



# Romanian employees working remotely from other countries: from theory to practice

**Rokas Law Firm**

**[View In Analytics](#)**

**European Union, Romania** | January 27 2022

Remote working for Romanian employees (contracted with a Romanian employer) from abroad is regulated mainly by Law no 81/ 2018 and is in theory possible, but is it actually happening? The main concerns of Romanian employers in case an employee is asking that they agree on remote working from another country, outside Romania (hereinafter called “the host country”), are outlined below.

According to article 17 of the Romanian Labor Law Code (RLLC), the employer is the one deciding upon the workplace. If the employee is asking for teleworking outside Romania, an addendum to the individual employment contract (IEC) must be signed, in which it is not mandatory anymore to mention the agreed workplace of a remote working employee. However, due to the consequences that may arise for both the employer and the employee from remote working abroad, not mentioning the exact workplace in an IEC cannot be interpreted as the choice of the telework place outside Romania to be at the sole discretion of the employee. The employee cannot decide himself/herself on the host country even though his/her employer agreed to remote working without explicitly mentioning the workplace in the IEC considering also that, according to article 8 of RLLC, the employment relationship should be grounded in good faith and mutual consent.

The employer is entitled to check on the employees’ activity, including also in the working place, mainly by using information and communication technologies. Before 6<sup>th</sup> of May 2021, the employer was entitled to check on his/her employee even on-site visits to the declared working place. Considering the law amendment, it is harder now for the employer to be sure that the employee is working from Romania or from abroad.

It is also important to make a distinction and to point out that in Romania there are two different kinds of remote working and teleworking – regulated by Law 81/2018 and working from home regulated by RLLC respectively. Even though they seem to be the same, there are two different sets of law provisions. The teleworking activity is defined as being a work type where the employee regularly and voluntarily complies with the specific working assignments, in a different place than the organized working place of the employer, using information and communication technologies, while working from home is regulated by article 108 – 110 of RLLC and refers to the activity that is performed from home (residence) and not from another place. Usually, home working is used for activities that are not related to computers but there are no restrictions in the law therefore home working may also be used as an alternative for teleworking since in teleworking the employer may not find out if his/ her employee is working from Romania or not. On the other hand, when an employee is working from home under RLLC, he/ she is entitled to determine his/hers own working time schedule while in teleworking the working time schedule must be determined from the beginning of the IEC. In both cases, the employer is entitled to check on his/ her employee, under the conditions agreed in the IEC, during all working times in teleworking, while only in the agreed time schedule in case of home working. Resultingly, when the employer considers for his/her employees remote work outside Romania, only teleworking is applicable and not home working.

Working remotely outside Romania may also trigger fiscal issues for the employer, depending on the host country legislation, since the employer may have to consider opening a branch and/or pay the applicable taxes in the host country. Thus, before agreeing to remote work of its employees outside Romania, an employer should check the specific tax legislation of the host country. On the other hand, the employee may also be affected from a fiscal point of view, since the income tax regime is different for remote working in a host country. As a general rule applicable in Romania, the salary income obtained by employees is taxed in the country where the employee is performing his/her job duties. This also may trigger a debate on which is the actual workplace of the employee, since, even he/she is based in a host country, the Romanian employer benefits from the work provided. The applicable legislation of both countries (Romania and the host country) should be taken into account.

Another aspect that should be considered in case of remote working in a host country is the applicable labor and social security law for such employees. The most favorable legislation between Romanian legislation and the host country legislation will be applicable for the remote working employee. The Romanian employee will have the same employment rights as any employee of the host country, except in the case when the Romanian rights are more favorable. The health and safety regulations for the employees may also be different from one country to another and should be assessed in case of remote working in a host country. The Romanian employer should ensure to the employee that all such conditions are met as required in the host country.

In addition, according to article 18 of the RLLC, in case of remote work outside Romania, the employer must inform the employee, in due time before its leaving, regarding the main labor law provisions applicable in the host country, visa issues, life conditions in the host country that may endanger life, personal safety or freedom of the employee.

All the above-mentioned information may be difficult to be found and assessed by a Romanian employer, especially for the non-EU host countries, therefore, even though in theory the Romanian employees may work remotely from anywhere outside Romania, in practice, there are several implications for the Romanian employers to which they should agree and cope with.

Rokas Law Firm - Roxana Tureac - Radu

Powered by

LEXOLOGY.