

PROVINCIAL REQUIREMENTS FOR REMOTE WORKERS

A CROSS-COUNTRY OVERVIEW



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INTRODUCTION

One of the lasting impacts of the COVID-19 pandemic on the Canadian workplace will likely be the change in how, and where, employees work. Many organizations have embraced hybrid and fully remote work arrangements as the “new normal”. Organizations are also increasingly comfortable with having remote workers living in jurisdictions other than that of the “home office”.

While this flexibility can be an attractive option for both employers and employees, having remote workers who reside in other jurisdictions may impose additional legal obligations on an employer. In many situations, an employer may be required to comply with provincial employment and labour legislation in another jurisdiction if they have even one employee who works remotely in another province.

This guide is intended to provide a practical overview of the employment and labour-related requirements in each provincial jurisdiction if an employer has remote workers residing in that province, even where the employer has no office or other corporate presence in that location. It also reviews some of the tax and contractual considerations. This guide does not apply to employees temporarily performing work in another jurisdiction (as other rules may apply in these circumstances) or to international jurisdictional transfers.

Please note this is an overview only and is not legal advice. For more information on how remote work may impact on your organization, reach out to any member of the Canadian Employment Law Alliance team.

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OCCUPATIONAL HEALTH AND SAFETY

<p>Alberta</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in Alberta. This will apply even if the worker works from home.</p>
<p>British Columbia</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Workers Compensation Act</i> and the <i>Occupational Health and Safety Regulation</i> under that Act if it has one or more workers permanently working in British Columbia. This will apply even if the worker works from home.</p> <p>In addition, if the worker is employed through a work-from-home arrangement, the employer must:</p> <ul style="list-style-type: none"> • Assess potential hazards and risks associated with the work-from-home arrangement through a discussion with the worker, and • Implement a written procedure to check on the well-being of a worker assigned to work alone or in isolation
<p>Manitoba</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Workplace Safety and Health Act</i> and the <i>Workplace Safety and Health Regulations</i> if it has one or more workers permanently working in Manitoba. This will apply even if the worker works from home.</p>
<p>New Brunswick</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Workers Compensation Act</i> and the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in New Brunswick. While there is a limited exception for work performed at a private home, it does not seem as though this would extend to remote work arrangements. It is more likely the legislation will apply even if the worker works from home.</p> <p>In addition, if the worker is employed through a work-from-home arrangement, the employer must establish a code of practice that addresses working remotely and by oneself.</p> <p>The code must ensure, so far as reasonably practicable, the health and safety of a worker who works alone at any time at a place of employment (including their home) from risks arising out of, or connected with, the work assigned. It must contain specific prescribed information.</p>

<p>Newfoundland and Labrador</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in Newfoundland and Labrador. This will apply even if the worker works from home.</p>
<p>Nova Scotia</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in Nova Scotia. This will apply even if the worker works from home.</p>
<p>Ontario</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in Ontario. However, if the worker is performing work from a private residence (<i>i.e.</i>, is working from home) the legislation will not apply.</p>
<p>Prince Edward Island</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Occupational Health and Safety Act</i> if it has one or more workers permanently working in Prince Edward Island. This will apply even if the worker works from home.</p>
<p>Quebec</p>	<p>An employer with no corporate presence in the province is still required to comply with the <i>Act respecting occupational health and safety</i> if it has one or more workers working in Quebec. This will apply even if the worker works from home.</p>
<p>Saskatchewan</p>	<p>An employer with no corporate presence in the province is still required to comply with the Occupational Health and Safety Regulations under the <i>Saskatchewan Employment Act</i> if it has one or more workers permanently working in Saskatchewan. This will apply even if the worker works from home.</p>

WORKERS' COMPENSATION

Alberta	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers' Compensation Act</i> if it will have an employee who lives in Alberta performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none">• Accounting• Architectural services• Chiropractors and physiotherapist• Computer processing services• Employment agencies• Finance companies
British Columbia	<p>An employer with no corporate presence in the province is still required to have coverage through WorkSafe BC if it will have an employee who lives in British Columbia performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none">• Consulates and trade delegations from foreign countries• Professional sports competitors or athletes• Air transportation firms from outside BC conducting business in BC, and flight crews (cockpit crew and cabin crew) who are on turn-around in BC for a short period of time
Manitoba	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers' Compensation Act</i> if it will have an employee who lives in Manitoba performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none">• Accounting• Professional or trade associations• Athletes and entertainers• Financial services• Communication, motivational, public relations, sales and marketing consultants• Arbitration, mediation and dispute resolution• Data entry

	<ul style="list-style-type: none"> • Professional writing • Telephone answering • Translation and interpretation services • Certain healthcare services • Insurance or bonding companies • Legal services • Personal grooming services including a hair or tanning salon, body piercing or tattooing • Real estate agencies • Amusement or video arcades, carnivals or circuses • Community clubs, golf or country clubs, recreational or sporting facilities • Private instruction or training in the arts, a technical skill or vocational career • Employers transporting their own goods who have no place of business and no stock of goods in Manitoba • Workers who ordinarily reside outside Canada and are temporarily working in or travelling through Manitoba • Travel agencies • Universities or colleges
<p>New Brunswick</p>	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers Compensation Act</i> if it has three or more employees employed at the same time in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none"> • The fishing industry except for undertakings in which 25 or more workers are “usually employed” at the same time
<p>Newfoundland and Labrador</p>	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers’ Compensation Act</i> if it will have an employee who lives in Newfoundland and Labrador performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none"> • Person in respect of construction or renovation of a private residence, where the residence is or shall be used as a private residence for that person • Persons employed in respect to a function in a private residence • Professional sports and competitors

Nova Scotia	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers' Compensation Act</i> if it will have an employee who lives in Nova Scotia performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none">• Agriculture: the business of a florist or seedman, seed growing, gardening and horticulture; the keeping or breeding of livestock, poultry or bees; fruit growing; the picking, grading, packing, hauling, handling and storage of fruit or vegetables• Barber shops and shoe-shining• Undertaking and funeral management• Educational institutions, surgical medical, veterinary work, dental surgery• Taxidermy• Work upon golf courses, tennis grounds, grounds used for open air sports, games or athletics when performed by workers of the owner or occupier• Taxi driving• Operation of any boat, ship, or vessel• Fishing, sealing or dredging before 1970
Ontario	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workplace Safety and Insurance Act</i> if it will have an employee who lives in Ontario performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none">• Fish and shellfish breeding and propagation services• Hunting and trapping• Educational services• Air traffic control• Customs brokering and clearance• Live animal merchant wholesale• Motion picture and video production• Broadcasting• Central banks and monetary authorities• Real estate fiduciaries• Legal services• Fashion design• Software services• Credit bureaus

	<ul style="list-style-type: none"> • Private child day care services • Museums and historical sites • Personal care services
<p>Prince Edward Island</p>	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers' Compensation Act</i> if it will have an employee who lives in Prince Edward Island performing work in the province.</p> <p>Certain industries are exempt from mandatory coverage. Examples include:</p> <ul style="list-style-type: none"> • Artists, entertainers or performers • Circus operations, travelling shows, and trade shows • Clergy • Positions involving demonstrating and exhibiting • Persons employed in respect to a function in a private residence • Carriers employed to deliver newspapers and other publications • Door-to-door salespeople, or persons to sell on the streets • Salesperson who are not restricted to selling goods for one manufacturer or supplier • Sports professionals, sports instructors, players, and coaches • Volunteers • Elected public officials • Presidents, vice presidents, directors and officers of a company • Outworkers, being persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted for sale in their own home or on other premises not under the control and management of the person who gave the articles or materials • Taxi drivers
<p>Quebec</p>	<p>The <i>Act respecting industrial accidents and occupational diseases</i> does not apply if an employer does not have an establishment in Quebec, unless the CNESST has reached an agreement to that effect with another government.</p> <p>Although not mandatory, some employers located outside of Quebec decide to register with the CNESST when they have employees working remotely from Quebec.</p>
<p>Saskatchewan</p>	<p>An employer with no corporate presence in the province is still required to have coverage pursuant to the <i>Workers' Compensation Act</i> if it will have an employee who lives in Saskatchewan performing work in the province.</p>

	<p>Certain industries are exempt from mandatory coverage:</p> <ul style="list-style-type: none">• Farming or ranching industries related to dairy, piggery and poultry farming• Sports coaches and players while engaging in competitive sports• University professors, assistant professors, associate professors, lecturers, special lecturers or instructors who are employed by a university• Salespersons selling goods for more than one manufacturer or supplier• Artists, entertainers, and performers• People employed by the owner of a residence for the construction or maintenance of the residence or the performing of domestic functions in that residence
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EMPLOYMENT STANDARDS

The applicable provincial jurisdiction for a remote worker will be the province in which a remote worker permanently lives and works. Accordingly, an employer is required to comply with the employment standards legislation of that province, even if the business has no corporate presence in the jurisdiction.

The employment standards legislation in each province will address common topics, such as overtime, vacation, statutory/public holidays, termination entitlements, leaves of absence, *etc.* These standards vary among the provinces and are **not** outlined in full below. In addition, there are certain provinces that have specific requirements that are distinct from most (and, in some cases, all) of the other provinces.

The chart below sets out some of the unique requirements of the various provincial employment standards legislation, as well as the overtime threshold for each province.

Note: Every province will have specific industries and/or positions that are exempt from overtime.

Alberta	Overtime: An employee is entitled to overtime after 8 hours per day or 44 hours per week. An employer and employee can agree to overtime banking and overtime averaging, subject to the specific statutory requirements.
British Columbia	<p>Overtime: An employee is entitled to overtime after 8 hours per day or 40 hours per week. An overtime averaging agreement can be used with the agreement of the employer and employee but is subject to specific statutory requirements.</p> <p>Paid Sick Leave: After 90 consecutive days of employment, an employee is entitled to up to 5 days of paid sick leave per year for any personal illness or injury in addition to up to 3 days of unpaid leave.</p>
Manitoba	Overtime: An employee is entitled to overtime after 8 hours per day or 40 hours per week. An employer and employee can agree to overtime banking and overtime averaging, subject to the specific statutory requirements.
New Brunswick	Overtime: An employee is entitled overtime (calculated on the minimum wage) after they have worked 44 hours in a week.
Newfoundland and Labrador	Overtime: An employee is entitled overtime (calculated on the minimum wage) after they have worked 40 hours in a week. An employer and employee can agree to overtime banking, subject to the specific statutory requirements.

<p>Nova Scotia</p>	<p>Overtime: An employee is entitled overtime after they have worked 48 hours in a week.</p> <p>Termination Entitlements: An employee cannot be suspended or discharged without cause after they have ten years of service and can be reinstated if they are wrongfully dismissed.</p>
<p>Ontario</p>	<p>Overtime: An employee is entitled to overtime after they have worked 44 hours per week. An employer and employee can agree to overtime banking and overtime averaging, subject to the specific statutory requirements.</p> <p>Minimum wage: An employee who meets the definition of “homeworker” is entitled to a separate minimum wage that is higher than the general minimum wage. A “homeworker” is defined as “an individual who performs work for compensation in premises occupied by the individual primarily as residential quarters but does not include an independent contractor”.</p> <p>Severance Pay: If the employer has a payroll of 2.5 million or more (inside or outside of Ontario), an employee with five or more years of service is entitled to severance pay in addition to their entitlement to notice of termination (or termination pay). Severance pay amounts to one week per year of service, prorated for any partial year, to a maximum of 26 weeks’ wages.</p> <p>Electronic Monitoring Policy: An employer with more than 25 employees in Ontario is required to have an Electronic Monitoring Policy.</p> <p>Disconnect from Work Policy: An employer with more than 25 employees in Ontario is required to have a Disconnect from Work Policy.</p>
<p>Prince Edward Island</p>	<p>Overtime: An employee is entitled overtime after they have worked 48 hours in a week.</p>
<p>Quebec</p>	<p>Overtime: An employee is entitled to overtime after 40 hours per week. An employer and employee can agree to overtime banking, subject to the specific statutory requirements.</p> <p>Termination Entitlements: An employer may only unilaterally terminate the employment of an employee with two or more years of uninterrupted service for good and sufficient cause and, among several available remedies, an employee can be reinstated if they are wrongfully dismissed.</p>

	<p>Contractual Entitlements: Pursuant to the <i>Civil Code of Quebec</i> a clause in an employment contract that provides for specific notice of termination or compensation in <i>lieu</i> cannot be invoked against an employee because what constitutes reasonable notice must be evaluated at the moment of termination. As such, contractual termination language cannot be used to reduce an employee's reasonable notice entitlement.</p> <p>French Language: Pursuant to the <i>Charter of the French Language</i>, every employer must respect the worker's right to carry on his activities in French. This means that employees may require that all documentation and communication be drawn up in French. That said, regardless of a specific request, there must now necessarily be a French version of an employment contract before the parties can agree to sign a version in another language.</p>
Saskatchewan	<p>Overtime: An employee is entitled to overtime after 8 hours per day (if the employee works a five-day schedule or 10 hours if the employee works a four-day schedule or 40 hours per week.</p>

ADDITIONAL EMPLOYMENT-RELATED LEGISLATION

Certain provincial jurisdictions have additional employment-related legislation with which an employer must comply if it has any remote worker who permanently lives and works in the province, even if there is no corporate presence. An overview of the applicable additional statutes is set out below.

<p>Alberta</p>	<p><i>Personal Information Protection Act</i></p> <ul style="list-style-type: none"> • Applies to private sector organizations with respect to the collection, use and disclosure of employee personal information • Governs the storage and retention of such information and the right to access same <p><i>Alberta Human Rights Act</i></p> <ul style="list-style-type: none"> • Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds • The protected grounds related to employment are race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, and sexual orientation
<p>British Columbia</p>	<p><i>Personal Information Protection Act</i></p> <ul style="list-style-type: none"> • Applies to private sector organizations with respect to the collection, use and disclosure of employee personal information • Governs the storage and retention of such information and the right to access same <p><i>Human Rights Code</i></p> <ul style="list-style-type: none"> • Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds • The protected grounds related to employment are race, sex, sexual orientation, disability, Indigenous identity, political belief, family status, and conviction of a criminal or summary offence unrelated to employment or intended employment
<p>Manitoba</p>	<p><i>Human Rights Code</i></p> <ul style="list-style-type: none"> • Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds

	<ul style="list-style-type: none"> • The protected grounds related to employment are ancestry (including race and colour), nationality, ethnic origin, religion, age, sex (including pregnancy and gender identity), gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief and physical or mental disability. In addition, the <i>Human Rights Code</i> prohibits discrimination that is based on other group stereotypes (such as criminal record or disadvantaged social condition) <p><i>Accessibility for Manitobans Act</i></p> <ul style="list-style-type: none"> • Applies to any person or organization that employs persons. In a broad sense, the statute is intended to remove barriers affecting people with disabilities <p><i>Personal Investigations Act</i></p> <ul style="list-style-type: none"> • Applies to an employer that does not have a corporate presence in Manitoba in the context of verification of information provided in the scope of a personal investigation, which can include a reference check in the context of an application for employment
<p>New Brunswick</p>	<p><i>New Brunswick Human Rights Act</i></p> <ul style="list-style-type: none"> • Prohibits discrimination and harassment in employment on the basis of any of the protected grounds • The protected grounds are race, colour, national origin, place of origin, ancestry, creed or religion, age, family status, marital status, sex, sexual orientation, gender identity, gender expression, physical or mental disability, social condition and political belief or activity
<p>Newfoundland and Labrador</p>	<p><i>Human Rights Act</i></p> <ul style="list-style-type: none"> • Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds • The protected grounds are race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income, political opinion and criminal conviction unrelated to employment

Nova Scotia	<p><i>Nova Scotia Human Rights Act</i></p> <ul style="list-style-type: none">• Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds• The protected grounds are age, race, colour, religion, creed, ethnic, national or aboriginal origin, sex, sexual orientation, physical disability, mental disability, family status, marital status, source of income, irrational fear of contracting an illness or disease, association with protected groups of individuals, political belief, affiliation or activity, gender identity and gender expression
Ontario	<p><i>Pay Equity Act</i></p> <ul style="list-style-type: none">• Applies to a private sector employer if it has 10 or more employees in Ontario and requires the employer to establish and maintain compensation practices that provide for pay equity <p><i>Accessibility for Ontarians With Disabilities Act</i></p> <ul style="list-style-type: none">• Applies to an organization that employs any persons in Ontario. It establishes a process to develop and enforce accessibility standards, both for members of the public who access services and for the organization's employees <p><i>Human Rights Code</i></p> <ul style="list-style-type: none">• Protects against discrimination and harassment in the workplace on the basis of any of the protected grounds• The protected grounds related to employment are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, and disability
Prince Edward Island	<p><i>Human Rights Act</i></p> <ul style="list-style-type: none">• Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds• The protected grounds related to employment are colour, race, creed or religion, criminal conviction, ethnic or national origin, family status, marital status, physical or mental disability, political believe, sexual orientation, source of income, sex or gender, gender identity and gender expression

Quebec	<p><i>The Act respecting the protection of personal information in the private sector</i></p> <ul style="list-style-type: none">• Applies to private sector organizations with respect to the collection, use and disclosure of employee personal information• Governs the storage and retention of such information and the right to access same <p><i>The Charter of the French Language</i></p> <ul style="list-style-type: none">• Protects a worker's right to carry on one's activities in French• Requires an employer provide any communication to its employees in French and requires any written individual employment contract be drawn up in French <p><i>The Charter of human rights and freedoms</i></p> <ul style="list-style-type: none">• Prohibits against discrimination and harassment in the workplace on the basis of any of the protected grounds• The protected grounds are race, colour, sex, gender identity, gender expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, and a handicap or the use of any means to palliate a handicap
Saskatchewan	<p><i>Saskatchewan Human Rights Code</i></p> <ul style="list-style-type: none">• Prohibits discrimination and harassment in the workplace on the basis of any of the protected grounds• The protected grounds are related to employment are religion, creed, marital status, family status, sex, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race, receipt of public assistance and gender identity

EMPLOYMENT AGREEMENT CONSIDERATIONS

If an employee commences employment in a province where the employer does not otherwise have operations, an employer will generally prepare the employment agreement to comply, from the outset, with the laws of that provincial jurisdiction, particularly as they relate to termination entitlements. However, in certain cases, an employee may have an employment agreement in place at the time they *move* to a remote work arrangement in another province. The question then arises as to whether that employment contract and its terms continue to apply to the employee. This becomes particularly important if the employee has their employment terminated.

There are many factors a court may consider to determine if an employment agreement entered into continues to apply to the employee, despite relocation. These include whether there is a term of the employment agreement that expressly sets out the governing law (for example, a provision that states the agreement will be governed by the laws of Manitoba) and, even if there is, whether there is a “sufficient connection” to the jurisdiction selected to support the application of that law. Further, if there are public policy reasons why the laws of the selected jurisdiction ought not apply then this may result in a court rejecting its application. This could include the selection of a jurisdiction that would result in a contracting out of provincial employment standards, occupational health, or other legislation (for example, if a Canadian entity attempted to have the laws of Delaware apply to an employment relationship in British Columbia).

For these reasons, an employer that hires an employee in another jurisdiction or has an employee permanently transfer to another jurisdiction is well-advised to consult with experienced employment counsel to determine if a new (or amended) employment agreement is required to accurately reflect the new work arrangements and the appropriate termination entitlements.

TAX IMPLICATIONS ASSOCIATED WITH REMOTE WORKERS

When a remote worker travels and works in different provinces, an employer must consider the potential impact of the arrangement on the company's tax liability, compliance obligations, and withholding and remittance obligations for employee remuneration.

Provincial corporate and health tax implications

Having employees work remotely in different provinces can affect the tax the employer pays, its access to specific provincial tax benefits, and its filing obligations in different provinces.

Canadian resident corporations are subject to separate income taxes levied by the federal government and the provinces. While the federal portion of income tax is the same for all corporations, the income attributable to each province is subject to varying rates. Canadian-resident corporations are generally subject to tax on active business income at combined federal and provincial tax rates ranging from 23% (Alberta) to 31% (Prince Edward Island). Canadian-controlled private corporations may be eligible for the small business deduction on active business income up to a limit, for combined federal and provincial tax rates ranging from 9% (Manitoba, Saskatchewan) to 12.2% (Ontario, Quebec). Provinces also have different tax calculation rules and provide incentives and tax credits that apply only to income attributable to the province.

While all provinces legislate their corporate tax regimes and rates, the Canada Revenue Agency ("CRA") administers corporate provincial tax for each province except Quebec and Alberta. Corporations file an annual return with the CRA for the federal portion and activities in all provinces other than Quebec or Alberta. Separate provincial returns may also need to be filed in Quebec or Alberta if the corporation has activities in those jurisdictions.

A corporation's active business income may be taxable in any given province if the corporation has a permanent establishment ("PE") in that province. Whether a corporation has a PE in a particular province is a question of fact, determined under the detailed legislation and deeming rule framework in the *Income Tax Act* (Canada) ("ITA") and the *Income Tax Regulations* ("ITR").

As remote work has become significantly more common, concern has arisen that a home office could constitute a PE in a province where an employer did not otherwise have a PE. The answer in any particular case depends on the work location, the employee's authority to act on behalf of the employer, and the extent of the employer's other operations in the province. The CRA recently stated that it *may not* consider an employee working from a home office in another province to constitute a PE of the employer, provided that the employer does not otherwise carry on business in that province. While helpful, this CRA statement does not replace the need to seek tax advice for any particular situation.

Where a corporation has a PE in multiple provinces, its taxable income is allocated among the provinces. The ITA and ITR provide rules for allocating provincial income, but these do not address all situations, particularly in a modern and changing world. The CRA has developed administrative positions on issues that could apply to various situations. However, as with all CRA interpretations, the guidance is not legally binding and is subject to change.

The formula for allocating taxable income among the provinces considers the employer's salaries, wages and gross revenue in each jurisdiction. Therefore, the salary of an employee working remotely in another province (either temporarily, periodically, or permanently) where the employer otherwise has a PE, could factor into the employer's allocation of income to each province for provincial tax purposes. Tracking and allocating profits and payroll to different provinces is an administrative burden on employers. If the CRA or provincial tax authorities disagree with the allocation, they may reassess the employer for tax, interest and penalties.

Separate from corporate tax, certain provinces (Ontario, British Columbia, Quebec, Manitoba and Newfoundland and Labrador) impose provincial health and education taxes on employers. The rates and calculation bases for each of these taxes are governed by provincial legislation, and remote workers can affect an employer's liability.

Provincial withholding and social security implications

Employers must withhold the appropriate federal and provincial taxes from an employee's remuneration and remit to the appropriate taxation authorities. If an employer fails to withhold appropriate amounts, it may be subject to penalties.

An employer's obligation to withhold amounts for provincial taxes from remuneration is calculated differently than its obligation to pay provincial corporate taxes on its profits. An employer is to deduct amounts from remuneration following the individual income tax rates of the province in which the employee reports for work at an employer's establishment. Suppose an employee is not required to report to any particular place of business of the employer. In that case, the employer calculates withholding based on the province from which it pays the employee's remuneration.

On the other hand, the employee's income tax liability for a year depends on the employee's province of residence at the end of the year. The personal marginal tax brackets and rates in each province vary considerably. A remote worker who resides in a province other than the province from which the employer pays their salary may ultimately owe more or less tax than was withheld and remitted on their behalf.

Having too much or too little tax withheld and remitted can create cash flow issues or surprises when an employee files their annual tax returns. To mitigate these effects, an employee can request that additional tax be deducted and remitted on their behalf or may apply to the CRA for authorization allowing the employer to reduce the amount deducted and remitted on their behalf.

Employers are also responsible for deducting Canada Pension Plan contributions from employees to the government-sponsored retirement income program for all provinces except Quebec, where Quebec Pension Plan ("QPP") contributions are collected. Employers operating in and with remote employees inside and outside the province of Quebec must consider the interactions between the two plans. In certain instances, an employee may contribute to the QPP, but never benefit from the plan.

International implications

A non-resident employer engaging a remote worker in Canada can create many complex tax liability, compliance, and withholding issues for the employer. A full description of the issues of cross-border workers is beyond the scope of this publication, but a summary follows.

In Canada, a corporation is taxed based on its residency status. Resident corporations are taxed on their worldwide income. In contrast, non-resident corporations are taxed only on certain Canadian-sourced income, such as income from a business carried on in Canada. A double tax treaty may ultimately relieve a non-resident corporation from tax liability to Canada but not eliminate a filing obligation. Depending on the employer's operations in Canada, the employee's authority to act on the employer's behalf, the physical location where the employee works, and other factors, a remote worker may or may not result in the employer being subject to Canadian tax.

Regardless of whether the employer is subject to tax in Canada, a foreign employer must comply with Canadian income tax withholding and remittance rules on remuneration paid to employees in Canada. A foreign employer may also have Canadian social security contribution requirements and other employer-related tax obligations when engaging Canadian employees. Complying with these obligations can be cumbersome and costly, but failure to comply can result in penalties.

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