International Remote Working: 3 Factors Employers Need to Know About Reimbursing Remote Employees for Work-Related Expenses

Insights
4.08.22

As we gradually emerge from the prolonged COVID-19 pandemic, many employers are weighing requests from employees who want to continue working remotely at an out-of-state or international location – either on a long-term or permanent basis. An increasing number of employers are granting these requests and transitioning their employees towards cross-border remote status. When considering whether to grant these requests, you should consider not only whether the employee can perform their work remotely in a competent and efficient manner, but also whether you will have a legal obligation to reimburse employees for costs incurred as a result of working remotely. Because the laws vary from country to country, it is important for you to know where your employees are located so you can determine the applicable laws pertaining to reimbursement of work expenses, decide whether or not to permit employees to work from those locations (either on a short-term or longer-term/permanent basis), and ensure your policies and practices are compliant with all applicable laws.

Must Employers Reimburse Remote Working Expenses? 3 Factors to Consider

In order to determine whether employers are required to reimburse employees for work-related expenses incurred while working remotely, you should take the following steps:

1. Confirm the Location of the Employees' Work

An employer's obligation to reimburse remote workers' expenses not only depends on the laws of the country or state in which you are located, but also may depend on the country or state that the remote employee is living and working in. This is especially true if the country or state is different than your location. Generally, the laws of the country or state where the employee performs services will apply to the employment relationship. The longer the employee works from another country or state, the more likely the local law will apply.

Knowing the location of the employees is incredibly important because the laws can vary greatly.

- For example, some countries, like the United Kingdom, Canada, India, and Australia, impose no legal obligation on employers to reimburse employees for expenses that the employees incur while working remotely

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while working remotely.

- By contrast, many other countries, such as Spain, Brazil, Italy, and China, impose a general requirement that employers must reimburse employees for any business expenses, which include equipment employees need in order to work remotely, such as computers and desks.
- There are a few countries, such as Colombia, the Czech Republic, France, and Mexico, that require employers to reimburse employees for all remote work expenses, including a proportionate share of the employees' utilities costs.
- Or consider Japan, South Africa, or New Zealand, where there is no explicit statute requiring employers to reimburse employees for remote work expenses, but reimbursements are highly recommended to avoid claims of discrimination or claims based on negative changes in working conditions.

2. Determine the Applicable Laws in the Particular States or Countries in Which Employees Are Working

After identifying all of the countries or states from which your employees are working remotely, it is important that you identify and follow the specific laws in each of those countries or states as they pertain to reimbursing remote workers. More specifically, you must determine whether the particular locale has applicable federal, regional, municipal, or other laws that apply, and if more than one applies, how they intersect.

For example, in the United States, there is no federal law regarding the reimbursement of expenses for remote employees. There may be specific state laws that do apply, however, such as in California (Cal. Labor Code § 2802). You will also need to determine if there are any industry-specific or other particulars with respect to the applicable rules.

Some international jurisdictions, such as Austria and Colombia, have enacted new laws to specifically govern remote working from home. Employers should keep a keen eye on these latest legislative developments to ensure compliance.

3. Prepare a Reimbursement Policy for Remote Employees That Complies with Applicable Laws and Company Goals

Employers with remote employees should decide what kinds of policy or policies they want to utilize. For example, you can have one global policy that encompasses the most comprehensive and generous requirements and provides all of your employees with those benefits regardless of geographic location. Or, you can choose to have a basic global policy for everyone alongside more specific, individually tailored policies that address local requirements for employees who work in those areas that have more stringent rules. There are pros and cons to either approach, with cost implications likely being the most important deciding factor.

Additionally, employers whose employees are subject to individual employment contracts will also need to be cognizant of promulgating policies that materially change the terms of those contracts.

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Such changes could be deemed breaches of those contracts, including constructive discharge, which could result in costly unintended consequences.

Conclusion

There are many factors to consider when deciding whether to permit employees to work remotely on a long-term or permanent basis and if so, developing a reimbursement policy for those employees. If your organization conducts business overseas or has employees in different locations, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our International Practice Group to learn more about international remote work and to assess what changes, if any, are needed to bring your organization into compliance. We will continue to monitor the situation and provide updates as warranted, so you should ensure you are signed up for the Fisher Phillips Insight System to receive the most up-to-date information.

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