



REMOTE WORK

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# COMPLIANCE HANDBOOK

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Ensuring Legal Compliance: A Guide to Remote Work Abroad

## INTRODUCTION

The way how work is done experienced an unprecedented change. In the midst of technological advances and changing workforce needs, companies around the world have begun to revolutionize the way they think about work. One particularly prominent trend: **Workations - or temporary work from anywhere**



This innovative form not only allows employees to work from home but also temporarily abroad from another country. Workations are not only an expression of flexibility but also a sign of companies' willingness to adapt to modern requirements. Workations are becoming a decisive advantage for employees by overcoming the fixed boundaries of the traditional workplace. But while this flexibility often comes at little cost, it can create **unexpected obligations for employers.**

**Working across borders always creates compliance problems.** But not only workations create risks when working abroad. Also, the classic standard form of short-term working abroad, when an employee travels for company reasons– the so-called **business trip – creates hefty compliance risks and triggers many “To-Do’s” for the employer.**

**This handbook focuses on compliance risks associated with working abroad in all forms. We'll explore a range of risks, spanning adherence to social security, immigration, and work entitlement rules, managing tax implications, by passing the need to prepare payroll in the destination country, taking financial responsibility for medical assistance abroad, and more.**

## So what forms of temporary work abroad are we looking at?

1) **Workation** is a combination of work and vacation, at another place than the regular country of employment. The trip is in the interest of and initiated by the employee and the costs involved are also borne by the employee.

2) In opposition to that a **business trip** is always in the interest of the employer, meaning that the employer sends the employee to do business at another place than the regular employment. Thus, the employer has to cover the costs.

Looking at legal consequences and risks, both involve an employee working abroad and therefore **creating obligations for the employer** to comply with and risks to be evaluated and mitigated. But it is not just the existence of compliance risks that makes mobile working abroad particularly difficult, but the fact that the **relevant laws and regulations were not written specifically for business trips** – and even less so for "workations". Quite the opposite: they were written long before the concept of temporary work from abroad even emerged. As a result, the **legal situation regarding temporary work abroad is often unclear**.

The overview below describes the commonly distinguished risks to employer compliance and addresses the complexity of their application for employees:



This compliance guide aims to provide HR and employers with insights on **how to manage and proactively minimize these compliance challenges** to maximize the potential of workations and business travel.

## Visa & Work entitlement

= The risk that a workationer or business traveller has no right to enter or work in the destination country, creating an illegal labour situation.

This dimension assesses the company risks of **potential illegal entry and labour situations** if an employee enters and works from abroad without the pertinent permit to work in the destination country, which is **heavily penalised**. A particularly interesting topic is the question of how employees working temporarily abroad qualify for immigration purposes. The options are generally limited to **(a) vacation, (b) business travel, or (c) local employment**.



Not every business travel qualifies as executing business at the host location, often entering a country just for meetings or conferences would be subsumed under the tourist entry and no visa could be necessary.

But if business would be executed or services provided, there might not only be a business visa required, but also a work permit to enable the conduct of work at the destination place.

It is, however, clear that mobile work abroad in the means of workation does not fit into any of these boxes, which raises the question of whether the employee needs a business visa and/or work permit in the destination country and, if so, what type. A misinterpretation can have serious consequences. Performing work activities without a valid work permit can be classified as undeclared work, which is severely punished. Fines can easily amount to €5,000 or more and affect both the employee and the employer. Further penalties can include a ban on entering the destination country for several years.



## Consequences

- Entering ban or ban of business
- Fines exceeding €5,000 for employer and employ

## Handling of risk

To assess and mitigate risks the following information is needed

- Nationality
- Second nationality
- Visa & Immigration Status
- Reason of stay
- Duration of trip
- Previous trips in that country
- Tax payment

In order to evaluate the potential risks associated with obtaining a VISA and/or work entitlement and entering the destination country for a business trip or workation reasons, certain details are needed, including the employee's nationality (and second nationality, if applicable), the length of the trip, and the purpose of the trip.

Since **different nations have different immigration laws**, the employee may or may not need to apply for a business travel visa.

**Every trip should be evaluated independently**, and a variety of criteria may come into play, including the nationality of the talent and the nature of the business activities that will take place in the destination nation.

## WorkFlex solution

Find out how you can easily eliminate the risk and automate the process through WorkFlex. For cases when a VISA is required, WorkFlex has partnered with CIBT Visas to ensure employers are supported with obtaining the right VISA efficiently and timely.

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# Permanent Establishment

**= The risk that a workationer or business traveller constitutes (or works for the benefit of) a Permanent Establishment in the destination country.**

A permanent establishment (PE) is a fixed business facility serving a corporate purpose. It is **legally a dependent branch** of a company that operates under the same name. The establishment of a PE leads to tax implications. In particular, **local tax authorities obtain the right to tax the profits of this branch.** Therefore, companies should **try to avoid establishing a permanent establishment abroad.** The existence of a permanent establishment is determined based on certain criteria set by local authorities, which vary from country to country.

As the name suggests, PEs require a certain **level of permanency.** However, there are no "permanent" temporary workers from abroad. A workation is temporary by character and will generally not be permanent enough. The OECD and the UN support this, the two organizations whose tax treaty models and commentaries have been most widely adopted. Both state that a so-called 'fixed place of business PE' and 'service PE' will usually not be constituted if the presence in the other country is below 183 days.

This is one of the reasons why an international stay that exceeds this threshold no longer qualifies as "temporary." As a result, even in countries that have adopted tighter policies around 'fixed place of business' or 'service PE' than the OECD and UN policies, **employees enjoying workations will hardly ever constitute a PE.** Nevertheless, there is the danger of constituting a so-called '**dependent agent PE**'. In short, the OECD and UN consider a 'dependent agent' an employee that habitually plays the principal role leading to the conclusion of contracts. It is broadly accepted that "habitually" implies a specific frequency. For example, five **contracts where the individual played the leading role.** Still, this doesn't exclude the theoretical possibility that a dependent agent constitutes a PE during a workation of one day.

## Consequences

- Offset profit and submit tax returns abroad
- Corporate tax at 20% to 35%
- Administrative obligations exceeding €100.000
- Consultation of local lawyers/tax advisors
- Penalties and interest
- Brand damage

## Handling of risk

To assess and mitigate risks the following information is needed

- Reason of stay
- Duration of trip
- Previous trips in that country
- Activities performed
- Tax payment

The reason behind this is that depending on the **trip nature** and the activities to be performed from the destination country, the risk can highly increase (i.e., negotiating contracts wouldn't involve the same risk as conducting auxiliary activities). The **duration of the stay** is also key as exceeding certain time limits could lead authorities to conceive a PE has been created in the country the same way it works for the previous trips in the country as accumulated duration may be taken into account when assessing the total length of the stay (and consequently the duration of the PE if it has been triggered). **PE would imply paying corporate taxes** in the destination country and would also involve huge administrative costs including fines and local lawyers/tax advisors if the PE is created.

## WorkFlex solution

Due to the above-named consequences, employers want to prevent their employees from constituting PEs. Given that a PE implies a certain permanency - it is the name after all - managing the PE risks of temporary work from abroad should be possible. The WorkFlex compliance logic helps employers with this, not only by flagging potentially risky employee requests but also by providing mitigating measures such as employee instructions. This risk dimension is included under the no-risk concept.

## Wage tax

**= The risk that a workationer or business traveller triggers the obligation to set up a payroll in the destination country.**

This dimension assesses the company risks of becoming an employer in a third country and having to pay employment tax there. This would imply having the obligation to set up payroll in such a country (generally consisting of wage tax and social security contributions). Also, the employee might be affected by double tax residence issues. Wage tax rates can be up to 60% of the employee's remuneration, and even up to 150% if the employer has not ensured that the taxes are paid by the employee. Penalties and fines can be imposed if taxes are not declared and/or paid on time.

From an administrative point of view, an employment obligation requires the establishment and implementation of a local payroll system. The payroll tax risk is closely related to the permanent establishment (PE) risk mentioned above. Another special feature is that in some countries and in some cases the personal income tax liability of an employee in the destination country can trigger this payroll tax liability. In order to assess this risk, the employer must obtain personal information before approving temporary work from abroad.

### Consequences

- Employment tax up to 60% or even 150% grossed up
- Administrative obligations exceeding €5.000
- Penalties and interest

### Handling of risk

To assess and mitigate risks the following information is needed

- Nationality
- Second nationality
- Reason of stay
- Duration of trip
- Previous trips to that country
- Double tax residence issues that can arise affecting the own employee situation.



## Social security

**= The risk that a workationer or business traveller becomes socially insured in the destination country and/or drops out of the coverage of the home country's social security.**

This dimension assesses the company risks of the temporary remote worker abroad becoming socially insured in the destination country and/or dropping out of the coverage of the home country's social security, both of which are not desirable. A Social Security Treaty is a legal agreement between two or more countries that outlines the rules and regulations regarding the social security benefits and coverage for individuals who move or work between those countries. These agreements are designed to prevent people from losing their social security benefits or being covered twice if they work or live temporarily in another country.

### Consequences

- Contributions of €5.000 to €15.000
- Administrative obligations exceeding €5.000
- Penalties and interest

Mobile working from abroad entails a twofold risk with regard to social security contributions. On the one hand, there is the risk that the employee loses the protection of the social security system of their home country, and, on the other hand, the social security system of the destination country may apply. Both risks are relatively easy to manage in the European Union and other countries with a social security agreement.

### Handling of risk

To assess and mitigate risks the following information is needed

- Country of payroll = Social security payment due
- Reason of stay
- Duration of trip
- Previous trips to that country

In order to assess the potential risks concerning social security, some information is required such as the home country payroll, duration of the trip, previous travels, and reason of stay.

For the application of Social Security statements, more information on the traveler, such as the **social security number** would be required. First, it needs to be assessed whether the home country of payroll and the host destination country have agreed on rules for the **social security exchange**. Within Europe, this is regulated by an EU regulation. Many countries have signed **bilateral social security treaties**. In case regulation is in place, documentation for the remainder of in-home social security has to be applied for – the **so-called A1 (in the EU) or Certificate of Coverage (CoC) in treaty cases**. These documents become relevant when a talent works from abroad. The talent needs to have written proof for the authorities, for both the employment country and destination country in order **to avoid bureaucratic issues** such as becoming insured in the destination country or **losing the coverage from the employment country**.

### **WorkFlex solution**

WorkFlex is able to request A1s and CoCs in eligible countries. After it has been issued - it will be directly uploaded to the platform along with all other necessary trip documents.

For documentation of the applicable social security rules, the unique WorkFlex Social Security Statement – Provisional A1 or Provisional CoC - is always immediately produced and uploaded, the content of which is similar to an A1 or CoC (see example [here](#)), so the employee and employer can prove the legal background had been checked and subsumed. Moreover, for short requests (60 days or below) and for cases where a social security treaty applies, the WorkFlex Social Security Statement ensures that the No-risk concept applies. Moreover, for short requests (60 days or below) and for cases where a social security treaty applies, WorkFlex Social Security Statement ensures that the no-risk concept applies.

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## Deep Dive: A1 / CoC/ WorkFlexSocial Security Statement (WSSS)

### What is an A1 Certificate?

Since July 1, 2019, employers must issue an A1 to every employee traveling to an EU country. This includes all business travel, as well as remote work.

The A1 certificate is a document that serves as proof that the social security legislation of the employer state stays applicable during a period abroad. This document is valid throughout the EU/EEA countries and Switzerland.

The image shows a screenshot of the A1 Certificate form. The title is 'Bescheinigung über die Rechtsvorschriften des sozialen Schutzes, die auf die Inhaberin anzuwenden sind'. The form includes sections for 'Personenbezogene Angaben', 'Arbeitsvertragliche Angaben', and 'Arbeitsvertragliche Angaben'. It contains fields for name, date of birth, and employer information, along with checkboxes for 'Wahlweise' and 'Mehrfach'. The form is numbered '1/2' at the bottom right.

### What is the difference between an A1 and CoC?

The Certificate of Coverage (CoC) specifies the application of home country social security benefits in situations where a treaty exists between the home and host countries. It applies globally wherever such treaties are in place. In contrast, the A1 certificate is applicable exclusively within EU/EEA countries.

### Why do you need an A1 or CoC?

You need an A1 document to avoid paying social security contributions in both your employment country and the destination one. This document proves you're fully covered by the social security system of your employment country, preventing arising issues on where you are supposed to pay social security contributions.

### What could happen when being on a workation without an A1?

In practice, A1s entail a massive administrative burden for both employer and employee. Nevertheless, A1s must be issued, otherwise, there is quite a risk that the traveling employee could become liable for social security payments in both the employment country and the country where they're temporarily working. Eventually, this would lead to complications in eligibility for benefits and hinder their ability to navigate and utilize social security systems properly.

# Posted Workers Directive (PWD)

= The requirement of registering the business traveller or employee on workation in the destination country

A **posted worker** is a worker who is sent by his employer to another EU (host/destination) country for a limited period to provide services under a service contract, an intra-corporate posting, or a posting by a temporary work agency. This temporary work assignment can concern different sectors and industries, e.g., construction, services, IT, and others.

**The EU has defined a set of mandatory rules** regarding the terms and conditions of employment to be applied to posted workers in the Posted Worker Directive, defining the requirements to abide under EU law for companies sending their employees to work temporarily in another EU member state.

The objective of the PWD is to **protect the rights and working conditions** of the posted employees and to address several concerns such as **social dumping**. The Posting of Workers Directive (PWD) stipulates that both, employees going to another EU state on business travel, as well as going on work assignments (only in Belgium) must register with the local authorities in the destination country before starting their trip. **This registration is known as PWD notification** (*in German EU Meldepflicht*) and must be carried out via specific portals and processes depending on the destination country.

**Non-Compliance can result in fines up to €500k**, as well as non-financial penalties such as **multi-year restrictions on doing business** in a particular country. How strictly this is enforced varies per country. What also varies per country is the exact content of the registration and the method of filing it with the local authorities. In Switzerland, for example, this is required up to 8 days in advance. Following the PWD, the member states are obliged to guarantee, to these employees, certain rights and conditions of employment that are granted to local workers in the host country.



The PWD has been enacted into national legislation by all the EEA member states and Switzerland, thus the definition of posting workers can vary and have a broader or more restricted meaning depending on the country. Remote workers not being posted, meaning not providing services, are clearly excluded from the scope of these national rules (unless it is Belgium), especially as they do not meet the posting workers main characteristics – provision of services.

### **Consequences**

- Severe penalties up to €500.000
- Brand damage

### **Handling of risk**

To assess and mitigate risks the following information is needed

- Reason of stay
- Duration of trip
- Previous trips in that country
- Wage of traveller

WorkFlex directly registers the employee in the respective portal. Required to proceed with the country registration, details of the trip are asked, often the contact details of the client/customer/business contact in the destination as well as workplace and hourly or yearly wages of the traveler.

### **WorkFlex solution**

Find out how you can easily eliminate the risk and automate the process through WorkFlex.

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# Labour law

**= The risk that local labour law becomes applicable to the employment of a workationer or business traveller.**

This dimension assesses if the labor law provisions of the destination country will apply to the employee's employment. This may have an impact on the employee's minimum wage, working hours and resting periods, applicable termination regulations, etc. **Labour laws differ among countries.** Some labour law provisions of the destination country concerning the employee protection (e.g., regarding salary, maximum working hours, paid leave) might become applicable in some cases. It is, however, very unlikely that local employment law will become applicable, if (1) the country where the employee was hired clearly remains to be the habitual place of employment, (2) the stay in the destination country is temporary and of limited duration, and (3) the employee will return to the country of employment after the business travel.

## Consequences

- Local entitlements such as termination arrangements
- Local rules apply with respect to maximum working hours and minimum rest periods
- Risk of penalties when local employment protection rules are violated against

## Handling of risk

- Employment country
- Reason of stay
- Duration of trip
- Previous trips in that country
- Tax payment
- Posted worker status

In order to assess labour law potential risks a workation or business trip can entail, some information is required such as the duration of the trip and the reason of the stay. Depending on the length, the destination country's labour law could apply which would have an effect on the employer/employee relationship and labour conditions. The reason of the trip is often also relevant as **different rules apply for business travels and the posted of workers.**

# Data protection

**= The risk of non-compliance with a data privacy regulation as well as unauthorised access, breach, theft, or damage of data.**

Employees working from abroad may violate security regulations in their home or destination country, such as the GDPR or the local ban on the use of VPNs. Such a breach could also be based on customer contracts that prohibit service providers from providing their services from certain countries. This risk dimension assesses the company risks of unauthorized access, breaches, theft, or damage of data during your employee's trip abroad, as well as ensuring coverage by and compliance with adequate data privacy laws similar to GDPR in the destination country.

## Consequences

- GDPR fines of up to €20.000.000 or 4% of the global annual turnover
- Civil claims, e.g. resulting from client data breaches
- Commercial and/or reputational damage, e.g. resulting from data theft or damage

## Handling of risk

To assess and mitigate risks the following information is needed

- Nationality
- Second nationality
- Reason of stay
- Duration of trip
- Previous trips to that country
- Tax payment

In order to assess data protection potential risks a workation can entail some information, such as data confidentiality level. The destination country will play the main role in this dimension as a result of the different data policies applied in the world.

## WorkFlex solution

WorkFlex is the **only provider** that considers data protection in its risk assessments. Find out how you can easily eliminate the risk and automate the process through WorkFlex.

# Health insurance

**= The risk that the employer is liable in case a traveling employees suffers an accident while working abroad. This means the employer is obliged to cover the medical costs.**

Not being sufficiently covered by health insurance is an imminent risk to all travelling. For any professional travel, the employer would be liable in case a traveling employee suffers an accident while working abroad. This means the **employer is obliged to cover the medical costs**. Although it might appear that this applies to business travel in the interest of the employer only, and that the work to purchase extensive travel health insurance in cases of workation must be conducted by the employee, **the legal frameworks stating what is an occupational accident during workations is ambiguous**.

Moreover, the workation happens with the employer's permission, therefore making it somewhat of an official travel. Under the EU regulation, it is generally advised **to carry the European Health Insurance Card (EHIC)** to prove the insurance coverage of your home country's insurance while traveling abroad. Though the home country's public insurance is helpful, will it be able to cover all the different situations you may encounter during your temporary work abroad? Be aware that any differences in costs of the medical treatment would have to be borne by the sending employer. Further, it is important to bear in mind that **European public insurance is only valid in the EU countries, Switzerland, Liechtenstein, Norway, and Iceland**.

Another concern is the **differing quality of medical services** employees get in case of a sickness or an accident. The medical insurance coverage we would receive in destinations might not be as broad as expected, even if you carry public or private insurance and your home country has a social security treaty with the destination country. Therefore, employers might be enjoined to cover the medical expenses.

## Consequences

- Medical expenses exceeding hundreds of thousands of euros
- Neglected Duty of Care
- Tremendous Brand damage
- Other non-financial losses

## Handling of risk

To assess and mitigate risks the following information is needed:

- Insurance status of employee
- Duration of trip
- Insurance coverage conditions

## WorkFlex solution

WorkFlex offers a comprehensive travel insurance to eliminate the risk of employers and employees in covering medical expenses in the event of a medical emergency abroad.

- **Unlimited medical coverage** to suit your and your employee's needs while in a foreign country, including any emergency situation in any clinic, dental treatments, cases of Covid-19 and medical repatriation
- **No restrictions on home & destination countries:** Many insurance providers have great restrictions on countries their packages cover. With the WorkFlex solution there are no restrictions on home & destination countries eligible for the insurance package
- **Easy-to-use & integrated with WorkFlex platform** for a seamless and easy application
- **No administrative burden:** WorkFlex team takes care of applying, communicating and managing the insurance package throughout the whole employee workation period
- **Comprehensive & easy-to-grasp guide of the insurance policy** provided for the employee and employer. The Hallesche Emergency Line also provides **24/7 phone and email support** for any questions about the insurance coverage or assistance while abroad **in 25 languages.**

If you want to learn more about WorkFlex's insurance feature, feel free to book a demo or reach out to your WorkFlex consultant!



# Want to know more?

Do you want to offer mobile working as a benefit in your company and learn more about how you can enable this easily & efficiently with WorkFlex's all-in-one software? Our team is here to help you with advice & support!



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[Book a meeting](#)

You are also welcome to book a free and non-binding meeting with our WorkFlex team to clarify individual questions directly.

## Hundreds of employers already check their compliance with WorkFlex

