Remote and flexible working: an overseas adventure

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Employers must balance growing demands for overseas flexible working with the significant legal, tax and compliance risks.

Key Points

What is the issue?

Employers are facing growing risks and obligations as more staff request to work flexibly from abroad, with complex implications around supervision, tax, data protection, right-to-work, insurance and foreign employment law.

What does it mean to me?

Firms must treat requests reasonably and consistently, but each overseas arrangement can trigger different legal and compliance exposures, requiring careful

assessment and potentially specialist advice.

What can I take away?

Have a clear, robust overseas-working policy that sets conditions, evidence requirements and limits, supported by documented risk assessments.

The changes in the way people work, combined with recent legisative changes that expand employees' rights to request flexible working, mean that employers must be prepared for a more agile working environment and the adjustments that come with it.

Those changes can bring benefits, such as a happier, more productive workforce and a reduced cost base. However, employers also need to weigh up the advantages and disadvantages that such changes create and prepare their businesses for any adjustments they choose to make or which are required by law.

When making changes, employers need to identify and manage the potential risks in advance. These risks include challenges with staff working from home, such as maintaining confidentiality away from the office, handling flexible working requests fairly, managing the impact on presence in the office, and addressing international or cross-border working issues.

In the November 2024 issue of *Tax Adviser*, our article 'Remote and flexible working: a plan for your practice' explored the domestic risks. However, once flexible working arrangements extend beyond the UK, employers face an entirely different level of complexity. This follow-up article focuses on the overseas aspects.

A recent 'thought leadership' group, led by myself and Lauren Eager, Compliance Manager at QED Legal, brought together specialists in tax, general data protection regulation (GDPR), risk, employment law and insurance for a round table in London to discuss these issues. The group agreed that there is a serious lack of clarity and guidance in the current laws and regulations. To address this, a working party is being established to advocate for clearer rules and reforms.

The right to demand flexible working

Under the Employment Relations (Flexible Working) Act 2023 and the Flexible Working (Amendment) Regulations 2023, employees now have a statutory right to request flexible working. This right applies from the first day of employment and employees can make up to two flexible working requests a year.

Employees may request changes to their working hours, working days, start and finish times and their place of work. This means that some employees might ask to work abroad, either temporarily or for a longer period, and employers need to be ready to deal with such requests appropriately.

Employers are required to consider all requests ‘reasonably’. The legislation sets out a specific list of valid reasons for rejecting any request. A request can only be refused if it would result in:

- the burden of additional costs;
- an inability to reorganise work amongst existing staff;
- an inability to recruit additional staff;
- a detrimental impact on quality;
- a detrimental impact on performance;
- a detrimental effect on the ability to meet customer demand;
- insufficient work available during the periods the employee proposes to work; or
- planned structural changes to the employer’s business.

Risks of staff working abroad

An increasing number of staff are seeking to work from different locations. This can include staff who wish to work remotely from abroad while retaining their UK-based role, or those who want to extend a family holiday abroad with some additional time away, and so extending their two-week holiday to a four-week stay. Between these two situations lies a wide range of other possible scenarios.

Supervision and management: The first concern is supervision – how the firm will monitor and support an employee who is based in another country. This links closely with management responsibilities, particularly where the employee has line management duties which may be difficult to carry out remotely.

Insurance: Insurance coverage also requires careful review. Employers should check whether the firm's existing insurance policies extend to work performed abroad. If so, it is essential to ensure that insurers are informed in advance – even where the employee's time overseas is expected to be relatively short.

Data protection: Data protection is another key issue. Employers must confirm that any transfer of data to another country complies with both UK data protection law and the relevant local regulations, and that security standards are maintained throughout.

Taxation: An employer may become liable for tax in the country where the employee is working, or face other adverse tax consequences depending on the length and nature of the arrangement. National Insurance and local social security obligations may also arise.

Right-to-work requirements: These also need to be considered. Employees may not have the legal right to work in their chosen country, even for a short period. Allowing an employee to work without the appropriate authorisation could expose the employer to penalties or other liabilities.

Employment law: Employers must assess whether the employee's presence abroad could bring them within the scope of foreign employment laws, and if so, what those laws are. There is also the risk of inadvertently creating a permanent establishment in that country, which could have significant legal and tax implications.

Other potential concerns include regulatory and contractual issues, particularly where the employee routinely enters into contracts on behalf of the employer. The employer will need to consider whether the employee can continue to do so whilst working overseas.

Clearly, the longer an employee spends abroad, the greater the risks. What matters most is that employers are aware of these potential pitfalls, recognise that the risks vary significantly from country to country, and have a clear policy in place to assess and manage flexible working requests from abroad in a consistent manner.

What issues shoul

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d be included in a remote working abroad policy?

Where an employer intends to permit employees to work from abroad – whether for a short or extended period – it is essential to have a clear and comprehensive policy in place. The policy should address several key areas to ensure that both employers and employees understand their rights, responsibilities and potential risks.

A starting point is the employee's right to work in the chosen jurisdiction. The policy should make clear that the employee must hold the legal right to work in that country and, where applicable, confirm that any regulatory body governing their professional activities allows them to work from that jurisdiction.

The policy should also cover the tax and payroll implications that may arise. This includes potential exposure to corporate tax in the overseas country and the practical arrangements for handling payroll, national insurance and other social security contributions. It should also clarify who bears any additional costs associated with the arrangement – whether the employer or the employee – and whether the employee will be required to indemnify the employer for any unforeseen charges that result from the employer agreeing to the request.

Employers should also consider whether there is a need to review and strengthen data protection, privacy and acceptable use policies, depending on the location of the proposed remote work. Similarly, insurance coverage must be reviewed to ensure that work carried out overseas is included within existing policies, and to confirm what notifications or amendments might be required.

For cases where remote working may evolve into a more permanent arrangement, employers should consider whether a formal long-term structure is needed, particularly where the employee may acquire tax or residence status abroad. The policy might specify which staff will be eligible for the firm's support with the cost of professional advice, such as immigration or tax consultations – whether critical staff only, all employees to none, and the rationale behind that approach.

Guidance should also be provided to employees on what work may or may not be undertaken while abroad, particularly in relation to visa or permit conditions, to prevent breaches arising from unauthorised work activities.

If an employee wishes to permanently relocate abroad, employers may request that written permission is required in advance. They should explain that permanent

relocation has far-reaching implications for the employer, including tax, social security and insurance obligations, which may be substantial.

Each employer will also need to decide the extent of risk they are prepared to accept in relation to shorter periods of working abroad. For example, some employers, after taking appropriate advice, may decide to permit short periods – perhaps up to two weeks – without requiring formal evidence, while others may adopt a stricter approach.

Where evidence is required, the policy should outline what documentation employees must provide, such as:

- proof of professional immigration and tax advice, ideally on a formal letterhead, to confirm the employee is legally entitled to work in the overseas location and that no adverse tax consequences will arise; and
- confirmation that the proposed arrangement does not breach the organisation's insurance or compliance obligations.

A checklist of issues can be a useful reference tool, though this should not be viewed as a substitute for professional advice. Each employer should seek tailored guidance when developing policies to handle requests to work abroad. Nevertheless, a well-drafted policy can serve as a valuable framework, helping employers to avoid the many unforeseen pitfalls that can arise when flexible working extends across borders.

A useful checklist

1. Immigration and right-to-work checks:

- Confirm the employee's legal entitlement to work in the proposed location before addressing tax or other issues.
- Understand visa requirements for both short-term and long-term stays, as breaches can lead to fines, immigration penalties or reputational damage. Remember that tourist visas rarely permit work.

2. Tax and social security implications:

- Determine whether the arrangement triggers local tax obligations, payroll requirements or permanent establishment (PE) risk.
- Obtain certificates of coverage (e.g. A1 forms) to avoid dual social security contributions.
- Be aware that even short stays can create tax filing obligations in some jurisdictions.

3. Employment law and contractual impact:

- Check whether local statutory rights (e.g. working hours, holidays, dismissal protection) may override UK contract terms.
- Ensure contracts and policies explicitly address overseas working and require written authorisation before any such authorisation begins.
- For regulated roles, confirm whether working abroad is permitted by the relevant professional regulator.

4. Data protection and privacy controls:

- Check compliance with data protection regulations and international transfer rules when data is accessed from outside the UK or EEA.
- Update privacy notices, acceptable use and remote working policies to cover remote access and cross-border transfers.
- Conduct and document data security risk assessments, especially in high-risk jurisdictions or sensitive data categories.

5. Insurance and risk management:

- Notify insurers of all overseas working arrangements to ensure coverage under professional indemnity, directors and officers (D&O) and employer liability policies.
- Note that failure to disclose such changes can invalidate cover and significantly increase exposure to liability.

6. Operational and policy considerations:

- Develop a clear overseas working policy that includes: time limits (e.g. maximum consecutive days abroad); transparent approval processes involving HR, compliance and management teams; and a requirement for proof of

immigration and tax advice.
- Consider the practical implications for team supervision, client service and confidentiality standards.

7. Balance flexibility with compliance:

- Weigh the commercial and wellbeing benefits of overseas working against legal, tax and reputational risks.
- Maintain records of decisions, advice obtained and risk assessments to demonstrate informed, proactive management.

If you would like to be involved in Karen's working group, please email her or Lauren Eager at Lauren.Eager@qedlegal.com.

Editor's note: On 19 November 2025, the OECD published approved updates to the OECD Model Tax Convention on Income and on Capital (the OECD Model Treaty). The updates include changes to the OECD Model Treaty's commentary on the definition of a 'fixed place of business' permanent establishment in situations of cross-border remote working.

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