**Working Overseas Guidance**

**Covid-19 is causing many managers and employees to ask if an individual can work from “home” for an extended period in an overseas country - for example, because it is their home nation and they have returned there and are unable to return to campus due to travel restrictions. The following information explains the potential legal issues. It’s important to note that no-work can be undertaken until the checks have been completed**

**Once you have read the information and are satisfied the work is to be completed overseas you need to:**

* For casual workers fill out the **Checklist for Overseas Casual Workers** and return it to UniWorkforce who will co-ordinate the initial check with corporate tax, Insurance and payroll.
* For permanent or fixed term employees who are on a contract of employment speak to your HR BP.
* If payroll advise that the request needs more investigation PwC will need to be engaged. A questionnaire must be completed and a subproject code provided. The initial PwC costs are approx. up to £2500 but a quote will be requested by payroll before the review is completed.

As an employer the University needs to consider a variety of issues, including tax, social security, immigration and employment implications, before we can agree to a request to work from home when “home” is not in the UK.

**Tax and social security implications of working temporarily abroad**

The University needs to consider, whether the employee’s stay in the host country creates risks of income tax or social security liability in that country - or even the risk that we (as the employer) are regarded as having created a permanent establishment there. When it seems likely that the arrangement may create a permanent establishment PwC must be engaged to confirm the situation. There are costs associated with this check (up to £2,500) which as the budget holder, you will be responsible for paying. This will need to be paid before any work can commence.

**Income tax may be payable in the host country if the employee becomes tax resident**

The host country has primary taxing rights over the employment income that the employee earns while physically working in that country. The employee’s residence status is determined by reference to their personal circumstances, and whether the number of days they are present in the host country over a 12-month period (however briefly and irrespective of the reason) exceeds 183 days.

In practice, this means that a short stay abroad in many locations is not going to result in the employee becoming liable for host country income tax. However, if the employee has already spent other periods in the host country in the same 12-month period (e.g. visiting family or holiday) they may reach the 183-day threshold sooner than you think. This has been exacerbated by the coronavirus pandemic when people may have returned to their home country and cannot travel back to the UK at this point.

**Social security position is complex and depends on what agreements are in place**

The general rule is that employee and employer social security obligations arise in the country in which the employee is physically carrying out their duties.

In the European Economic Area (EEA) and Switzerland, there are currently exceptions to this general rule which allow a UK employee and their employer to continue to pay UK NICs and not pay social security contributions in the host country if certain conditions are satisfied. It is crucial the worker obtains an A1 (or E101) certificate from HMRC (or the social security authorities in the employee’s country of residence if different). Note that these rules are due to expire on 31 December 2020, when the current Brexit implementation period ends, and it remains to be seen whether there will be a trade agreement between the UK and EU which will replicate any of these features.

Outside the EEA and Switzerland, the position will depend on whether there is a reciprocal agreement between the host country and the UK.

**Immigration implications of working abroad temporarily**

Immigration permission is generally not required for business visits. Depending on the employee’s activities, it may be possible to characterise their stay as a business visit - for example, if their activities are limited to those typically undertaken during business trips (e.g. meetings and training). However, restricting an employee’s activities in this way is unlikely to be practical for many employees and, in general, the longer an employee works without permission, the more difficult it will be to characterise their stay as a business visit. In some countries, work itself is prohibited even as a business visitor.

Currently, if the employee is a UK or EEA national, they have the right to live and work in an EEA country (although this position will change for UK nationals from 31 December 2020 when the current Brexit implementation period ends).

If an employee is not an EEA national and/or wishes to work from a non-EEA country, you will need to consider what restrictions may be in place. They should not undertake any work without permission, even for a limited period. As with tax and social security, some countries have implemented emergency Covid-19 legislation that will affect the normal immigration position, but this is not the case everywhere.

**Employment law and data privacy implications of working abroad temporarily**

On top of the tax, social security and immigration implications explained above, there are various other employment law and data privacy considerations. Further costs would be incurred to obtain the specialist employment advice required for individual countries.

**Mandatory employment protections may apply**

If employees live and work abroad, even for short periods, they can become subject to the jurisdiction of that other country and start to benefit from the applicable local mandatory employment protections. These may include minimum rates of pay, paid annual holidays and – perhaps most importantly in the event of a dispute - rights on termination. What protections, if any, an employee acquires will depend on the country in question.

**Be careful about transferring data**

If an employee’s role involves processing personal data, this could give rise to data protection issues, especially if the employee is requesting to work from a country outside of the EEA which is not subject to the General Data Protection Regulation and other EU data privacy laws.

**Local health and safety protections may apply**

UK employers have a duty to protect the health, safety and welfare of their employees, which includes providing a safe working environment when they are working from home. If an employee works from home abroad, you should also ensure that it is compliant with any local health and safety requirements. For example, in the Netherlands, employers must provide employees with the equipment needed to ensure a safe working environment which in some cases might involve making a contribution or purchasing relevant equipment.

Employees will also need to comply with applicable public health guidance (e.g. quarantine periods) both in the host country and on their return to the UK.