Casuals Working Overseas

Guidance for hiring managers

# Introduction

Casual workers cannot undertake any assignments until checks have been completed and signed off by Finance, Payroll and Health & Safety.

For permanent or fixed term employees who are on a contract of employment speak to your HR Business Partner.

# Process

Once you have read the guidance and are satisfied the work is to be completed overseas, complete the[**KPMG HE Sector Checklist - International Casual workers**](https://sotonac.sharepoint.com/%3Aw%3A/r/teams/HROperationsProcessandInstructions/UniWorkforce/04.%20Overseas/01.%20Overseas%20Guidance/KPMG%20-%20Higher%20Education%20Sector%20checklist%20-%20International%20casual%20workers.docx?d=wf67bf2657d6f436c9dcc30d05d288f49&csf=1&web=1&e=PM2z8W), ensure this is signed by the relevant people before returning to UniWorkforce to finalise the assignment.

Remember no work can be undertaken until this has taken place.

If payroll advise that the request needs more investigation KMPG will need to be engaged. You will need to supply a subproject code for this to take place. The initial KPMG costs are approximately to £2,500 but a quote will be requested by payroll before the review is completed.

# Employer considerations

As an employer the University needs to consider a variety of issues, including tax, social security, immigration, and employment implications, before agreeing to a request to from another country.

## Tax and social security implications of working temporarily abroad

The University needs to consider whether the work abroad 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 KPMG must be engaged to confirm the situation. There are costs associated with this check, 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 worker earns while physically working in that country. The worker’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 worker 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 may not be able to travel back to the UK at this point.

## Social security

This 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.

## Immigration implications of working abroad temporarily

Immigration permission is generally not required for business visits. Depending on the worker’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, field trip and training). However, restricting an activities in this way is unlikely to be practical for many workers and, in general, the longer work is undertaken 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.

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.

## Mandatory employment protections may apply

If workers 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, a worker acquires will depend on the country in question.

## Be careful about transferring data

If the role involves processing personal data, this could give rise to data protection issues, especially if the worker 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 workers, which includes providing a safe working environment when they are working from home or other location. If a worker 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 workers with the equipment needed to ensure a safe working environment which in some cases might involve making a contribution or purchasing relevant equipment.

Workers 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.