

GMS Flash Alert

2020-068 | March 18, 2020



European Union - Shedding Some Light on Social Security As COVID-19 Spreads

The European Union (EU) Council is currently introducing measures to protect people and businesses during this difficult time.¹ Many companies have already introduced temporary policy changes resulting in people working remotely from home.

Business travel, meetings, conferences, and projects are being canceled every day. Consequently, many employees and companies are concerned to know what the impact on social security may be if an employee's working pattern changes significantly, even though such change is temporary.

The EU Regulations for coordination of social security² continue to apply despite the presence of COVID-19 in Europe. EU Regulations for social security are a central EU legislation that applies directly and does not require being transposed into national legislation. The EU countries should therefore not take individual steps enforcing the Regulations that diverge from the way in which the provisions are meant to be applied.

WHY THIS MATTERS

Significantly changed working patterns can lead to a change in which country's social security applies, for frontier workers as well as certain multi-state workers. Frontier workers are employees who reside in one EU country and work exclusively in one other EU country. Relevant multi-state workers are employees who reside in one EU country, their employer(s) is located in another EU country and they normally work less than 25 percent in their country of residence. In general, other types of mobile workers should not be at a risk of experiencing changes to their social security coverage as a result of their changed working patterns.³

The A1 certificate is EU documentation that secures a right to benefits for an employee (and family members), including health insurance and pension benefits. Therefore, an A1 certificate must reflect the actual circumstances and should be able to pass an audit both now and when an employee retires and claims benefits (for example, pension benefits).

Employers are advised to wait for work to be resumed as normal and then assess if there are any changes to the social security that require action, focusing on frontier workers and certain multi-state workers only. The Regulation (EC) provides for solutions to a varied spectrum of working patterns, so employees should be able to maintain their current social security coverage without alteration by applying some of the other provisions in the Regulation.

Some Historical Context May Point a Way to Options During Current Crisis

Although it is not quite the same situation, the current COVID-19 disruption is in some ways comparable to the so-called "migrant crisis" in Europe that took place in 2015. During the migrant crisis, migrants and refugees walked their way through Europe, resulting in border controls that in some countries had a negative effect on the travel time for employees who traveled for work across the border. In some cases, a commute that usually took half an hour or an hour, suddenly took up to several hours each way. Many companies whose employees were affected by this disruption introduced temporary policies allowing their employees to work from home until the situation at the border was normalised.

Scenario 1: Frontier Workers – residence in one EU country, work exclusively in another EU country

If a frontier worker works from home until the threat of COVID-19 has passed, a company might want to consider applying for an A1 certificate under the provision for posted workers in order to help ensure the continued application of social security in the country of work. This means that the employee would be temporarily posted to his country of residence and remain covered by social security in his country of work.

Frontier workers are not required to apply for an A1 certificate for social security, which means that the majority of frontier workers do not have documentation that attests to which country's social security applies to them. When they work from home, they would be covered by social security in their country of residence, but the posting provision in the Regulation may rectify this situation. There is no need for a formal assignment letter because the posting provision applies as long as the factual circumstances meet the requirements for posting.

Furthermore, the situation for these employees might change after COVID-19. For example, their employment might cease, or they might continue to work from home for some period, or even permanently. These situations can lead to a change in which country's social security will apply going forward.

For these reasons it is recommended to wait for the safety measures for COVID-19 to be lifted, and to take steps to obtain necessary documentation for social security at that time. When the situation is back to normal, an employer can assess and act accordingly both in terms of retroactivity and for the future working pattern.

The posting provision, as well as the provision that regulates social security for frontier workers in the Regulation, are not subject to a statute of limitations, so waiting for COVID-19 to end will not limit the ability to apply those provisions retroactively.

Scenario 2: Certain Multi-State Workers – company located in one EU country, multi-state worker resides in another EU country, while working less than 25 percent in the country of residence

If a multi-state worker's work from home exceeds 25 percent during COVID-19 restrictions in the company policy, a company might want to consider the following:

1. Assess if the increase in the work from home leads to 25 percent or more work in the country of residence over a period of the next 12 months.

If the amount of work done in the country of residence does not exceed 25 percent over a period of 12 months, the current A1 certificate applies "as is" and no action is required.

2. If you assess that work done in the country of residence exceeds 25 percent over a period of 12 months, consider following:

- If a commuter works exclusively from home until the COVID-19 crisis has passed, the employer could consider applying for an A1 certificate under the provision for posted workers, in order to help ensure that the country competent for social security does not change. See the section above regarding Frontier Workers.
- If a commuter still travels to the country of work while COVID-19 safety measures are in force, but works predominantly from home, the employer could apply for a special agreement, to help ensure that the country competent for social security does not change.

The provision for multi-state work in the Regulation does not have a statute of limitations, thus allowing companies to make the assessment retroactively, due to uncertainties about how long COVID-19 restrictions will apply. Special agreements for social security are governed by local rules and can have a statute of limitations, but expect that the administrations will show understanding for any retroactive application that concerns COVID-19 safety measures.

KPMG NOTE

As ensuring public health and safety are paramount, and governments and businesses respond accordingly, we are seeing work patterns and work arrangements for affected frontier workers and multi-state workers change in extraordinary ways. Once the COVID-19 crisis is behind us, it is quite possible we will be seeing further changes in work behaviours and arrangements; therefore, it is recommended that employees and employers take a "wait and see" approach for the time being until there is more certainty both about the situation.

FOOTNOTES:

1 See the 16 March 2020 European Commission press release, "COVID-19: Commission presents guidelines for border measures to protect health and keep goods and essential services available."

2 European Union (EU) Regulations 883/2004 and 987/2009.

3 If an employee is covered by special agreement for social security concluded between two EU countries accordingly to article 16 in the Regulation (EC) 883/2004, the countries who have approved such agreement can allow it to continue, to be extended, etc. even if the conditions are no longer met as a result of safety measures for COVID-19. In such cases, employers are advised to contact the relevant authorities to obtain a written statement that confirms their position is such case, for example if the authorities are willing to extend the agreement under article 16 with the time during which the COVID-19 safety measures have been implemented. Please note that this only applies to special agreements concluded under article 16 in the Regulation (EC) 883/2004.

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