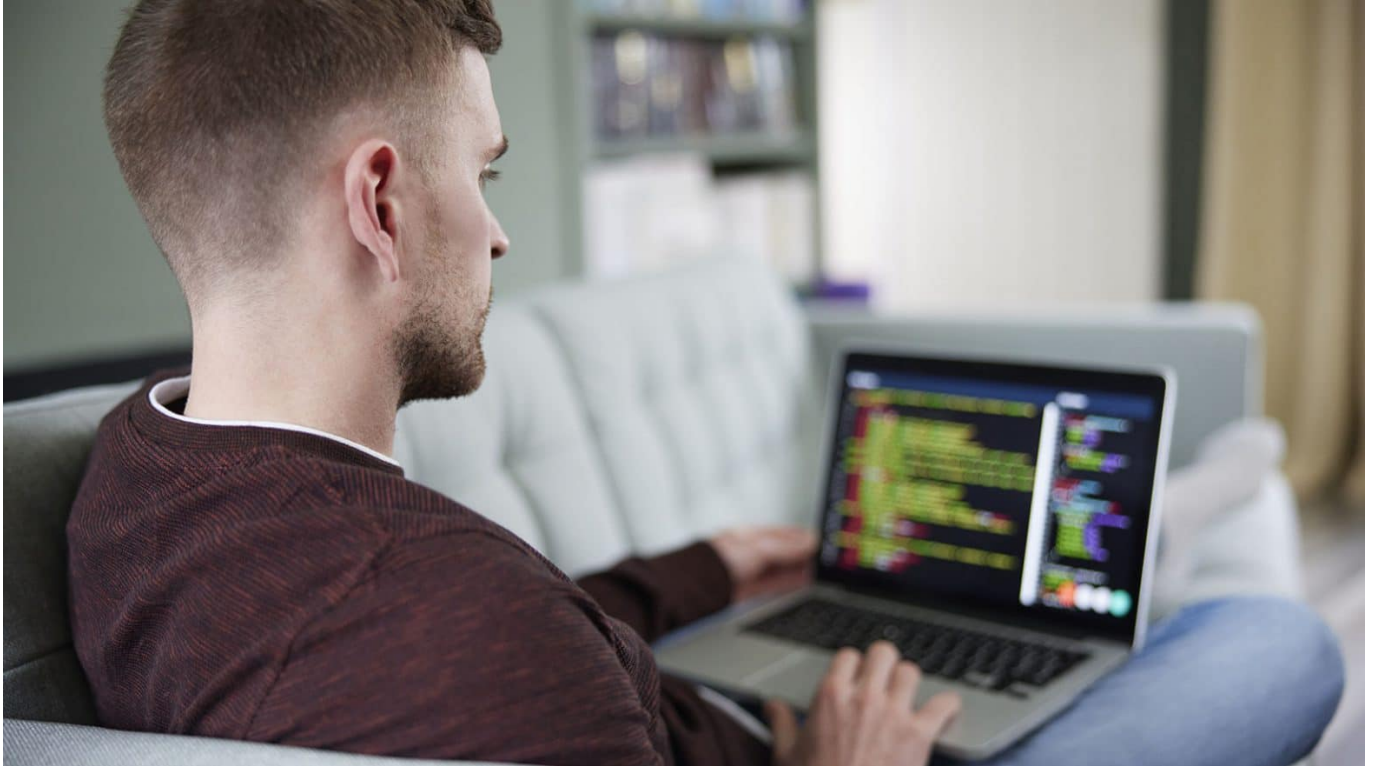


## Considerations for employers when employees ask to work outside the UK

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### How remote is too remote?

The COVID-19 pandemic has had consequences for all aspects of society and this includes the workforce. At the outset of the pandemic employees were asked to work from home where possible. This saw businesses change their internal processes and infrastructures overnight to accommodate new working arrangements. Now, over two years after the pandemic first began, a hybrid form of working exists in most organisations, flexible working requests are more common place, and we have seen a rise in requests from employees to temporarily or permanently work remotely from outside the UK.

This trend is likely to continue, especially if the ongoing Government consultation concludes that the right to request flexible working should be from day 1 of employment rather than after 26 weeks in a role, as is currently the case. With this in mind, we have set out below the top 5 considerations that employers should have in mind when they receive a flexible working request from an employee who wants to work abroad.

### Top 5 considerations for employers when employees ask to work outside the UK

#### Statutory employment rights

The length of time the employee works abroad effects which country they are deemed most connected to and consequently the statutory employment rights that apply to the employee. This is the case regardless of the



jurisdiction and laws that are specified as governing the employee's contract of employment.

UK employment law and employment rights are more likely to apply where the employee only works temporarily in the host country for a limited period. However, if the employee works in the host country for a longer duration, the employment rights in the host country could apply to the employee. This could affect, amongst other things, the minimum rate of pay and sick pay that the employee is entitled to, their holiday entitlement, notice periods and dismissal rules.

Consequently, employers should always take local employment law advice before terminating an employee's employment if they are working remotely abroad.

## Tax and social security

Working remotely abroad also has implications for the employees' tax and social security contributions. To be a UK tax resident, an employee has to be present in the UK for more than 182 days in a tax year (6 April-5 April). If the employee is in the UK for less time than this, the statutory residence test will need to be applied to check the employee's UK tax residence position. The employer should also check whether the employee is liable to pay tax to the host country under the applicable domestic tax laws. This will determine whether the employer will continue to deduct income tax under the PAYE system. Employers should also be aware that it is possible for an employee to be a dual tax resident. In this scenario, the applicable double tax treaty should be applied to determine the employee's residence status.

Where the employee is working, why they are working there and the time spent in the host country will also impact which country the employee pays social security contributions in.

Employers should also consider if there is a risk of a "permanent establishment" being created in the host country, which could result in serious corporate tax repercussions. This is unlikely to occur if the arrangement is short-term in nature and if the employee is not routinely involved in negotiating contracts with the employer's customers.

## Data protection and security

There is an increased risk of cyber fraud and hacking when employees work remotely abroad. Employers will need to consider carefully how they can continue to protect their businesses in light of this threat. Where an employee's role involves processing personal data, it will also be necessary to identify what data protection legislation will apply. Practically, employers will also have to give some thought to how personal and confidential information will be stored.

## Pension and other contributions

Employers will need to review the employee's employment contract and applicable policy documentation to determine whether employment related benefits and pension arrangements can continue to be made when the employee is working abroad. This can be affected by the employee's statutory tax residence position so it is important that this is considered and applied at an early stage.

Pension contributions and benefits are more likely to be affected the longer the employee works abroad. Employers should be ready to consider the contractual implications of any change when reviewing a flexible working request.

## Health and Safety

Under UK law, employers are required to protect the health and safety of their employees. This is limited to UK



law jurisdictions but it does extend to when employees are working from home. Employers should therefore consider undertaking a risk assessment as part of their review of the flexible working request.

Employers will also need to comply with the health and safety requirements of the host nation. These rules will need to be reviewed and continually monitored to ensure compliance. It will also be essential that employers review any insurance policies in place to ensure that an employee working temporarily abroad is covered.

It is important that businesses review their home/remote working policies and consider adding sections which cover working remotely abroad and the issues raised above. This will help ensure that all flexible working requests to work abroad are treated consistently and fairly in line with other requests.

If you have received such a request from an employee and need some advice, we are here to help. Our [employment team](#) has extensive experience with advising clients on flexible working requests and also has access to an extensive network of foreign lawyers and tax specialists if required.