

Workation – Remote Work from anywhere



Businesses have gained forced experience of employees working remotely – with some even working from other countries – and many employers are now faced with requests from their employees to continue to work from abroad on a more permanent basis or as an extension of their holidays.

For employees, this new approach or working from anywhere or a “Workation,” can open up the attractive opportunity to work from “their place in the sun”; for employers, this option can be an ideal way to retain or attract qualified labour and talent.

Before agreeing on this type of cross-border remote work, both parties should consider the following legal issues:

Social Security: Does an exception apply from the general principle, according to which employees will become subject to social security in the country where the work is undertaken?

Employment: Will local working conditions of the host country apply?

Taxation: When will the company and the employee become tax liable in the host country?

Immigration: Is a work permit required?

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Workation

Social
security

Employment
law

Tax law

Immigration



As home country

Can the employee stay subject to social security of the home country without official posting by the employer?



Belgium

Yes – "No-impact rule" has been extended until 30 June 2023. As of 1 July 2023, flexible rules might apply.



France

Yes – the posting has to be formalized via an A1 certificate which confirms that the French social security regime continues to apply.



Germany

Yes – No written rule, but social security started to accept this during the pandemic as in case of a posting by the employer.



Poland

For occasional work outside Poland, employees will be subject to the Polish social security system.

In case of a posted employee or a multi-state employees (within EU), it is necessary to obtain an A1 certificate confirming that the Polish social security regime continues. Otherwise, it may be necessary to be subject to such insurance also in the host country.

In the case of country with which Poland has a social security agreement (e.g. Ukraine, the USA, Canada, Israel, Turkey), generally, an employee who is employed in the territory of one country should be subject to the legislation of that country. The continuation of the relevant social security regime is only possible if the employee is formally posted abroad. If this is not the case, it may be necessary to be subject to such insurance in the host country as well.



Spain

Yes – I case of temporary posting to a member state of the European Union (or in a member State of the Agreement on the European Economic Area). In such cases, the posting must be formalized via an A1 certificate which confirms that the Spanish social security regime continues to apply.

In case of temporary posting outside the European Union or the European Economic Area, the provisions of bilateral social security conventions shall apply.



UK

This will depend on the amount of time spent working in the non-home country.

As host country

When will the local employment law become applicable?

 Belgium	 France	 Germany	 Poland	 Spain	 UK
<p>Immediately: All statutory labour / work / salary conditions which are criminally sanctioned (i.e. min. salary, working time, salary protection, min. holiday, salary indexation, end-of-year premium) + Generally binding Collective Bargaining Agreement</p> <p>After 12 months: All working conditions except for</p> <ul style="list-style-type: none">• Regulations concerning the conclusion and termination of the employment contract;• non-competition clauses;• supplementary occupational retirement pension schemes.	<p>Immediately: Core stipulations of the French employment law (minimum remuneration, working time and overtime, paid leave, reimbursement of the cost related to the assignment)</p> <p>After 12 months: Entire French employment law requirements excluding in particular the stipulations regarding</p> <ul style="list-style-type: none">• Conclusion, the implementation and the modification for economic reasons of the employment contract;• Fixed-term contracts	<p>Immediately: Minimum working conditions (Minimum salary, working time, minimum holidays)</p> <p>After 12 months: All working conditions with the exception of</p> <ul style="list-style-type: none">• Regulations concerning the conclusion and termination of the employment contract,• non-competition clauses and• supplementary occupational retirement pension schemes.	<p>Immediately: Minimum working conditions (minimum salary, working time, minimum holidays)</p> <p>After 12 months (or 18 months if appropriate notification of the need for the service / posting after the 12-month period has been made to the competent authority): all working conditions with the exception of:</p> <ul style="list-style-type: none">• regulations concerning the conclusion and termination of the employment contract,• non-competition clauses and• supplementary occupational retirement pension schemes (employee pension schemes and employee capital plans).	<p>Immediately: Minimum working conditions (minimum remuneration, working time and overtime, paid leave, minimum salary, equal treatment and non-discrimination, prevention of occupational risks, free syndication).</p> <p>After 12 months: all other terms and conditions of employment, except for the following matters:</p> <ul style="list-style-type: none">• Procedures, formalities and conditions for the conclusion and termination of the employment contract, including non-competition clauses;• supplementary pension schemes.	<p>This will depend on the amount of time spent working in the host country.</p> <p>Typically we recommend that some local laws are always adhered to, such as holiday, working time, data privacy, etc. and we would recommend that any terminations be carried out in the home country.</p> <p>However for short stays, a commercial approach can likely be taken to short periods of time worked in a host country.</p>

As host country

What should be checked with respect to individual tax liability and risk of a permanent establishment (PE)?

 Belgium	 France	 Germany	 Poland	 Spain	 UK
<p>Wage taxes: The host country generally obtains the right to levy wage taxes if the employee's stay exceeds 183 days within one year.</p> <p>PE: Risk of creating a PE is rather low as long as employee works from home (premises which are not provided by the employer). However, risk is greater if the employee has power of representation and habitually concludes contracts or plays a leading role in concluding contracts.</p>	<p>Wage taxes: Provided that the employee's tax residence does not change and the posting does not exceed a 6 months period, the employee remains taxable in the home country, except the posting cannot be considered as a temporary mission (in particular if the posting exceeds 183 days per 12 consecutive months).</p> <p>PE: Risk of a PE is rather low if the company does not have a fixed place of business in France. However, there is a risk of PE if the posted employee is entitled to conclude contracts on behalf of the company for which he is acting.</p>	<p>Wage taxes: The host country generally obtains the right to levy wage taxes if the employee's stay exceeds 183 days within one year.</p> <p>PE: Risk of creating a PE is rather low as long as employee works from home. However, there is a notable risk if the employee has power of representation and habitually concludes contracts or plays the leading role in concluding contracts</p>	<p>Wage taxes: In the case of employees from countries with which Poland has concluded a double tax treaty (DTT), the host country (Poland) generally obtains the right to levy wage taxes if the employee's stay exceeds 183 days within one year or each twelve-month period beginning or ending in the fiscal year concerned (unless other conditions indicated in the treaty are not met).</p> <p>In the case of employees from countries with which Poland has not concluded a DTT, income earned by a non-tax resident from work performed within the territory of Poland, irrespective of the place of payment of remuneration, will be taxed in Poland from the first day of work.</p> <p>PE: Risk of creating a PE is rather low as long as employee works from home and the company does not have a fixed place of business in Poland. However, there is a notable risk if the employee has power of representation and habitually concludes contracts or plays the leading role in concluding contracts. Nevertheless, according to recent tax rulings, remote work can result in PE in Poland if the tasks that employees perform do not qualify as preparatory or auxiliary activities.</p>	<p>Wage Taxes: The host country generally obtains the right to levy wage taxes if the employee's stay exceeds 183 days within one year or is tax resident in Spain under other criteria.</p> <p>Generally, if the company does not have any tax presence in Spain, there is no obligation to withhold. However, if a tax presence exists employment income must be withheld by its payer.</p> <p>PE: Pursuant the Spanish Non Resident Income Tax Law ("Spanish NRIT Law") a PE is deemed to exist (i) when all or part of the company's activity is carried out either continually, or regularly, through a fixed place of business of any kind and through any means of ownership or (ii) when a person acts on behalf of the company and has or usually enjoys in that State powers to conclude contracts.</p> <p>Note that in general terms the domestic rules governing the qualification for the existence of a PE in Spain are stricter than the provisions of an applicable Double Tax Treaty ("DTT") between two countries. Likewise, please note that PE issues have historically been a hotspot by Spanish tax authorities, which are very aggressive.</p>	<p>Wage taxes: The host country generally obtains the right to levy wage taxes if the employee's stay exceeds 183 days within one year.</p> <p>PE: This will depend on how long the employee is working in the host country and their role. The risk can be reduced if the employee is only working for a short period and is junior, not in a sales generating role, or signing contracts on behalf of the country etc.</p>

As host country

Would a residence permit/work permit be needed for the host country?

 Belgium	 France	 Germany	 Poland	 Spain	 UK
<p>Yes – if third country national.</p> <p>No – if EU or EEA citizen.</p>	<p>Yes – if third country national except in specific cases (employer established in an EU or EEA State or Switzerland and employee holds a residence permit in this country or posting does not exceed three months and concerns specific activities).</p> <p>No – if EU or EEA citizen.</p>	<p>Yes – if third country national.</p> <p>No – if EU or EEA citizen.</p>	<p>Yes – if third country national except in specific cases (employer established in an EU or EEA State or Switzerland and employee holds a residence permit in this country or posting does not exceed three months and concerns specific activities).</p> <p>No – if EU or EEA citizen.</p>	<p>Yes – if third country national.</p> <p>No – If EU or EEA citizen.</p>	<p>Yes – if third country national except in specific cases (employer established in an EU or EEA State or Switzerland and employee holds a residence permit in this country or posting does not exceed three months and concerns specific activities).</p> <p>No – if EU or EEA citizen.</p>