

## BUSINESS RAMIFICATIONS OF A GLOBALLY DISPERSED EMPLOYEE POPULATION

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This session, in partnership with Eversheds Sutherland, focused on the rise in cross-border working enabled by the rapid adoption of remote working technology during the Covid pandemic.

### Introduction and Background – the remote working landscape

The pandemic forced organisations to adopt remote working technology at a speed that surprised even its most enthusiastic advocates. As a result, the idea that some roles can be performed from any location has taken root. The idea of remote working has outlasted the pandemic and marks a long-lasting shift in the assumptions about the nature and, crucially, the location of work.

Being able to work at a significant distance from the workplace became normalised during the pandemic. The practice was also extended to groups of employees who had hitherto been denied the opportunity to work from anywhere outside their formal workplace. The practice of remote working has therefore extended in terms of time, from a few days to much of the week, and in terms of the organisational hierarchy, from a few senior people to, in some cases, the entire organisation.

As the team from Eversheds Sutherland pointed out, a number of studies show that the trend to remote working is becoming an enduring feature of the global working landscape:

- A study by Global Workplace Analytics found that the number of remote workers since 2009 has increased by 159%, with the numbers continuing to rise
- A 2022 study found almost 6 in 10 Americans had been given the opportunity to work from home at least one day a week.
- In the UK, the proportion of workers hybrid working continues to remain high (as at March 2023, 37%).

The result of this has been a significant shift in employee expectations about remote working. Before the pandemic, company expatriate policies were mainly designed to cover a relatively small number of employer-initiated assignments, usually for roles that were difficult to fill locally – and often



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relatively senior people. Since the pandemic, there has been a huge increase in employee-driven international remote working, with increasing numbers asking to work in countries other than those in which they are formally employed. In some cases, they have simply gone ahead and moved location. The phenomenon of 'stealth expats' – employees who have effectively expatriated themselves – was one of the unforeseen consequences of the shift to remote working. There is little doubt that the remote working genie is now out of the bottle.

This presents both opportunities and difficulties for employers. Remote working technology has made it easier for companies to draw on a geographically dispersed talent pool. However, attractive as these arrangements may seem, they carry legal, regulatory, and logistical challenges. The advantages must be set against the potential loss of control and increased risks for the employer.

As cross border working becomes physically (if not legally) easier, it is likely that more employees will ask to do it and more companies will seek to use it to access talent pools or reduce costs. These questions demand new employment practices and new sets of rules and procedures.

Two common scenarios are emerging, alongside the traditional expat model:

- 1 Employee based in one country but employee-driven desire to spend time working in another country (e.g. summer holidays working from holiday house in France).

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Model typically to remain with home entity on home terms.

- 2 Employee permanently working remotely from home in another country with occasional business travel (often getting hired in this model).

This raises a number of questions for employers from a legal, regulatory, and logistical perspective, which can be particularly challenging when working arrangements cross borders.

This session therefore looked at:

- the potential legal issues and how to ensure compliance with those aspects when operating across borders.
- how to best protect the legitimate interests of businesses operating across borders, including intellectual property, confidential information/trade secrets, key talent, and physical assets.

### Eversheds Sutherland

Slides are available [here](#) and cover:

- 1 Typical options for permanent remote working
  - Continue to be employed by home country employer.
  - Using a local entity within the group.
  - Use a global employing company within a group. Or use of a third party such as an Employer of Record.
  - Pros and cons of the options.
- 2 Potential issues and solutions for businesses embracing remote working
  - Advantages and risks of a geographically dispersed workforce.
  - Employment law – applicable laws – choice of governing law clauses, Rome I Regulation in Europe, mandatory employment rights, collective agreements.
  - Tax – income tax, social security, permanent establishment considerations.
  - Immigration considerations, potential immigration routes (including digital nomad visas).
  - Compensation and benefits – pay differentials, health plans share incentive arrangements, and retirement benefits.
  - Contract formalities.
  - Solution options – ‘Work anywhere’ policies, individual assessments, global approach.

- 3 Protecting the legitimate interests of businesses operating across borders

- The risks and how they most often arise.
- IP – the importance of setting clear boundaries in relation to the ‘usual course of duties’.
- Restrictive covenants – confidential information/trade secrets, key talent.
- Physical assets.

### FURTHER READING

[Eversheds Sutherland Global Employment and Pensions Law APP](#)

[Global Benefits and Compensation: Top 10 actions for your 2023 agenda](#)

*A Workplace Around the World: What the rise of the Digital Nomad means for global businesses.*  
[Eversheds Sutherland Digital Nomad Guide](#)

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