

10TH
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CROSS-BORDER REMOTE WORK FAQs

POLAND

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.

European Union citizens are not required to obtain any documents before they can begin to work in Poland. If the stay exceeds 3 months, the foreigner (not the employer) is only obliged to register their stay at the nearest Voivodship Office (regional administrative divisions with authority over all matters related to the legalisation of the stay of foreigners in the Republic of Poland, matters of the residence of EU citizens and their family members, and where the registration of invitations and granting permits for foreigners to perform work, can be arranged).

In order to work in the territory of Poland, foreigners who are not citizens of the European Union, are required (with some exceptions) to obtain documents legalising their work and stay.

In a typical case, the foreigner must obtain a work permit before starting work in Poland. The processing time is approximately 3 months and is usually initiated by the employer. In the case of citizens from countries such as Armenia, Belarus, Russia, Ukraine, etc. it is possible to use the simplified procedure: obtaining a "declaration of the intention to entrust the foreigner with the performance of work". The simplified procedure takes between several days and several weeks to process.

Most important of all, is that the foreigner must secure the legal right to stay in Poland (e.g. visa, residence permit or visa-free stay permit, depending on the particular circumstances). As a rule, a residence permit can be obtained on the basis of a work permit or the above-mentioned declaration, unless the stay takes place as part of visa-free travel (then the employee must obtain the right to stay as part of visa-free travel, after 90 days of stay).

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.

As a rule, a foreign enterprise will not be deemed to have a “permanent establishment” in Poland as long as the employer does not conduct business here, which could be considered a foreign establishment in accordance with the provisions of the Personal Income Tax Act (on terms consistent with the OECD Model Tax Convention) and pursuant to the provisions of a double taxation treaty (if any) between Poland and the home country of a given employer. We suggest analysing the obligations of future employees and bilateral agreements carefully, so as to exclude the risk that the employer has a recognised permanent establishment in Poland.

Temporary remote work, generally, will not create a permanent establishment in Poland. Currently, remote work is most often forced by government restrictions; as such, this eliminates any consideration that mandatory remote working arrangements are a result of the employer’s will (it could be otherwise if an employee, after the COVID-19 restrictions are withdrawn, continues to work remotely in Poland, e.g. concluded agreements on behalf of the employer as an agent).

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?

Basically, every citizen of the EU should be subject to the legislation of the country where he or she works, but employees of the Member States will be able to work in Poland without changing the place of social insurance, on the basis of the A1 document. However, not every state wants to issue this document in case of remote work. If the A1 document is not issued, there is a risk that the Polish Social Insurance Institution will demand payment of contributions for work performed

in Poland. In such cases, the employer has to register as the payer of contributions with the Polish Social Insurance Institution and obtain a tax identification number. In addition, the employer is required to register the remote employee within 7 days from when his work commences within the territory of Poland. The employee, however, may perform duties on behalf of the payer, including paying contributions.

If an employer is not from the EU, it should be verified whether an agreement between Poland and a given country, which regulates the rules on being subject to insurance, has been concluded. Poland has established bilateral social security agreements with e.g. the former Yugoslavia (now Serbia, Bosnia and Herzegovina and Montenegro), Macedonia, Canada, the United States of America, South Korea, Australia, Ukraine, Israel, Moldova, Turkey and Mongolia.

In the absence of a bilateral agreement, temporary remote employees from outside the EU, will be covered by insurance, only on a voluntary basis.

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.

As long as the work is habitually performed in the home country and not in Poland, the Polish labour provisions will not apply.

The possibility that Polish law will apply depends on the particular facts concerned, e.g. if the work is performed habitually in Poland under the “Rome I” Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations).

The choice of law stipulated in an employment agreement may not result in depriving the employee of the protections afforded to him under Polish law; nor can the parties, by agreement, deviate from such provisions; this means that an employee would be subject to the law chosen in the contract, unless Polish employment law provided him/her with better

protection (e.g. working time norms, minimum wage, amount of days of annual leave, occupational health and safety regulations, etc.).

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

As mentioned above, as long as the work is habitually performed in the home country, the provisions of the law regarding remote work, currently in force in the home country, should apply.

The ad hoc regulations sanctioning remote work during the COVID-19 pandemic presently in force in Poland, and which are reappraised only periodically, impose too few obligations (mainly having to do with the provision of tools and work materials, etc.), although general rules of practice and procedure for the provision of appropriate occupational health and safety measures, still apply. However, several draft amendments to change the Labour Code in this respect, have been proposed.

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?

First of all, it has to be determined whether a particular person is a Polish tax resident, so if he or she:

- has a centre of personal or economic interests (centre of vital interests) on the territory of the Republic of Poland; or
- stays in the territory of the Republic of Poland for more than 183 days in a tax year.

As a rule, an employee temporarily working here will not be considered a Polish resident, and will be subject to tax only on income achieved in the territory of the Republic of Poland (limited tax obligation). Typically, in this case, a double tax treaty applies, which limits the obligation to pay income tax in Poland.

If no double tax treaty between Poland and a given country has been concluded, tax obligations will arise and the remote employee will have to register with

the Polish Tax Authority (a foreign employer, as a rule, has no payroll withholding or reporting obligations in Poland).

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

In general, post-accident proceedings aimed at determining whether (or not) an accident at work has occurred, should be conducted in accordance with the regulations of the place where the employee usually works. As long as the work is habitually performed in the home country, and not in Poland, the Polish provisions in this matter are unlikely to be applied. In some cases however, it cannot be ruled out that claims will be filed against the employer at the place of the accident, i.e. in Poland.

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

If an employee is covered by social insurance, he/she can also be covered by health insurance. In this case he/she is entitled to the same benefits as Polish employees.

If the stay of a remote employee insured in an EU country is temporary, she may receive necessary medical care by presenting the European Health Insurance Card. If an employee is a citizen of a country with which Poland has signed a treaty or bilateral agreement, the employee may also be entitled to receive the necessary medical care. In other cases, medical assistance is provided against payment.

In addition, people who are currently staying in Poland are eligible to receive healthcare services (e.g. prescriptions) and epidemiological tests, which are related to the fight against diseases, infections and infectious diseases, including COVID-19.

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?

In the field of data protection in Poland, as in all European countries, the GDPR provisions apply. If the employer's activity is conducted in the EU or is related to European citizens, the obligation to comply with the GDPR regulations arises. In case of the non-EU employer who has no connection to the European market, the GDPR may not apply.

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 Poland.

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 a remote employee is a Polish citizen, he or she will most likely also be a Polish resident for tax purposes and will pay income taxes in Poland. Presumably, the employee will also be subject to Polish social and health insurance. The employer will therefore, have to register with the relevant authorities and pay contributions. Polish labour law regulations, which are more favourable than the laws of the country designated in the contract, will apply if the performance of work in Poland will be permanent; therefore a detailed analysis of working conditions in Poland will be necessary.

b) If the foreign worker is actively interacting with the Polish market and depending on the interaction, in certain situations, according to the principles of the Personal Income Tax Act, it may be that the foreign employer is deemed to have a permanent establishment in Poland; consequently, the foreign enterprise is will pay taxes on corporate income in Poland, in accordance with the Corporate Income Tax Act (CIT).



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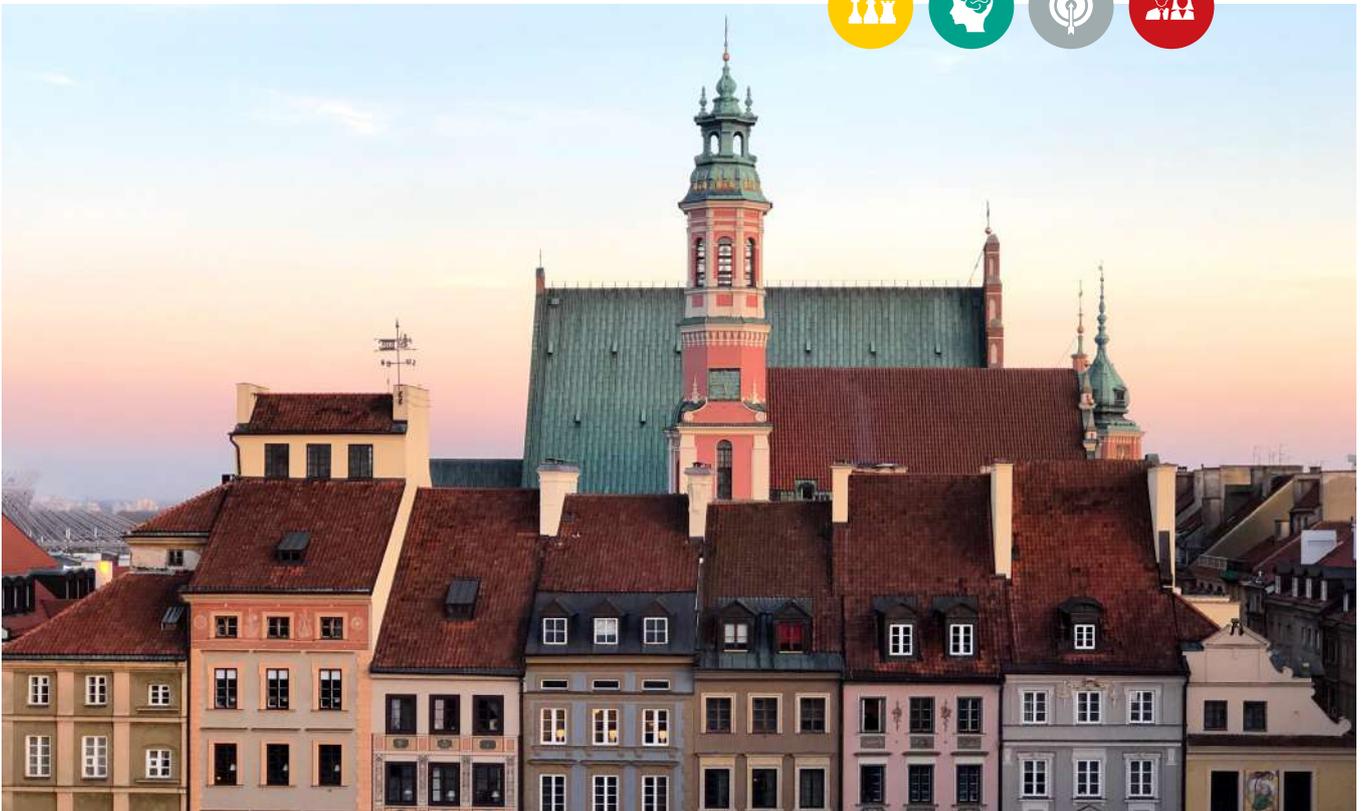
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