

GMS Flash Alert

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Ireland - Social Security Developments for Remote Workers

In our 22 June 2022 *GMS Flash Alert*, we highlighted the strict application of the European Union (EU) Social Security regulations by Ireland's Department of Employment Affairs and Social Protection (DEASP) for remote workers not covered by the EU Commission "no impact" policy. Under this strict approach, the "Pay-where-you-work" provisions generally applied to cross-border remote workers, making it difficult for Irish employers to facilitate temporary cross-border remote working requests within European Economic Area (EEA) member states – the administrative burden and associated costs were often prohibitive.

Since then, DEASP has confirmed to KPMG¹ that it now intends to align with the "Guidance Note on Telework" that was recently published by the EU Administrative Commission.² This Guidance Note acknowledges that the current EU Social Security Regulations have limitations in the case of cross-border teleworkers.

WHY THIS MATTERS

In recognition that hybrid working will be more commonplace going forward for many, the Guidance Note is intended to allow the existing regulations to be applied more flexibly. It is also designed to help ensure a "common interpretation" across all member states.

This more flexible interpretation is expected to greatly simplify the social security compliance obligations for many Irish employers.

More Details

The Guidance Note focuses on the interpretation of Article 12 of the EU Social Security regulations in relation to cross-border telework. A condition of this Article is that the employee should be "posted by that employer to another Member

State to perform work on that employer's behalf.”³ When strictly applied, this condition is not satisfied where the telework is employee-initiated, hence why DEASP took its original stance.

However, the Guidance Note introduces the concept that Article 12 of the regulations should apply where the remote-working arrangement is in the “interest of the employer,” and notes that “telework is usually in the interest of the employer as well as the employee” i.e., teleworking is mutually beneficial, otherwise employers would not entertain teleworking requests in the first instance.⁴

Given this broader application, it is now expected that Article 12 will apply in the case of most temporary requests to work remotely overseas, and the Guidance Note provides a range of examples which reinforce the increased flexibility:

- An employer has to shut down some rooms of the office building to renovate them. All the employees working in these rooms are sent home to perform teleworking.
- The employee can only continue to work from home, because, for example, she/he has to care for sick children, aged relatives, small children, or is the partner of such a person (otherwise this employee would have, for example, to take paid or unpaid leave and would not any longer be in a position to exercise the work, which is important for the employer).
- An employee agrees with the employer that she/he will telework during the following four weeks to better concentrate on a specific project.
- An employee stays at the holiday place and starts to telework there for another month before returning home and resuming work in the office.
- Any other comparable cases, where there is an agreement between the employer and the employee concerned. In case of doubt as to whether a concrete case could be subsumed under this category, an agreement under Article 16 of Regulation (EC) No 883/2004 is advisable to avoid disputes between member states.

The above examples are fairly broad and point 4 in particular covers the scenario covered by many remote-working policies.

The Guidance Note also reminds that the arrangement must be temporary for Article 12 to apply, i.e., the arrangements cannot have an indeterminate duration.

Finally, the Guidance Note reinforces that Article 13 (i.e., the multi-state worker provisions) and Article 16 (the exceptions provisions) may also apply in the case of cross-border teleworkers, although this has always been reasonably assumed.

Position Going Forward

Until 30 June 2022, the original guidance issued by the EU Administrative Commission in its response to the pandemic should be applied i.e., the “force majeure” provisions.⁵ This guidance recommended that where employees needed to telework temporarily as a consequence of COVID-19, it should not lead to a change of applicable legislation, that is, the so-called “no impact policy.” However, thereafter (i.e., from 1 July 2022), the latest Guidance Note confirms that force majeure will no longer be a valid legal basis.

Accordingly, DEASP has advised the following regarding the application of the EU regulations going forward:

1 July 2022: From 1 July 2022, new teleworking arrangements will be considered in accordance with the existing EU Social Security regulations (i.e., Articles 12, 13 or 16 as applicable), and the broader interpretation proposed in the Guidance Note on telework should be applied from this date.

In addition, in recognition that an abrupt end to the existing guidance could be detrimental to some individuals, it has been agreed that a six-month transition period is appropriate for those relying on the no impact policy. This transition period is designed to give employers, employees, and any other persons concerned, sufficient time to determine the applicable legislation.

1 January 2023: From 1 January 2023, the “normal rules” will apply – the EU Social Security regulations will apply as normal, albeit, they should be interpreted in accordance with the Guidance Note on telework.

FOOTNOTES:

1 Correspondence between an official with Ireland's Department of Social Protection and KPMG in Ireland.

2 European Commission, EMPL/1053-01/22 - EN, Administrative Commission for the Coordination of Social Security Systems. Subject: Guidance Note on Telework.

3 See: Article 12 of the EU Social Security regulations: [EUR-Lex - 02004R0883-20140101 - EN - EUR-Lex - https://eur-lex.europa.eu/](https://eur-lex.europa.eu/) . Also, European Commission, EMPL/1053-01/22 - EN, Administrative Commission for the Coordination of Social Security Systems. Subject: Guidance Note on Telework.

4 European Commission, EMPL/1053-01/22 - EN, Administrative Commission for the Coordination of Social Security Systems. Subject: Guidance Note on Telework.

5 For related coverage, see [GMS Flash Alert 2022-119](#), 17 June 2022.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Ireland:



Thalia O'Toole
Tel. +353 1 410 2745
thalia.otoole@kpmg.ie



Olive O'Donoghue
Tel. +353 1 700 4359
olive.odonoghue@kpmg.ie



Edward Stewart-Moore
Tel. +353 1 700 4093
edward.stewart.moore@kpmg.ie

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