

Guidance for Decision Making

Staff Working Overseas

Introduction

Employment costs, liabilities and risks are complex surrounding staff working overseas which makes decision making on such requests very difficult. This guidance document outlines the liabilities and risks for the University enabling a staff member to work overseas whilst delivering duties/responsibilities of their role, alongside a decision making framework.

Please note – authorisation for a staff member to work overseas can only be provided by the Dean/Registrar.

Overview of Liability and Risk Associated

It is worthwhile being mindful of liability and risks associated with staff working overseas. Each case has to be handled and assessed individually due to the complexity of regulations and the different requirements of host countries. Although there is some in-house expertise in this area, there is usually a requirement to seek external specialist advice dependent on the host country in question. The main considerations are:

- **Right to Work** – the staff member will have to obtain the correct working visa for the length of time that they will be residing and working overseas, it is also important to ensure that the absence from the UK does not affect settlement rights or UK working visa status. Confirmation of this right to work needs to be provided to the University to ensure compliance in the host country.
- **Taxation Regulation** – dependent on the host country and the length of time the staff member will reside, income tax liability may be created in that country. There is also the risk that the University may create a 'permanent establishment' as an employer within the host country, this though is dependent on the number of staff employed that are resident, and more importantly the nature of the contract of employment and the type of activity performed. The creation of a permanent establishment is expensive, and the liability of that cost is currently set on the budget of the staff member who triggers the creation. Compliance with these regulations are absolute, and can involve a lifetime ban from entering the country, a heavy fine for anyone who has not adhered (staff member not employer), and in some rare cases imprisonment.
- **Social Security Liability** – the general rule is that employee and employer social security obligations arise in the country in which the employee is physically carrying out their duties. Agreements on this varies globally, however in the worst case situation where there are no agreements with the UK in place, the employer has to pay UK National Insurance contributions as well as in the host country for the first 52 weeks of residence, which can be very expensive.
- **Employment Law** – if staff members live and work overseas, even for short periods, they can become subject to the jurisdiction of the host country and start to benefit from the applicable local mandatory employment protections. These may include minimum rates of pay, paid annual holidays, collective bargaining rights and perhaps most importantly in the event of a dispute, rights on termination. Although our employment

package stands up well to most of these requirements, termination of a contract can be very difficult in these circumstances.

- **Transferring Data** - if a staff member's role involves processing personal data, this could give rise to data protection issues, especially if the employee is requesting to work from a country outside of the EEA which is not subject to the General Data Protection Regulation and other EU data privacy laws.
- **Local Health & Safety Protections** – if a staff member works from home overseas, they need to be compliant with any local health and safety requirements. These vary dependent on the host country, but may expose the University to purchase additional equipment incumbent on the employer to provide by law in that country. It is also important to note that safety of our staff is paramount and as a reasonable employer there may need to be evidence of safety measures inputted e.g. LGBTQ+ staff may be more at risk in some countries than others, therefore discussions and protocols surrounding this would need to take place to safeguard the staff member to deliver their role within that location.

Decision Making Framework for New Requests to Work Overseas

To support decision making and to help manage the University's risk at an acceptable and proportionate level, the following framework has been created.

Please Note:

- All requests to work overseas must have an OW1 completed and submitted to HR Services, advice will then be taken regarding additional employment cost, risk and liability to the University. It is only after the provision of that advice should cases be authorised by the Dean or Registrar. Staff members should **not** commence working overseas until this process has been completed.
- It is the University default position that staff are UK based, and agreeing for staff members to work overseas is only done so on an exceptional basis due to role requirements for the University's benefit.
- Exception to the default position can be made where there is a specific reason for a non UK base such as funding, or a requirement to be non UK based e.g. CERN.
- University liability and risk is significantly reduced where an Educational Institution or Partner body will act as the payroll provider within the host country.
- If the host country is either China or India, caution should be applied and case specific expert advice taken due to the increased complexity and significant personal penalty of breach of regulations in these host countries. Expert advice is procured externally therefore there will be a cost which is charged to the appropriate Faculty/PS budget.
- For budgetary purposes an average annual cost of £14,400 should be applied as additional employment costs for each case approved to work overseas.

1.	Staff requesting to work overseas for a period <u>less than 90 days</u> in any rolling 183 day period (except for China & India)
	<p>Request must meet the below criteria:</p> <ul style="list-style-type: none"> • Working overseas will only be considered in cases for the University's benefit, and will be for research activities, field work, or strategically related activities. Requests for personal reasons cannot be accommodated. • The staff member making the request must have spent less than 90 days in any rolling 183 day period in the host country including personal trips. • The projected assignment/project/research must be completed within the 90 day period in any rolling 183 day period. Any personal trips made during this period are included within the 90 day timeframe, therefore in such cases there will be less than 90 days to complete the assignment/ project/ research. • OW1 Form Completed and Returned to HR Services. • Assessment of case completed by HR Services/ external experts and advice has been provided. • Request is considered along with the advice provided by the Dean/Registrar and approval given.
2.	Staff requesting to work overseas for a period <u>greater than 90days</u> in any rolling 183 day period and can be set up on a University Overseas Payroll or can be hosted for payroll purposes in an Educational Institution or Partner Body
	<p>Request must meet the below criteria:</p> <ul style="list-style-type: none"> • Working overseas will only be considered in cases for the University's benefit, and will be for research activities, field work, or strategically related activities. Requests for personal reasons cannot be accommodated. • OW1 Form Completed and Returned to HR Services. • Assessment of case completed by HR Services/ external experts and advice has been provided. • Request is considered along with the advice provided by the Dean/Registrar and approval given. <p>Please note: that it is favourable to limit University risk to have staff members either on a University overseas payroll or being hosted by another employer. However there are other factors that can create the risk of creating a permanent establishment such as contract type and duration. The creation of</p>

	<i>permanent establishments are extremely costly and complex for the University and therefore must be avoided unless strategically agreed by SLT. The inclusion on an overseas payroll or hosted payroll provider does not provide an automatic right to work overseas.</i>
3.	Staff requesting to work overseas for a period <u>greater than</u> 90days in any rolling 183 day period.
	<p>Requests in this category must be truly exceptional as these cases carry the most liability and risk for the University. Requests must meet the below criteria:</p> <ul style="list-style-type: none"> • Working overseas will only be considered in cases for the University's benefit, and will be for research activities, field work, or strategically related activities. Requests for personal reasons cannot be accommodated. • OW1 Form Completed and Returned to HR Services. • Assessment of case completed by HR Services/ external experts and advice has been provided. • Request is considered along with the advice provided by the Dean/Registrar and approval given.

For further information on Staff Working Overseas, visit our staff net page - <https://www.staffnet.manchester.ac.uk/human-resources/managers-essentials/recruiting-the-right-people/staff-working-abroad/>