

The Changing Landscape Of Right To Work Compliance

The way in which we work, the locations from which we source talent, and the workforce-related policies that we deploy have changed significantly in recent years. This has been fuelled in part by the impact of ongoing geopolitical events and the aftermath of the pandemic. Certainly, there has never been a more complex environment for organisations to operate in - balancing the need to remain compliant, whilst ensuring that talent is both accessible, and benefiting from forward-thinking mobility policies.

Ensuring that every employee has the legal basis to work in a particular country (Right to Work) for businesses operating across multiple jurisdictions (and therefore multiple distinct legal frameworks) can be a daunting task.

Has your organisation considered the crucial role that Right to Work compliance plays in a range of Global Mobility-related activities? It is a critical compliance factor to consider in a variety of situations.

What Is Right To Work?

This is an interesting question because it depends upon where an individual wishes to exercise work activities. Further complexity arises as the context of those activities may vary, e.g., local employment, formal assignments or remote working arrangements.

The Core Principal

Essentially, having the Right to Work means an individual has a legal status to exercise work activities in a particular country. This is proved by providing, to an employer, evidence of this status. A Spanish national, for example, wishing to start work in another EU country, may present evidence of their Spanish nationality to enable them to exercise their Right to Work in another EU country.

A Complex Web Of Regulations

The challenge facing businesses and HR advisors is that regulations are distinct, depending on the country of employment. Actually, relatively few governments have

specifically legislated for how a Right to Work check must be completed. Examples where they have, include the UK and the US where processes and required documents are precisely documented and dictated by law.

However, whether or not there are formal laws in place to govern this compliance process, the potential ramification of employing an individual illegally is almost universally negative. Consequences vary from corporate fines, to bans on hiring foreign migrants, and in extreme circumstances, imprisonment. There is also the risk of negative publicity.

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Businesses must have a way to (i) understand what the requirements are in each country at all times, (ii) become aware of changes in a timely manner, (iii) have a mechanism to conduct checks and (iv) record and access the data needed to evidence their compliance.

How Is It Policed?

The government audit is very much a feared event in many countries, but it doesn't have to be. Audits are the most popular way for

governments to check the compliance of companies operating in their jurisdiction and are reviews to identify any illegal working or abuse of processes. We can expect that the scope of audits may also expand in the future to include those captured under international remote working policies employed by organisations.

We have seen a considerable uptick in such audits in several countries in recent times, with auditing becoming more regular in the Netherlands and Ireland, and audits in the UK in 2023 70% up on the previous year.⁽¹⁾

Organisations can prepare for such audits in the short term by having access to employee files and the documentation and data held on such files that evidence the Right to Work, e.g., passport or work permit documents. In addition, understanding the questions that will be asked by auditors is important. This may be seemingly diverse enquiries such as requests for evidence of the lease or ownership of the office that an employee works in, or company organisation charts. Having these readily available will help considerably in preparation for any surprise visit by auditors.

Longer-term preparation means ensuring processes and knowledge are fit for purpose. This is something we will look at later in this article.

Considering Right To Work In A Variety Situations

It is fair to say that the Right to Work is a key consideration or mandatory compliance step in a huge variety of circumstances.

Often a Right to Work requirement is not immediately obvious and may not have been considered in a company policy. For this reason, it can also be challenging for businesses to find the appropriate place to hold responsibility for Right to Work compliance within the organisation. It can sit with onboarding, with mobility, immigration or general HR compliance. Given the significant risk involved it is not always a responsibility that business functions are willing to take on.

Regardless of who does ultimately hold this important responsibility, their input has never been more necessary in guiding practices and policies to ensure compliance.

International Talent Acquisition

The trend to look for talent outside the borders of the contracting country (in order to access the skills and expertise required), creates challenges in maintaining compliance.

Traditionally, company X looking for a locally contracted employee would expect to look for that employee in the same 'home' country. That employee would be expected to conduct their work almost exclusively (bar the occasional business trip) in that same jurisdiction. But the talent marketplace is now very different.

The best candidate may be in another country and there may be a need to allow that candidate to stay there to perform their duties. On the surface that seems straight forward, however, a business must ensure that the candidate has the Right to Work in that country. This candidate's home country may be one where you have limited expertise or knowledge of compliance processes, therefore introducing risk.

Imagine a scenario where a UK-based employer has employed an individual on a UK contract but permits them to work overseas. The employee in question is a national of that overseas location, e.g., France. Because they are part of a UK team, they make regular trips to the UK to attend team meetings and training. At this point they are working on a UK contract, in the UK and without a work permit. They are not just on a short business trip, they are working illegally.

International Remote Work

As the difficulties of the pandemic and immediate challenges that it presented to an organisation's policies and compliance processes calmed, with it came the need and desire to offer remote work opportunities more widely to employees. The definition of remote work does change somewhat across organisations. For one employer, it may mean working from another part of the country or working from home a number of days a week. For another, it may mean permitting an employee to work abroad. We will focus on international remote work.

I am actually writing this article whilst working remotely in Spain (with the appropriate Right to Work documentation that my UK employer has checked I must add!). As part of our company policy I am permitted to work abroad for a certain number of days a year. This is a fantastic and very welcome opportunity to spend more time in an alternative jurisdiction. It also provides the further benefit of enabling me to be close to family that live here.

Notwithstanding other important compliance considerations relating to remote working, Right to Work must be front and centre of an organisation's focus and therefore another policy area that the person(s) charged with Right to Work compliance must be involved in. Such policies may require employees to self-certify that they have the Right to Work elsewhere, or the employer may actively request and review a candidate's documentation.

Approaches vary from organisation to organisation but strong processes around tracking employee whereabouts and approval processes are important.

The latter approach means expertise will be needed to review documents for what could be any country in the world, and therefore presents a significant undertaking to get it right.

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Mergers, Acquisitions And Global Expansion

One of the most challenging events from an HR compliance perspective has to be a merger or acquisition, or expanding operations into new jurisdictions. As part of a merger or acquisition, a group of individuals will become employees of a new organisation. When setting up in a new location, again many employees may be new to the business. These groups will have gone through previous onboarding processes that have not been controlled by the acquiring business or the receiving entity.

With the pressures and deadlines associated with such transactions it is easy for Right to Work compliance to be forgotten and it is vital that it is not. A transaction may involve multiple jurisdictions, each of which will have its own requirements for a company to satisfy.

Practitioners responsible for Right to Work should ensure that processes required to evidence Right to Work compliance are

considered as part of the overall project and that the appropriate knowledge is gathered to ensure compliance from day one.

Building A Reliable Framework For Compliance

Fundamentally building processes and policies to give an organisation the best chance to be globally compliant rests on just a few core principles. There are some important questions for HR practitioners to consider in assessing whether they have robust programmes and approaches in place.

Understanding The Challenge

Which jurisdictions are you operating in? What are the requirements there? What are the organisational restrictions or push back you may face?

Are there additional data privacy considerations in those locations over and above the principles of GDPR that must be taken into account? For example, in Germany an employer is not permitted to capture and hold the documentation and data of EU nationals.

Establishing Appropriate Processes To Safeguard The Business

There is no one way to do this and it will very much depend upon the nature of the organisation and team structures within it. Some see responsibility for safeguarding processes as sitting with a centralised team responsible for global compliance. For others, a more locally led process will be appropriate. Regardless of the approach, access to current legislation and requirements is critical, as is ensuring that the capture and thorough checking of documents is carried out.

Employers are encouraged to consider whether appropriate processes are established in all locations and how monitoring of current requirements is handled and how changes are applied.

Technology As An Enabler

Several governments are moving towards a form of digital immigration status becoming the default, rather than issuing physical documents. As an example, in the UK, biometric residence permits will cease to be issued this year. With this trend, the door has been opened to embrace alternative means of checking a candidate's Right to Work. The majority of checks being carried out on those with immigration permission in the UK must now be completed using the Home Office's online Right to Work system. In addition, for British and Irish nationals, employers are now permitted to assess valid passports using Identity Service Providers (IDSPs) to validate authenticity and the identity of the employee. In Singapore, work pass cards are issued with QR codes which employers scan using the

SGWorkPass app. And in Australia the Right to Work of migrants must also be checked online using Australia's VEVO system.

Do consider how third party technology can be used as part of your Right to Work compliance process and whether this can be linked to HRIS or onboarding systems. Are you accessing the appropriate government systems to capture candidate status and, where relevant, are you requesting candidate consent to do so?

The Benefits Of A Reliable Process

Recording employee data where permitted to do so also means that other risk considerations, such as nationality quotas in locations such as Singapore and Saudi Arabia, are anticipated and can be tracked and most importantly that you are ready for any potential government visit.

A reliable and focussed Right to Work

process is critical for any modern, agile organisation. It brings huge opportunity for your business to grow compliantly, for employees to feel supported, and for forward-thinking policies to be deployed without introducing additional risk.

Reference:

(1) Identity Service Provider Home Office Working Group, 5th February 2024



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Global Talent & Mobility Advisory

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