

10TH
ANNIVERSARY
IN 2021

CROSS-BORDER REMOTE WORK FAQs

ITALY

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.

For EU citizens, no work authorisation is required. On the other hand, a business visa is required for non-EU nationals, which allows them to stay for up to 90 days in a 180 day period, as per the current Schengen regulations. The activities allowed under this status are limited to the following:

- *business meetings with clients or colleagues;*
- *attending conferences or seminars;*
- *negotiations or managing contracts;*
- *maintenance and management, or learning how to use capital goods (such as machinery, technical instruments, etc.) bought or sold, following commercial contracts and industrial cooperation.*

If the activities of the foreign national employee do not fall under the category above, he/she will need to obtain the relevant work permit and working visa, even for a stay shorter than 90 days.

However, to request a permit for business purposes, there is an assumption that an Italian employer will request entrance into the country on behalf of the non-EU citizen, within the quota limits as determined annually by the Labour Ministry. The overall timing to obtain the permit is around 6 months. Therefore, with regard to remote workers who are non-EU citizens, our advice is to allow them to work - for a period up to 3 months - with a business visa.

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.

From a tax perspective, if the employee is a director/ executive and/or is involved in concluding contracts/ negotiating activities on behalf of the employing

entity, the employer is responsible for providing the employee with IT equipment. Also and in any case, if the employee works regularly from the same country, which is not his/her habitual place of work, this could have an impact on the tax residence of the employer and result in double residency; consequently, the foreign employer may be regarded as a taxable permanent establishment by the tax administration authority of the host country. As a result, the employer may be required to withhold social security obligations in the host country. It is even possible that an agent or business representative would fall under the PE classification, assuming the agent is competent to sign binding contracts in Italy, on behalf of the foreign company.

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?

If the remote worker has been seconded and as long as the secondment exists, he/she shall remain under the social security system of the country of origin. If the remote worker is not seconded and works from Italy, with regard to the work produced in Italy (if ascertained in case of inspection from the Social Body) the social contribution should be paid in Italy (i.e. by acquiring a tax number and registering with the Italian Social Body). However, in light of the fact that the risk of inspection from the Social Body is merely theoretical, the risk is relatively slight. Registering with the Social Body is therefore not advisable, especially when taking into account the burden imposed by the steep costs associated with social contributions (around 33% for the employer).

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.

Directives on secondment provide that the remote working employees who are seconded, will be subject to Italian law (European Directive 957/2018), if it is more advantageous than those of the home country, with the terms and conditions of employment relating to:

- maximum work periods and minimum rest periods;
- minimum length of parental leave(s);
- remuneration, including for the extraordinary working hours;
- health and safety at the workplace;
- protections for pregnant employees and employees with toddlers (small children), as well as young people (under 18 years of age);
- equal treatment of men and women;
- adequate accommodations for the seconded employees when the accommodation is provided by the employer;
- indemnities and reimbursements to cover and compensate for expenses (e.g. travel fees, accommodations,...) incurred by employees when travelling for business.

Besides the terms above, in the event that the secondment exceeds 12 months (may be extended to 18 months) and if more favourable to the employees, all other terms and conditions as provided for in the relevant national collective bargaining agreement (NCBA), together with other mandatory laws in Italy, shall therefore apply to the employees; with the exception of the protection against unfair dismissal, non-compete and integrative social security. Protection against unfair dismissal is always controlled by the law governing the employment agreement, unless the remote worker claims that he has been working, de facto, for an Italian company (i.e. a company of the group) while located in Italy.

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

No, the remote working law applies only to Italian companies and employees.

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?

As general principle, the income produced in Italy shall be taxed in Italy. There are however, some exceptions:

- *if the foreign employer continues to pay the salary;*
- *if the foreign employee retains his residence abroad;*
- *if his stay in Italy does not exceed 183 days and if below such threshold, the employee does not have a housing situation that may suppose a current intention to have a habitual residence in Italy;*
- *if there is no permanent establishment in Italy; and*
- *if compared above to the risk in case of permanent establishment.*

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

Theoretically, yes.

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

Yes. Please note that if the remote worker is temporarily present for a period not exceeding 90 days (e.g. as a tourist), he/she may take advantage of urgent and elective health services against payment of the relevant regional rates. Registration with the National Health System is not required, except for au pairs and students.

If the remote worker has a regular residency permit, he can register with the National Health System by contacting the local health agency in the city/town of residence or, if he/she is not yet a resident, the city/town where actually domiciled, as indicated on the residency permit.

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.

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

No. Although there is a regulation on remote working (so called 'smart working'), it only applies to Italian companies and Italian employees.

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 an Italian citizen or an EU national (applies to all EU member states), he would not be required to obtain a visa.

b) If the remote worker is an Italian citizen or an EU national (applies to all EU member states), he would also be able to freely work from Italy.



Michela Bani
 Partner & Head of International Practice,
LABLAW – Studio Legale
 m.bani@lablaw.com
 +39 2 33 111

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.

LABLAW – Studio Legale

Largo Augusto, 8
 20122 - MILANO
 +39 02 303 111
www.lablaw.com

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.