

GMS Flash Alert

2022-124 | June 22, 2022



Ireland – EU Social Security Regulations and Temporary Remote Working

Recent dialogue with Ireland’s Department of Employment Affairs and Social Protection (DEASP) has confirmed that it is strictly applying the EU Social Security Regulations in the case of employees temporarily working remotely in another European Economic Area (EEA) member state.

Generally, employees and employers should pay social security where duties are performed; however, relief may be available under EU Social Security Regulations for individuals who commute to work within the EEA, who are a posted worker on assignment within the EEA for a temporary period, or where the authorities agree that, by exception, it is in the best interests of the individual to remain covered by a particular country’s regime.

The DEASP has confirmed that it is not applying Article 12 of EU Regulation 883/2004 (i.e., the posted worker provisions) in cases where the move is employee-initiated as the employee has not been “posted by that employer.” The DEASP is deferring to the general “Pay-where-you-work” provisions under Article 11 and so the employee shall be subject to the legislation of the member state in which the activity is performed.

WHY THIS MATTERS

This strict application of the general “Pay-where-you-work” provision for employee-led requests means that facilitating temporary cross-border remote-working/implementing flexible working policies may be difficult for Irish employers. If the general rule is applied, then social security should be operated in the remote working location even though the employee may only be working there for a short period (subject to any domestic relief in the overseas location). The administration and costs associated with complying with the remote-working location’s social security system often means that facilitating such requests is hard for Irish employers, at a time when providing additional work-location flexibility is needed to attract and retain talent.

As an example, in the case of an Irish employee wishing to work in Spain for two months for personal reasons, based upon recent DEASP feedback, an A1 Certificate to retain the employee within the Irish social security system is not

WHY THIS MATTERS continued:

obtainable and so in strictness, Spanish Social Security should apply for the two-month period. To comply, the employer is required to register for Spanish social security, and operate/remit Spanish social security for two months. This would be time-consuming and costly for the employer.

We note that depending on the applicable social security rates, there may also be a direct social security cost to both employer and employee in these instances. In the example above, the additional employer social security cost is almost 20 percent – the Irish employer social security rate is 11.05 percent, whereas the Spanish equivalent is 29.90 percent. Furthermore, given the short duration, employees are unlikely to derive any benefit from these host-country social security contributions, and there may be corresponding gaps in the employee's Irish social security record. These gaps could adversely impact the employee's entitlement to certain state benefits.

The DEASP is of the view that provisions relating to commuters do not apply as short-term working overseas does not form part of the ordinary working pattern of the employment. They may consider relief under Article 16 (i.e., the exceptions article) in such instances, however, as this is reviewed on a case-by-case basis, approval will depend on the fact pattern.

KPMG NOTE

KPMG in Ireland has noted to the DEASP that this strict application is impractical and differs to the position adopted in most other EEA member states. Based on our discussions with the DEASP, this will be the approach until the EU social security regulations and/or guidance get updated to account for such scenarios. Therefore, until further notice, employers should bear this in mind when considering remote working requests/policies.

Extension of European Union (EU) Temporary COVID Concession for Certain Cross-Border Remote Workers

It is worth noting that the social security concession¹ as introduced by the European Commission in its response to the COVID-19 pandemic has recently been extended to the end of 2022. This concession was commonly referred to the “no-impact policy,” and enabled frontier workers (those living in one country but working in another) to spend more than 25 percent of their time working from home, without any impact to their social security position, i.e., they remain covered by social security in the country where their employer is located. The purpose of this extension is to provide more time for employers and employees to adjust to the change.

Further details regarding this extension is contained within [GMS Flash Alert 2022-119](#), 17 June 2022.

KPMG NOTE

The provisions relating to social security are complex. Often requirements to pay overseas social security can indirectly lead to income tax withholding obligations for the employer as well. Given the developments in these areas, it is more important than ever for employers to review their employee population to determine what actions may be needed for the past and in the future.

FOOTNOTE:

1 See [*GMS Flash Alert 2021-236*](#), 15 September 2021.

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