

WHITEPAPER

# No-risk workations

By  
**Pieter Manden LLM MBA**  
Co-founder WorkFlex

[www.getworkflex.com](http://www.getworkflex.com)

# No-risk workations

## Offering workations as an employee benefit without the employer compliance risks

**Within a matter of months various German media have published articles about leading employers offering their employees workations as a benefit. *Bild* headed “These companies allow work from abroad”, writing about Bosch, Adidas and SAP<sup>1</sup>. *Focus* wrote how Merck and Continental are pioneers in this field<sup>2</sup>. The *Spiegel* interviewed an HR manager on the work from abroad policy of the Otto Group<sup>3</sup>. Workations as a benefit are hot. But they are risky too, and many employers need to include strict limitations. In order to protect employers from compliance risks related to workations, WorkFlex has introduced the concept of “no-risk workations”.**

Employees love the possibility to combine work and vacation in sunny Spain or an extended family visit in their country of origin. Employers love the ability to provide a highly appreciated employee benefit at hardly any cost. They recognise the employer branding opportunity to retain existing talents and be an attractive employer for new hires. Some use workations as a benefit to balance out an increased pressure on employees to return to the office.

At the same time, employers are well aware of compliance risks related to employees temporarily working from abroad. These risks are the key reason for limiting workations to a certain number of days per year. Adidas’ employees are only allowed to work from abroad for 10 days per year. Continental allows up to 40 days, Bosch 54 days and Merck 60 days per year. Just as at SAP, Otto Group employees are allowed to enjoy workations for up to 30 days per year. “We did not come up with this limitation ourselves. Tax and legal regulations force us to do this”, is what the HR manager of Otto Group told Spiegel.

As a result of the same compliance risks, hardly any employee from the companies above will realistically reach the maximum number of workation days they are allowed. Their requests will be declined based on individual circumstances, e.g. the requested destination country. Moreover, besides a limitation of the duration more or less all companies have

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<sup>1</sup> Bild, 20 September 2022: “Diese Konzerne erlauben Arbeiten aus dem Ausland” by Silke Hümmer

<sup>2</sup> Focus.de, 20 September 2022: “Arbeiten am Strand: “Beschäftigte dürfen bis zu 60 Tage aus dem Ausland arbeiten”

<sup>3</sup> Der Spiegel, 3 November 2022: “Nach zehn Tagen Spanien ist Schluss” by Maren Hoffmann

limited the potential destination countries for workations, e.g. within the EU only. This destination limitation is again driven by the fear of compliance risks. It is not only the existence of the compliance risks that makes things particularly difficult. More problematic is the fact that the relevant laws and regulations were not written especially for workationers. On the contrary: they were written long before the concept of workations even originated. As a result, it can be very unclear how they should be applied to the situation of a workation.

**Today, employers strongly limit workations in duration and destination. They are afraid of the compliance risks that may occur because the rules and regulations were written even before the concept of workationers originated.**

The overview below describes the five employer compliance risks that are generally distinguished, and addresses the complexity of applying them to workationers.

## **1. Corporate income tax**

The risk that the workationer constitutes a so-called Permanent Establishment in the destination country. As a result, the company needs to attribute profit, file a tax return, and remit corporate tax accordingly. Corporate income tax rates usually vary between 20% and 35%. In order to pay corporate income taxes in the destination country, the company will have to register with local authorities and file a corporate income tax return. In case local tax authorities claim the constitution of a PE, the company will generally try to argue against this. This may trigger a lengthy and costly discussion on the existence of the PE - and if so the attributable profit. As the costs involved here will easily exceed € 100.000, the administrative burden and the discussion with the authorities are generally considered a disproportionately large disadvantage of constituting a PE.

## **2. Employment tax**

The risk that the workationer triggers an obligation for the employer to calculate and withhold employment tax in the destination. Employment tax rates can range up to 60% of the employee's remuneration, and even up to 150% grossed up in case the employer did not ensure that the taxes were to be borne by the employee. In case the taxes were not filed and/or remitted timely, penalties and fines may become due. From an administrative perspective, an employment obligation requires setting up and running a local payroll. Employment tax risk strongly correlates to the PE-risk above. An additional particularity is that in some countries and in some cases, an employee's personal income tax liability in the destination country can trigger this employment tax liability. Assessing this risk requires the employer to gather personal information before approving a workation.

### **3. Social security**

The risk that the workationer is excluded from the home country social security scheme on the one hand, and on the other hand is included on a mandatory basis in the destination country social security scheme. The first risk clearly is an unwanted situation for the employee. The second risk requires the employer to calculate and remit social security contributions in the destination country. These are usually (mainly) due by the employer and generally range between € 5.000 to € 15.000 per employee per (full) year. As with the previous risk, this usually also requires a payroll as well as registrations with local authorities.

### **4. Labour law**

The risk that the labour law regulations of the destination country become applicable on the employment of the workationer. This may impact the workationer's minimum wage, the working hours, the applicable termination regulations, etc. Also relevant in this regard is the question whether the employee is regarded as a so-called "posted worker". EU legislation protects several labour standards for such posted workers. Also, a posting of a worker requires a notification to the authorities in the destination country. Most EU countries have confirmed that, as workationers themselves choose to work from somewhere else, they do not qualify as posted. So far, only Belgium has stated that the domestic regulations also qualify workationers as posted workers.

### **5. Immigration**

The risk that the workationer has no valid work entitlement in the destination country. How workationers qualify for immigration purposes is a particularly interesting topic. The options are usually limited to (a) vacation, (b) business travel or (c) local employment. Clearly, workation does not fit in any of these boxes exactly, which raises the question if a workationer needs a work permit and if so, what type of permit. Getting this wrong can have serious consequences. Performing work activities without such a valid work entitlement may qualify as illegal labor, which is heavily penalised. Fines easily amount to € 5.000 or much higher and may affect both the employee and the employer. Other penalties can include a ban on entering the destination country for several years.

**With WorkFlex no-risk workations, employers are protected against the compliance risks of workations. Now, workations can become a true benefit with more possibilities for the employee.**

No-risk workations is a groundbreaking concept that protects the employer from the relevant compliance risks of workations. WorkFlex already (1) identifies risk drivers before a workation, and (2) implements risk mitigation measures. Under the no-risk workations concept, WorkFlex takes responsibility in the unlikely event that a discussion with the local authorities arises and/or a compliance risk materialises. This responsibility includes (3) professional support, (4) a legal liability, and (5) a financial liability. As a result, the employer can truly offer workations as a benefit by extending the possibilities in terms of duration and destination.

The overview below describes what is covered under the no-risk workations-concept:

- professional support during discussions with the local authorities;
- legal liability if a risk assessment turns out to be (partially) incorrect, and;
- a financial liability covering the local corporate tax, employment tax and social security premiums due if a compliance risk materialises even though the risk assessment was not incorrect.

The no-risk workations concept applies to ~92% of workations that the WorkFlex compliance engine qualifies as low or medium-risk cases (assuming risk mitigations are in place). No-risk workations coverage is guaranteed under the condition that the information provided by the employee was correct and the company policy, terms & conditions, and employee instructions were followed. Some additional conditions apply to the no-risk workations-concept.

### **How do no-risk workations work?**

On the WorkFlex platform, employees can submit a workation request. The employee is required to provide some information on the planned workation, such as the destination and duration. Other questions are meant to gather relevant personal information as well as information related to activities that the employee would perform during the workation.

Based on the provided information the WorkFlex global compliance engine generates a compliance risk assessment. This risk assessment is the result of an advanced compliance assessment of the specific workation request, that covers each of the five aforementioned key compliance risks. The engine has been developed with the help of global and local tax and legal specialists. It qualifies the request as a low, medium, or high-risk case. The report is uploaded to the WorkFlex platform. Upon final approval of the request, the platform also generates a summary of the submission, a social security certificate, a travel insurance certificate, and an employee instructions sheet.

The no-risk workations concept applies only to risk assessments that the WorkFlex compliance engine has qualified as low or medium-risk cases. High-risk cases are excluded from the protection; although employers can still decide to approve these cases, WorkFlex cannot take responsibility for them.

**Want to learn more**

Do you want to learn more about the WorkFlex platform or the no-risk workations-concept? Reach out via [e-mail](#) or [book a demo](#).

WorkFlex has brought together 25+ leading employers - such as Siemens, Allianz, and Delivery Hero - in the Workation Alliance. The objective of the Workation Alliance is to exchange experiences on this benefit and to jointly define this benefit in the future. Do you want to learn more about how other employers are offering workations as a benefit? Visit [Workation Alliance's website](#) or reach out to Pieter Manden [via email](#).