

# All roles flex across borders

## Making it work – Careful documentation and legal compliance



*Employers who successfully extend their ‘all roles flex’ policies to allow their staff to work remotely from another location outside their home country (or interstate) understand the importance of carefully thinking through and documenting these arrangements. They also ensure that they comply with applicable laws.*

While these arrangements may share some of the features of typical overseas assignments, they can be different in some important respects. For example, the benefits usually given to an employees who is sent on assignment may not apply, or the work location may not be under the employer’s control.

An employer’s standard all roles flex policy or global mobility policy may not therefore sufficiently cover essential aspects of these types of arrangements.

### How will the flexible arrangement work?

Central to any flexible work arrangement is agreeing with the employee how the arrangement will work. In particular:

- will it require any modification to the employee’s duties?
- who will the employee report to and are there any particular issues that need to be addressed to ensure work continues to be supervised at the appropriate level?
- how will the employer ensure that expected performance standards continue to be met and how will it manage the employee if those expectations are not met?
- in what location will the employee perform the work while overseas/interstate? Does the employer have a branch office? Will the employee be working from home?
- to what extent is the employer prepared to assist with any relocation costs or living expenses while the employee is overseas/interstate?
- how long will the arrangement last for?
- will there be a job for the employee to come back to in the home country should the arrangement come to an end?

### Key highlights

- An employer’s local ‘All roles flex’ or global mobility policies may be insufficient to deal with flexible work arrangements in which employees work remotely from another location outside their home country, or interstate.
- Employers who successfully manage these types of flexible work arrangements:
  - think through the legal and HR implications of the arrangement
  - carefully document terms of employment for the duration of the arrangement , building in trial periods and routine reviews
  - develop and implement policies which articulate the employer’s approach to requests to working remotely from overseas or interstate
  - understand and comply with the labour law and WHS requirements of the overseas country

### Making sure the flexible arrangement works for everyone

Just like any other kind of flexible working arrangement, it is very important that the employer and employee agree on mechanisms for monitoring how the arrangements is working, for the early identification of problems and for ending the arrangement if it is not working out.

This may include:

- agreeing that that the arrangement will always be subject to the employee performing at expected levels
- including a trial period
- providing for regular reviews

## Documentation – recording the terms of the flexible arrangement

Once the key issues have been considered and addressed, it is vital that the agreed terms are documented. For new employees, this may be included in their employment agreement. Existing employees seeking flexible arrangements may be given a letter setting out the changed terms of their employment for the duration of the arrangement. For this group of employees it will be very important to ensure that there is no confusion between the terms of the arrangement and the terms of the underlying employment.

## Documentation – a tailored policy

As well as recording the terms of the flexible arrangement in the contract documents, it is a good idea to have a written policy which:

- clearly states what the employer will require from employees who work under such arrangements
- explains the extent to which the employer will assist with the costs of the arrangement (eg travel, cost of living, insurance, repatriation, tax assistance, visa costs)
- sets out the procedure for requesting such an arrangement and specifies the information that the employee will need to provide for the application to be considered

A well written policy will help to manage the expectations of employees who are thinking about making a request.

## Complying with overseas minimum labour law standards

Depending on the circumstances, overseas minimum labour law standards (for example in relation to hours of work, pay, leave, public holidays, termination and redundancy) may apply even if the employee is working solely for an Australian company and they are employed under an Australian employment agreement. It is therefore important that employers understand what those standards are and the extent to which they will apply to the employee concerned.



### **Possible implications of poor documentation or not complying with applicable laws**

- Employee disputes
- Legal action by overseas regulatory authorities for non-compliance
- Reputational damage.

## Work health and safety

Many countries have work health and safety regulations which may apply to the employees performing work in those countries. Employers should understand what the WHS requirements are in the relevant country, the extent to which Australian WHS laws apply and what needs to be done to comply.

If the employee is going to be working from home in the overseas country, the employer may need to take additional steps to ensure that the working location complies with the occupational health and safety standards. Specific documentation should be drawn up, clearly setting out all obligations and requirements regarding the working from home arrangement. The employer should set clear parameters around all working from home to ensure all work-related activities are carried out in accordance with the employer's WHS requirements, as well as considering any country specific requirements. Regular monitoring (for example by requiring the employee to complete WHS checklist annually) to confirm safety precautions is also advisable.

*To discuss further how we can help your organisation navigate through the complexities of implementing 'All roles flex' to ensure success, please reach out to Tim, Susan, Georgina or your usual PwC contact.*



**Tim Frost**

Partner  
+61 (2) 8266 4609  
[tim.frost@au.pwc.com](mailto:tim.frost@au.pwc.com)



**Helen Cudlipp**

Principal  
+61 (2) 8266 2995  
[helen.cudlipp@au.pwc.com](mailto:helen.cudlipp@au.pwc.com)



**Susan Price**

Director  
+61 (2) 8266 2175  
[susan.price@au.pwc.com](mailto:susan.price@au.pwc.com)



**Selina Keller**

Director  
+61 (2) 8266 8067  
[selina.keller@au.pwc.com](mailto:selina.keller@au.pwc.com)



**Georgina Gowland**

Senior Manager  
+61 (2) 8266 2462  
[georgina.gowland@au.pwc.com](mailto:georgina.gowland@au.pwc.com)

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