

10TH
ANNIVERSARY
IN 2021

CROSS-BORDER REMOTE WORK FAQs

NETHERLANDS

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.

A work authorisation is not required for nationals from the European Economic Area (EEA) and Switzerland. People from outside the EEA and Switzerland often need a work permit (if less than 3 months) or a combined residence and work permit, known as a single permit (if longer than 3 months). The employer applies to the Employee Insurance Agency (UWV) for an employment permit or to the Immigration and Naturalisation Service (IND) for a single permit. Simplified procedures apply to skilled and highly educated foreign nationals. One is considered as highly skilled or educated, primarily on the basis of his/her salary or education.

The application forms are only available in Dutch. Before the application process, all the documentation must be translated into Dutch, English, French or German. Permit application procedures require extensive preparation, which can easily take several weeks (aside from the time it takes the authorities to process the application). Requesting a single permit, the IND has three months to process the application.

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.

A permanent establishment exists when an enterprise has a physical structure (building or office) in the Netherlands, for the purpose of carrying out business activities. The performance of building, construction or installation activities can also give rise to a permanent establishment. This is the case if the work abroad lasts longer than twelve months. Supporting activities, such as storage of goods or merchandise or collection of

information, do not normally constitute a permanent establishment. A permanent establishment may also exist if the enterprise has a permanent representative in the relevant country. A permanent representative has the power to conclude contracts on behalf of the enterprise. An independent agent does not constitute a permanent establishment. In this case, if the remote worker only works for the foreign employer and does not “come into contact” with the local market, there will not be 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?

In principle, if the employee lives and works (more than 25% of his activities) in the Netherlands, social security will be governed by Dutch law. Employers pay contributions on behalf of their employees to the Dutch Tax and Customs Administration. These contributions form a part of the payroll tax. The Employee Insurance Agency (UWV) arranges the payment of the employee benefits. In the Netherlands, the following employee insurance schemes are compulsory for each employee:

- Unemployment Insurance Act
- Work and Income (Capacity for Work) Act
- Sickness Benefits Act

If the employer is based outside of the Netherlands and intends to have an employee work temporarily in the Netherlands, the employee usually remains covered by his/her own country's social insurance system. An A1/certificate is required for this. This certificate is valid in the EU and the countries of the European Economic Area (EEA) and countries with which the Netherlands has a social security agreement.

For non-EEA nationals, the bilateral social security treaties that the Netherlands has concluded with other nations should be consulted. The relevant treaty determines where the employee is insured. If there is no treaty, the Dutch administration will have to discuss with the foreign administration which system will be applied, in order to avoid a double application of social security systems.

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.

If the foreign employee works in the Netherlands, based on international treaties, specific statutory Dutch employment law requirements apply such as:

- the employer must pay at least the Dutch statutory minimum wage;
- the employee is entitled to at least the minimum number of holidays as Dutch employees;
- the working conditions (such as maternity leave and safety at the workplace) and working- and rest-times must comply with Dutch legislation.

Parties may make a choice of law when concluding an employment contract. However, apart from the above and based on international treaties as well, this choice of law may not deprive the employee of the protection afforded to him by provisions from which it is not possible to derogate by agreement, such as the statutory Dutch dismissal law (which contains a preventive test) and the payment of the salary during illness (for at least 2 years). These provisions derive from the law of the country in which the employee normally carries out his/her work. The country where the work is normally performed is not considered to have changed if the employee temporarily performs his work in another country. There is one exception to this rule; if it is clear from all the circumstances of the case that the contract is more closely connected with another country, the law of that other country shall apply. Consequently, to determine if statutory Dutch law applies (such as Dutch dismissal law) to the foreign employee, depends on the above circumstances.

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

Yes, the foreign employer must comply with the provisions of the collective bargaining agreement (CAO) that is relevant for the company or the sector.

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 Netherlands has tax treaties and regulations with many countries. These treaties state which country may levy tax on certain income. If the employee has income from a country without a treaty with the Netherlands, the employee will not automatically have to pay income tax in the Netherlands. To avoid paying income tax in several countries on the same income, the employee can get a double tax relief in the Netherlands.

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

Following the Working Conditions Act, the employer is obliged to provide a healthy and safe work environment for its employees (duty of care). If a workplace injury occurs, the employer is liable unless he can prove that he has fulfilled his duty of care. If liability is determined and the employer can be held liable, the injured employee must be compensated.

Serious accidents at work must be reported immediately by the employer to the Inspectie SZW. Insurance for accidents in the workplace is not compulsory for the employer. However, many collective bargaining agreements (CAO) include accident insurance as an employment condition.

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

In the Netherlands, there is no obligation for the employer to provide for a healthcare insurance policy. However, anyone who lives or works in the Netherlands (the employee) must take out a basic healthcare insurance. This insurance covers the employee for care from, for instance, the hospital, the psychiatrist and the pharmacy. EU-citizens will have such insurance with a European Health Insurance Card (for up to four months).

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?

A foreign employer who uses or stores personal data from employees, must take measures to protect the data. The employer should comply with the European privacy law (GDPR). The GDPR applies if the company:

- *is based in the EU and processes personal data (no matter where the processing takes place);*
- *is established outside the EU but processes personal data because the company offers goods or services to individuals in the EU, or monitors the behaviour of individuals within the EU. Non-EU based companies processing an EU citizen's data need to appoint a representative in the EU.*

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

Yes, there is case law in the Netherlands regarding the applicability of Dutch dismissal law on foreign workers in the Netherlands.

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) Citizenship in the Netherlands can have an impact on the necessary (work) permits and application of certain treaties on the applicable tax or social security system.

b) This could mean that there is a permanent establishment in the Netherlands and, thus, Dutch statutory law applies (such as Dutch dismissal law), apart from the fact that specific statutory Dutch employment law applies as explained above.



Christiaan Oberman
Partner, **Palthe Oberman Advocaten**
oberman@paltheoberman.nl
+31 20 3446 100

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.

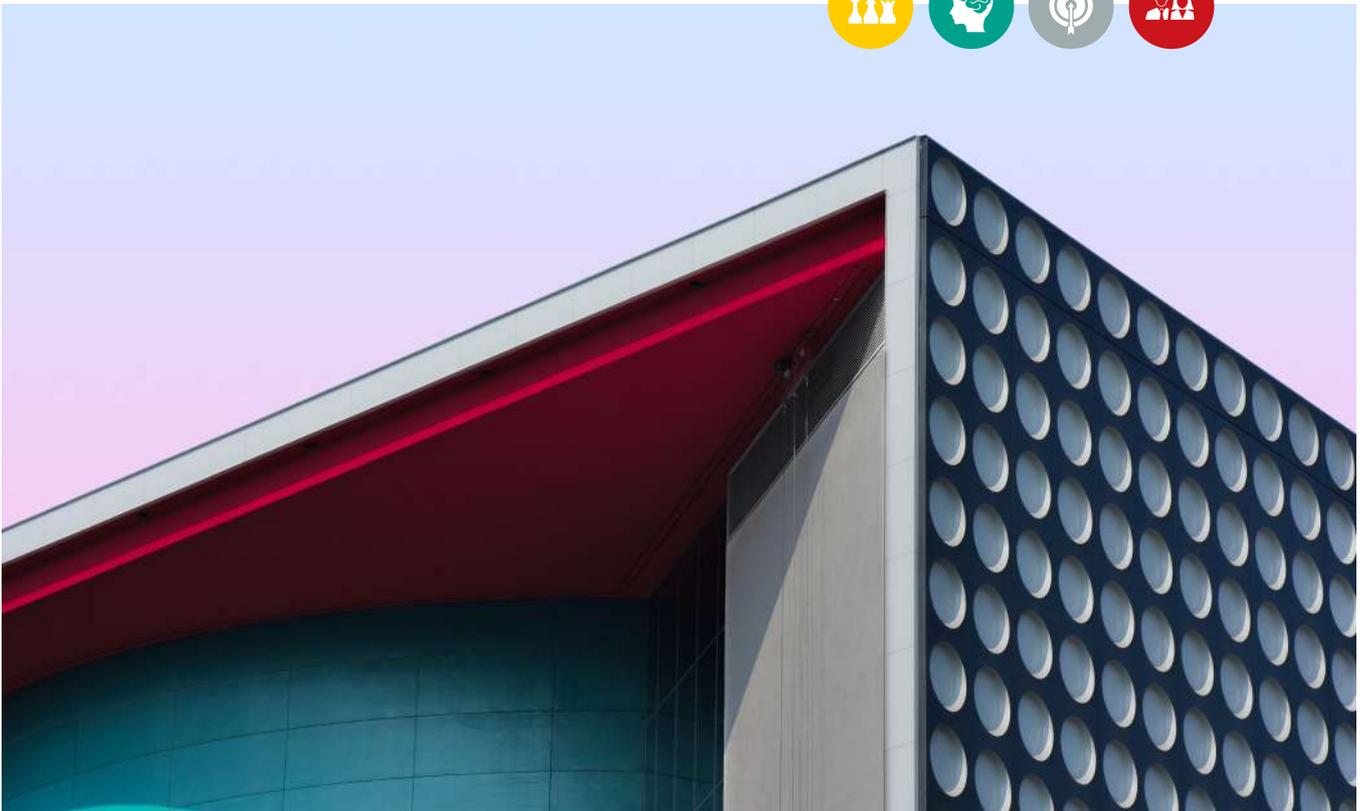
Palthe Oberman

Prins Hendriklaan 17
1075 AZ Amsterdam
Netherlands
+31 20 344 61 00
www.paltheoberman.nl

L&E Global

Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org

July 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.