

10TH
ANNIVERSARY
IN 2021

CROSS-BORDER REMOTE WORK FAQs

NORWAY

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.

Depends on nationality. EU/EEA employees who are going to work for and live in Norway more than 3 months, need to register as a worker obtaining a job in a Norwegian or foreign company. Non EU/EEA workers need a residence permit. The main requirements are that the employee is a skilled worker meaning that the employee obtain a higher education or have completed vocational training and have obtained employment/received a job offer. Working for a foreign company that does not have a legal entity in Norway requires that the foreign company have a contract with an enterprise in Norway to carry out an assignment in Norway.

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.

Highly unlikely. Most companies and self-employed persons engaged in business activities in Norway are liable to pay tax to Norway.

If a company or self-employed person resides in a country with which Norway has entered into a tax treaty, the condition for tax liability in Norway is that the business income originates from business activity that is carried on through a permanent establishment in Norway.

A ‘permanent establishment’ means that the company or self-employed person has a fixed place of business through which they run the business all or some of the time. The business must also have been operating for a sufficient period of time.

Examples of permanent establishments are:

- a place of management
- a branch
- an office
- a factory.

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?

Workers in Norway are as point of departure covered by/members of the National Insurance (social security). This does not apply if the employee work temporary for a foreign company. For work in Norway different rules apply, dependent on whether the employee is from the Nordic countries and the EEA, from countries with an agreement on national insurance/ social benefits with Norway or countries from outside of the EEA without such agreement on national insurance/social benefit. For workers from countries outside of the EEA with an agreement on national insurance/social benefits with Norway, the workers are obliged members of the National Insurance, unless you are regarded as a posted worker from your home country in accordance with the law in your home country. Workers from countries from outside of the EEA without an agreement on national insurance/social benefits are obliged members in the National Insurance. Membership in the national insurance provides entitlement to national health services and other social benefits. A foreign company may fulfill such requirements.

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.

This depends on the rules on choice of law. Norwegian choice of law rules are, as the clear main rule based on case law and follow the so-called “Irma Mignon

formula” which the Supreme Court established in Rt. 1923 II p. 59, according to which the laws of the country to which the case “has its strongest connection” shall be applied. In this connection, both the country in which the work is performed, where the employment contract was entered into and the language in which it was entered into, the parties’ joint affiliation with a country’s legal system and the parties’ assumptions and course of action are important for the assessment.

A number of legal sources state that Norwegian conflict-of-law rules must be harmonized with those of the EU, so that as long as there is no direct conflict between Norwegian and EU legal conflict-of-law rules, the latter rules must be followed. This is stated, among other things, in the Supreme Court’s statements in Rt. 2009 p. 1537 (The bookseller in Kabul), which is followed up in Rt. 2011 p. 531 and HR-2016-1251-A et al.

The rules on the choice of law for international working conditions in the EU are set out in art. 8 of the Rome I Regulation of 2008, Regulation No 593/2008.

The starting point is that the parties themselves can decide which country’s law is to be applied to each individual employment relationship, cf. art. 8 (1), first sentence, of the Rome I Regulation. This corresponds with the case law principle in Norwegian law of party autonomy (the parties decide for themselves). If the parties to an international employment relationship have agreed on the choice of law in the employment agreement, for example that Norwegian law shall apply, this is also the starting point. Art. 8 no. 1 second sentence, however, established an important limitation on this starting point: if the choice of law means that the employee loses protection that he would have had if the relevant choice of law had not been made, the rules of the law of the country that would have been applied given that the choice had not taken place, will apply.

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

Provided that Norwegian law applies, the regulation on working remote (FOR-2002-07-05-715) sets out certain requirements for working remote, when the work is not brief or temporary. Among others,

the regulation set out requirements for a separate agreement in addition to the employment agreement.

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 rules concerning tax residence upon moving to Norway apply to those who have not previously been resident in Norway. The rules also apply to have been residents in Norway before, if previous emigration has been approved for tax purposes.

If you stay in Norway for more than 183 days during a twelve-month period, you will become a tax resident in Norway. The same applies if you stay in Norway for more than 270 days during a thirty six-month period. All whole or part calendar days in Norway are included in the calculation of the number of days.

If you stay in Norway for more than 183 days during the year in which you move to Norway, you will be deemed a tax resident from your first day in Norway. If the 183 days are split between two income years, you will become a tax resident from 1 January of the second year. (You will have limited tax liability in the year before. This means you are only liable to tax on certain income linked to Norway.)

If you stay in Norway for more than 270 days during a thirty six-month period, you will be deemed a tax resident from 1 January of the year in which the stay exceeds 270 days. (You will have limited tax liability in the preceding year(s).)

As the company/employer in the example is foreign, and as long as their activities through the remote worker is not considered a "permanent settlement" or the likes, Norwegian law does not apply directly. Hence, the duties put on employers situated in Norway to withhold income tax are not relevant for such foreign employers.

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

If covered by Norwegian law and Norwegian occupational injury insurance – in principle yes. Depends on what type of injury and further what kind social benefit/insurance that will be relevant/in question.

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

See above regarding social benefits.

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. GDPR and the Norwegian personal data/privacy regulation applies to all physical and legal persons in Norway.

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

Not as far as we know.

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) All the questions presupposes that there is a "foreign" employee in question, thus the questions will have to be looked at from a pure Norwegian perspective if the employee is Norwegian citizen. A Norwegian citizen will not need residence permit/visa working from remote in Norway etc. The other rules regarding tax, working environment, employment protection, tax, GDPR all apply to Norwegian employment if they are deemed Norwegian according to the rules on choice of law.

b) Not necessarily, unless such activity results in "permanent establishment" status, discussed above .



Kari Bergeius Andersen
Partner,
Storeng, Beck & Due Lund (SBDL)
kari.andersen@sbdl.no
+47 22 01 70 50

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.

Storeng, Beck & Due Lund (SBDL)

St. Olavs gate 27 | P.O. Box 1234
Vika, 0110 Oslo
Norway
+ 47 22 01 70 50
www.sbdl.no

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.