Remote Work From Other Jurisdictions: What Employers Need To Know

Remote work has become the norm for many employers over the past year. With the flexibility to virtually work from anywhere, employers may receive more employee requests to continue the remote working relationship as they move to another province, or in some cases, another country.

Remote Work From a Different Jurisdiction in Canada

While it may seem like a harmless request, an employee moving into a different jurisdiction changes the employee's physical location of work, which in turn changes the jurisdiction that governs the employment relationship with the employer.

It is important to note that the "situs" or location of an employee's workplace is determined by the employee's primary location. A business trip, even if re-occurring or for a number of months, is unlikely to result in the employment relationship being governed by the laws of a different jurisdiction.

The legislation governing employment standards, occupational health and safety, and workers' compensation differs between each province and territory. Without proper review, an employer may be unknowingly offside the governing legislation for an employee working in another jurisdiction. Further, the tax deductions from an employee’s pay will also differ depending on the jurisdiction, and an employer may be held liable for not making the proper remittances.

When an employee moves to work in another jurisdiction, important provisions of their employment agreement may no longer be operational; most notably, the provisions governing an employee’s termination of employment without cause. A termination provision which once limited an employee’s entitlement to common law notice may no longer do so if it no longer references the proper governing employment standards legislation.

An employee’s relocation may subject the employer to additional business registration requirements in the new jurisdiction in which their employee is now conducting business.

Remote Work From Other Countries

These issues are concerning enough when the employee is seeking to remotely work from a different jurisdiction in Canada. The potential issues are compounded when the proposed jurisdiction is another country.

Every country has different rules regarding the direct employment of a worker who may be working remotely for an employer in Canada. Some remote work for a short duration may be permitted under business or tourism visas. However, a full working visa may be required.

It is possible the employer will be considered to be conducting direct employment in the new country, triggering corporate registration, payroll, statutory deduction and workplace insurance considerations. Also, an employee working remotely from another country may trigger tax consequences for both the employer and employee.

When an employee proposes a new country as a location for remote work, employers cannot assume any duration of work will be allowed and should fully review these issues.

Key Takeaways for Employers

Employers should review the requirements and standards of the applicable province, territory or country prior to permitting an employee to commence working in that jurisdiction and execute appropriate employment agreements reflecting this change. When an employee proposes relocating to a new country, an employer should conduct a more robust review of that country's legislation.

Employers should regularly check-in with their remote working employees to ensure that employees are still in fact present in their original jurisdiction of employment and are not secretly working from another location.

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