The concept of remote or mobile virtual work is not new, but in an era of technological innovation, increased global interdependence, and cost-cutting pressure, its application is more relevant than ever. Yet actions such as Yahoo’s “recall to base” decision for its remote workers in California seem to indicate that the debate has reached a new stage: Does remote work increase or decrease productivity? What are the relative values of added flexibility and increased employee satisfaction?

Place that discussion in the context of employers planning a bare-bones operation in a new foreign jurisdiction without building the infrastructure of a formal licensed and registered host-country entity, and you have framed the issue of remote work in global mobility in the era of technology and innovation.

Fundamental changes are occurring in the nature of organizations and the role of employees. Technology is a driving force in this new reality, alongside market competition and globalization. In a 2006 study titled “Mobile Virtual Work: A New Paradigm?” Erik Andriessen and Matti Vartiainen wrote, “Customers of a product or service, and talents needed to create it, are globally dispersed or require knowledge from different domains and disciplines. Mobile technology and other advances in information and communication open new perspectives on products, services, work, and organizations by making it possible to work in any place and at any time. Physically mobile salespeople, auditors, consultants, customer service representatives, and repair and maintenance groups are frequently using mobile technologies and services, and other professionals have a strong mobile element to their job content.”

But these new possibilities can bring risks, and short-term effectiveness may conflict with long-term sustainability. So what do those risks and benefits look like in global mobility? What are the implications for expat employees, their spouses/partners, and their employers? And how are governments responding to the new realities?

Where Is the Line Between Work and Business?

As technology creates new ways to work outside the “bricks and mortar” establishment, workers world-wide operate in a “plus-plus-plus” environment that redefines what an employee can be called. One new work equation looks something like this:

A worker resides long-term outside his or her home country and
- is employed by a company registered in another country,
- executes customer services for a global client base, and
- works in a real-time “remote collaboration” with global colleagues.

When a short stay abroad is coupled with a progressive way of conducting business from virtually anywhere through the use of mobile technology, the line between work and business is blurred. The issue of where and when does work take place often arises for high-level executives or highly skilled personnel. Companies use terms such as “extended business traveler,” “cross-border commuter,” or “remote worker.”

The actual job of such associates is to attend business meetings and engage with clients on projects spread out across an entire region without the need to be affiliated locally with any particular in-country employer. Their work is performed via phone, email, express courier delivery, or video-conference software. Their physical presence is not required in any one country for more than days at a time. Their work is transacted through short business meetings and/or phone conversations for a week or two spread over a relatively long period of time.

Technology has created whole new ways to work all over the world

By Lavinia Pascariu, LLM, GMS
In the March 2013 Worldwide ERC® “APAC Global Outlook Survey,” an overwhelming 94 percent of respondents said they expected the number of short-term assignments to increase in 2013 compared to 2012. This paradigm shift in the type of international assignments should come as no surprise as companies continue to cut costs and while working to expand their global footprint through nontraditional short work assignments and innovative ways to engage foreign personnel.

**Can Dependent Spouses/Partners Work Remotely Worry-free?**

In this era of technology, the location of work frequently creates interesting situations for accompanying dependents of traditional assignees. Dual-career couples typically find themselves with permission to reside in a foreign country but with work authorization for only one of the spouses (the assignee), while the accompanying spouse’s ability to engage in authorized work is generally nonexistent, or limited at best.

Where an open work authorization for a dependent/partner is not clearly defined by the host country’s immigration rules, the temptation for accompanying spouses/partners to continue to perform their job for their home employer from a foreign location is as practically understandable as it is legally risky—and it places additional compliance concerns on the assignee, his/her employer, and the partner’s employer.

More and more couples today expect to pursue employment abroad. Governments that want to attract skilled foreign talent, trade, and investment are increasingly recognizing the strategic role that open employment status for a spouse/partner plays in attracting highly skilled foreign workers. According to a May 2013 international mobility survey by the Permits Foundation, 60 percent of potential expats are not willing to relocate to a destination where it is difficult for a partner to obtain a work permit.

A fairly large number of countries offer work permit options for accompanying dependents, and some for unmarried or same-sex partners. But in a few important jurisdictions, such as Russia, China, Japan, and most of the African countries, dependent spouses do not yet have open permission to work. Interestingly, many of these same countries are prominent in Top 10 lists of the emerging markets. Two of the BRICS countries—India in 2011 and Brazil in 2013—have recently added simplified “dependent” work authorization processes designed to enhance immigration options for foreign talent.

**Impact on Companies**

As the typical international assignment has changed from long- to short-term, and as technology has enabled new ways of conducting business abroad, companies have become more interested in reaping the benefits of a flexible, talented workforce while minimizing the risk of noncompliance. Or have they?

In his online article “New Country Start-Up HR Tool Kit,” Donald C. Dowling notes that technology facilitates so-called “floating” employee arrangements, in which employees are placed in a foreign jurisdiction to perform work without being “anchored to any local employer-entity infrastructure. Floating employee arrangements are suspect and risky because they are often in noncompliance with local laws—especially where the nonresident employer entity is deemed to have an unregistered so-called ‘permanent establishment.’ ”

Human resources professionals and legal departments should be aware of, and educate stakeholders on, the laws that come into play when an employee performs work abroad through the use of technology, especially for a short period of time. This can range from ensuring that someone has the proper immigration documentation to perform work remotely from a foreign jurisdiction to ensuring that data privacy and permanent establishment laws are carefully observed and proper protections are in place.

**Immigration Compliance**

How governments are detecting and monitoring remote/virtual foreign workers taking advantage of new technology is not always clear. The question may be primarily one of enforceability. As Dowling points out, “the very same advances in technology allow tougher enforcement by local regulators.” National governments are increasingly moving toward a more integrated system of sharing information among tax, immigration, and border enforcement agencies. The U.S and Canada, for instance, have increased the sharing of border control information. Mexico, Colombia, and other Latin American countries have introduced biometric cards and entry/exit procedures designed to increase accountability of who enters, for how long, and why.
Arguably, a government could present evidence to prove not only that a particular foreign national has been present in a certain country, but based on cumulative duration of stay it could also make a case that a “permanent establishment” has been created by a foreign employer that is unaware of the implications of its employees performing work from a foreign jurisdiction.

Unfortunately, hardly any evidence suggests that immigration rules have caught up with technology advances affecting foreign nationals. A 2012 International Bar Association/Global Employment Institute survey on “National Regulatory Trends on Human Resources Law” found that 24 of 36 countries surveyed had taken no significant action on flexible working practices in the previous year. In the remaining countries, legislation had been drafted or debated, or was already adopted; Mexico, Poland, Spain, and Russia introduced laws relating to teleworking and remote working. “It will be interesting to see if more countries will follow suit and seek to regulate the growing phenomenon of remote working,” the report says.

Those engaged in remote work abroad for their home employer are counseled to be mindful that the performance of work activities without the proper immigration documentation in a foreign jurisdiction can be penalized as immigration noncompliance in the host country—regardless of the degree of likelihood that immigration officials in a foreign country would detect, say, an employee or spouse/partner working from her hotel room for her U.S.-based employer.

**Proceed With Precautions**

The impact of technology on the way we live and work today is increasingly visible in the mobility industry. Global employers can and should look at the myriad options technology offers to improve their bottom line and to improve work arrangements for employees and their changing families.

As the opportunities created by remote virtual work increase, so will foreign governments’ interest in regulating when and how these arrangements using highly qualified foreign personnel are acceptable and beneficial to the growth of their local economies. When faced with a lack of clarity on whether an assignee and/or relocating spouse/partner can safely engage in remote work from abroad, all precautions should be taken to ensure a review of the immigration, tax, discrimination, privacy, and other laws that are likely to come into play in this new equation of work in the era of technology.

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