allowed to enter Germany visa-free for 90 days, they must apply for a residence permit at the German Foreigner's Authority before they are allowed to perform any work activities. Only a few activities are considered not to be "work activities" and therefore, do not require a residence permit for employment purposes.*

*The processing time depends on whether the application is submitted at the German embassy or at a German Foreigner's Authority, and usually takes between 6 weeks and 3 months.*

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.

*Yes. However, in general, for the assessment of the existence of a permanent establishment it is decisive that an entrepreneurial activity is carried out with a certain continuity. The main factors determining the exposure cannot be answered in general terms, but rather the specific company, with its corporate structure and the activities performed, must be considered.*

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?

*Whether the German social security regulations shall apply, will depend on:*

- *first, if there is (or is not) a bilateral agreement on social security between Germany and the employer's country; and*
- *second, whether or not the remote working is considered as the posting of an employee.*

*If the German social security system applies, the foreign employer is obliged to pay the social security contributions in Germany and appoint a contact person (can be an employee) for the social security authorities in Germany. There are also payroll providers in Germany, which can carry out the payroll for the foreign company.*

*Please note that due to the lack of a bilateral agreement on social security, the employee working remotely from Germany may be subject to both social security*

*systems (i.e. Germany and the employer's country of origin).*

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 Posted Workers Act stipulates that in some business sectors, certain minimum working conditions must be observed if the remote work qualifies as posting.*

*Additionally, mandatory German provisions might apply, such as minimum wage, maximum working hours, minimum rest periods, annual leave, termination and pay protection regulations in favour of pregnant women, mothers and disabled employees, which it is not possible to deviate from to the detriment of the employee.*

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

*There are no special regulations in Germany regarding mobile work. However, the German government is currently considering the draft Mobile Work Act, which could pass momentarily.*

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?

*Employees are subject to unlimited tax liability in their country of residence and are therefore, also taxed on their remuneration in that country. However, double taxation agreements exist between Germany and other countries and, accordingly, the remuneration is generally taxable in the country in which the activity is performed.*

*If the employee is subject to German income tax pursuant to a double taxation agreement, the employer is required to arrange for withholding the income tax. If there is no double taxation agreement between the two countries, the foreign income tax is credited against the German income tax.*

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

*This depends on whether (or not) the employee is subject to German social security regulations. If the German social security regulations apply, the remote worker will be entitled to bring a claim for workplace injury before a German court.*

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

*This depends on whether the employee is subject to German social security regulations or if the bilateral agreement specifically includes provisions relating to regulations for healthcare and insurance. If the German social security regulations apply, the remote worker is covered under the local national healthcare system and insurance.*

**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?**

*Provided that the foreign employer does not have an establishment within the territory of the European Union, the fact that an employee will work remotely from Germany, will make it rather unlikely that relevant data protection implications, in the context of business activities, would apply. However, the General Data Protection Regulations could be applicable if the mobile working involves the processing of personal data.*

*If the foreign employer monitors the behaviour of the employee, or intends to monitor such behaviour while the employee is in Germany, then whether (or not) the*

*GDPR is applicable, should be assessed for on a case-by-case basis, respectively.*

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

*No, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Germany.*

**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) Yes, the answer on immigration requirements changes if the employee is citizen of Germany or EU country.*

*b) Depending on the activity with the local market, this might increase the risk of creating a permanent establishment in Germany (e.g. if business meetings with local clients are to take place at the employee's premises).*

*German citizens could also be subject to German income tax, even if a double taxation agreement exists.*



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May 2021



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