



How to employ—and payroll—a telecommuter working from home overseas

By Don Dowling - February 2018

Telecommuting used to be rare because it used to be almost impossible. Before today's sophisticated workplace information technology, logistical challenges made it tough for a "lone wolf" employee to work remotely from home, disconnected, out-of-touch, inaccessible and isolated from the workplace, apart from supervisors, colleagues and customers. "Getting the job done" used to be hard without direct access to a secretary and to employer infrastructure, company resources and back-office support.

Today, while many jobs still require employees be in physical contact with the workplace and the employer's "means of production," more and more jobs do not. Today's information technology has freed many employees from the brick-and-mortar workplace. Even a star performer today might telecommute successfully, keeping connected with a laptop, smartphone, printer, express courier delivery, videoconferencing and (ideally but not necessarily) a land-line. Today, we even see telecommuting in personal-service jobs that once seemed impossible to work remotely—now, even some doctors work from home.

Work-from-home can be rewarding for both telecommuter and employer. Remote-working staff benefit from telecommuting for obvious reasons, and certain employers can benefit because remote work arrangements deepen the pool of available talent by attracting and retaining those who for whatever reason (business, personal, physical disability) cannot "punch the clock" every day at a fixed workplace. Work-from-home can boost employee "engagement" and job satisfaction. Under certain circumstances it turns wasted commuting time into productive work time. And telecommuting might save employers money—commercial real estate is expensive.

Many telecommuters are local, living and working in the same metropolitan area as the employer and available to check into the office occasionally. Some telecommuters are long-distance, living hundreds or thousands of miles from the employer, maybe off in another region of the country. And then there is the international telecommuter, someone working from a home overseas, in a country other than that of the employer. International telecommuters pose special problems beyond the basic logistics of engaging a local telecommuter. International telecommuting can be more expensive for an employer, and it always requires closer attention to legal

compliance. The complications in international telecommuting flow from the inherently territorial nature of employment law (choice-of-foreign-law clauses rarely divest the mandatory application of host-country employee protection laws). To engage someone to work remotely in a foreign country is an awkward structure outside what employment law presumes: Employment laws worldwide assume a “master” employs and pays a “servant” both in the same jurisdiction, presumably in the same workplace.

The problems inherent to remote working overseas can make a proposed international telecommuting arrangement not worth the cost and effort. And these problems can cause an actual international telecommuting arrangement to fail, sometimes sparking expensive lawsuits. When considering any proposal for international telecommuting, begin by addressing the basic logistics as you would engage a domestic telecommuter to work from home locally. Then confront the special problems endemic to international telecommuting by accounting for the specifics of the particular cross-border telecommuting scenario. International telecommuting arrangements come up in a handful of contexts or scenarios. How best to employ and payroll a given international telecommuter depends on the specific context or scenario at issue. When an international telecommuting proposal seems viable, work through a checklist of the structural issues that relate to international telecommuting.

Our discussion here follows this approach. We assume the employer is already familiar with the basic logistics of engaging a domestic telecommuter to work from home locally. We begin by outlining the various international telecommuting contexts and scenarios. Then we set out a checklist of the issues to account for in structuring a cross-border or transnational telecommuting arrangement.

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