

The Importance Of Counting And Tracking Days When Employees Travel In The Modern Working World

In a Global Mobility ('GM') compliance environment, where a day really can matter, we explore the steps being taken by some of the world's largest companies, to ensure their employees remain compliant when undertaking international business trips and commuter-travel.

GM professionals around the world, whether that be in-house GM teams looking after international assignments, or tax professionals helping keep their client's workforce compliant, are well tuned on the importance of day tracking. In an ever-changing work environment, with business travel anticipated to exceed pre-Covid levels during 2024⁽¹⁾, it can become even harder to keep on top of the administrative burden of accurate record keeping.

We will explore the importance of employee 'day counting' and ongoing tracking throughout this article, touching on how Tracker Software Technologies ('TST') technology can help minimise the administrative burden and, in turn, effectively mitigate risk exposure for employees and their employers.

So, why is day counting so important and who really needs to worry?

Firstly, it is important to emphasise that, unlike many other compliance requirements that can differ widely depending on the size of a company, or the level of income an individual receives, the importance of day counting doesn't discriminate. Employee day counting is just as important on an individual level as it is for international corporations.

Whether that be implications on an individual's personal life due to the potential creation of Tax Return filing (and possible payment) obligations in multiple countries,, to preventing them holidaying or visiting family in certain countries if they have not fulfilled an immigration requirement when travelling on business.

Employee day counting is just as important on an individual level as it is for international corporations

Employee day tracking, or lack thereof, can also have significant implications at an employer level. Employers could potentially become exposed to expensive income tax and social security liabilities, and/or shadow payroll obligations in unexpected territories around the Globe. Not to mention the exposure to permanent establishment and/or economic employer issues.

As employer compliance obligations have increased over recent years, highlighted by the introduction of Posted Worker Notification requirements across the EU/EEA for example, so has the sophistication of the technology that authorities have at their disposal. Many regulatory authorities now have access to reliable real-time data to monitor frequent business travel and international remote working patterns by ecting collecting advance passenger information, or via the Schengen Information System, one of the EU's largest databases. Employers need to ensure that they too collate information about their travelling employee population in sufficient time, to help minimise the indirect costs that can quickly escalate when considering tax, social security and/or immigration exposure.

The importance of employee day count tracking is very clearly an issue that both employees and employers cannot afford to ignore.

Traditionally, established GM teams were able to have a much tighter handle of their internationally mobile workforce as they would generally fall into one of two categories; business travellers (usually isolated to a small group of employees or directors) or formal GM policy moves (assignees, extended business travellers, permanent transfers or localisations). GM teams have formal policies, processes, and paperwork to follow, all of which would have likely been designed in a way to help mitigate risk exposure. However, due to the new need for international remote working policies and the projected growth of business travel opportunities post-Covid, employers are forced to be more flexible to help the competition for, and retention of talent in the global market. This adds significant pressure on employers to ensure that they are also keeping abreast of the impact of this 'third' category of internationally mobile employees.

Remote working has the potential to drastically change the scope of traditional in-house GM teams; from bringing the demand for new internationally remote working policies into fruition to the widening scope of compliance issues due to the flexibility this new way of working is demanding.

Administrative authorities across the globe are also starting to adjust domestic rules and regulations to benefit from modern working patterns. For example, the creation of the EU Framework Agreement for cross-border teleworkers has recently been introduced and several EU/EEA countries have now signed up to the Framework Agreement. Put simply, the Framework Agreement will allow employers and employees to maintain their 'home' country social security position, where they have worked from home in another country for less than 50% of their work time. This will help employers and employees across those countries who have 'opted in' manage their workforce's social security obligations, allowing them more breathing space.

In addition to the considerations of remote working, as the world continues to become more connected, so do administrative branches of state governments. Data and information sharing between countries continues to grow with technological advancements. This is highlighted by the growth in tax residency audits around the world as information is more readily available to tax authorities. For example, tax residency audits in relation to US domestic travel, and the importance of being able to prove the amount of time spent in different States, should be on the minds of those frequently travelling across the US. Across Europe, immigration changes are also being implemented, such as the new European Union 'ETIAS' introduction and the UK introducing electronic travel authorisation procedures. As the automation of border controls grow, and existing data is refined for interdepartmental sharing, so does the importance of employee tracking to ensure any potential immigration (or other related compliance issues) are flagged, prior to travel.

It is also important to note that the burden of proof is generally on the individual, however, where the individual is an employee being sent on international business travel and/or overseas assignments by their employer, the employer also has a duty of care to ensure that their workforce remain compliant and ultimately not out of pocket.

Employers also have no control over where an employee travels during their days of annual leave. Personal travel days should, however, be included in day counting computations. These additional days can have significant implications, especially when looking at the immigration impact. For example, if an employee overstays in country (due to business trips and personal travel day counts combined), employer fines and repercussions on future sponsorship applications can be impacted. An overstay in the Schengen Area can also have significant travel restriction impact for the employee, sometimes lasting many years.

A further important thing to remember is, tax authorities (by way of example), take in to account the activity being performed on any 'day' in country. Whether that be consideration of if the day constitutes a 'workday' under domestic tax definitions, or whether any exceptional circumstances could be a mitigating factor when considering tax residence and potential downstream tax costs.

Recent high-profile case law further highlights the information that tax authorities can look at when counting an employee's days and determining the consequences. For example, the UK Statutory Residence Test was considered in

detail during a case which concerned the UK residence status of an individual who had spent 50 days in the UK, which under their specific personal circumstances, would have made them liable to UK tax. The individual looked to argue that 6 of these days could be considered 'exceptional circumstances' and therefore not included in their day count for tax purposes. Case law such as this highlights the importance of planning return trips with a safety buffer, where day thresholds are close to being breached. This can also allow for any unexpected visits that the individual may need to take. GM teams should ensure they take this into consideration if an employee frequently travels on business to the same locations.

The European Court of Justice of the European Union ('CJEU') has also recently released commentary with regards to AI certificates. In a recent judgement, the CJEU reiterated the ongoing requirement for EU Member States, and their citizens, to ensure that their AI applications are accurate based on the most up to date personal circumstances of the individual, their employment and travel status. The Court also reiterated that this is an ongoing requirement. Member States and individuals must ensure that they notify the relevant parties as soon as possible if facts and circumstances change (including days in country and travel patterns) during the validity period of an issued AI certificate.

As we have established, it is more important than ever to ensure that employers implement stringent policies and procedures around employee travel. In the past, this may have been done via calendar downloads, spreadsheets, office security pass records and/or reviewing passport pages. However, these manual processes are no longer fit for purpose.

Not only has the working environment advanced, with flexible and remote working becoming the norm, the introduction of 'unlimited annual leave' and focus on employee wellbeing and building an attractive company culture, so have authorities, with the advancement of automation and data sharing.

To help support employers with this, TST offers custom and proprietary technology that allows for automated day count tracking, including direct API solutions from third party vendors. These technology solutions ensure real time data collation, reporting and alerting based on individual employee circumstances and in accordance with corporate policy and risk thresholding. TST is also able to automate layers of approval process with internal stakeholders and take away the administrative burden across many different teams. With a proven record of saving clients hundreds of hours on time consuming travel approval processes, inflexible

systems that are unable to meet stakeholder demands, and reduce 'cycle times' on trip requests by more than half, when a day really can matter, why waste it?

For more information about Tracker Software Technologies' technology platform please contact Tom Crosby, Head of Sales at TST: Tom.Crosby@tst-international.com.

References:

(1) *Global Business Travel Forecast 2024* | CWT (mycwt.com)



JEANETTE RYAN

Jeanette has led TST's research department since joining in 2017 and has worked in a Big 4 firm for 9 years, advising companies in relation to their mobile employee's compliance requirements. Jeanette worked for three of the top global immigration law firms in London managing global accounts. She has a total of 25 years technical experience and knowledge spanning across multiple jurisdictions. Jeanette is a qualified Chartered Tax Adviser.



LUCY HARRISON

Tax & Social Security Research Manager, helping TST clients keep their Business Travel and International Remote Working employees compliant, safe, and engaged with company policies. Lucy has 8 years of experience in Global Mobility Tax within a Big 4 firm, prior to joining TST. Lucy has worked on a variety of clients over this time, from SME's, multinational manufacturing, and retail industry clients, to leading global professional services firms.