

## Employing people abroad – would an employer of record work for you?



After the pandemic lockdowns, many organisations have operated a hybrid working model with staff working away from their main location for a large part of their working week. Some have chosen to go fully remote allowing staff able to work from anywhere in the world. Others have been under pressure from employees who don't want to return to the UK or have faced talent gaps which they can plug by hiring staff based in other countries.

It's in this environment that we have seen an increasing number of our clients deciding to use employers of record.

### What is an employer of record?

An employer of record is an organisation usually based in the same country as the person you wish to hire. They contract with the employee or consultant as their employer, making the payments to them and to the local authorities in the country where the person is working. They also have a contract with you, their client, under which your respective responsibilities are set out.

### How does it work?

The services offered by employers of record vary considerably. This leads to wide variation in their costs so you want to be clear on what you need from them. At the simplest level, the employer of record is the named employer of the staff member, they take on the obligation to pay them and the local authorities and to provide



them with an employment contract which complies with the local law. Some organisations will add to that dealing with the immigration requirements and registration with the local authorities, which is beneficial if you are unfamiliar with the local law. Others will take a greater role such as finding the talent for you or managing their performance throughout their employment.

Usually you enter in to a main agreement with the employer of record that sets out how you will work with each other. As and when they provide staff, you agree with them the terms that will apply to that individual in a separate schedule. The employer of record then employs the individual based on those terms.

## What are the pros and cons?

There are three main advantages from using an employer of record arrangement:-

1. You can hire in a country where you don't have a branch or subsidiary. The employer is a separate legal entity from you which significantly reduces the risk that you or your group will be liable for corporation tax in that country;
2. It enables access to a wider pool of talent located anywhere in the world. At this time of the Great Resignation, this enables you to find the skills you need and often at a lower salary;
3. You don't need to be an expert on the local law where the employee is working. The employer of record will prepare the employment contract and should be complying with the legal obligations.

There are some downsides:-

1. You won't own the intellectual property in the work product of the employee. The intellectual property rights in the code, designs and work of your employees in the UK belongs to their employer. As this is not your employee, you need to make sure that the ownership is transferred to you to protect your rights;
2. the cost of the arrangement – this can be a fixed fee or a % of the salary of the person being hired. This is in addition to the normal employment costs (package, pension, holiday, social charge) the employer of record will incur.
3. The risk the employer of record relationship fails. The individual will ultimately be working for you, reporting to your staff and being managed by you. Exercising this control increases the likelihood that you will be seen as their employer under English law. Cases like Uber show the clear trend in tribunals across Europe and north America to look through complex arrangements to the reality of the relationship<sup>[1]</sup>. If the individual did bring a claim, you risk having to pay any compensation awarded.

## Our top tips

1. **Negotiate the terms of your arrangement with the employer of record.** This relates to the fee, the late payment costs, the services and the financial responsibility for any accidents or claims by the employee. This investment of time when you set up the arrangement will ensure that all future hires are engaged on the same basis which also streamlines your administration;
2. **Be clear on the services you need and ensure that the paperwork matches it.** If you want advice on the options for hiring the individual, that may not be forthcoming if they are merely offering an on-line portal or payroll services. The provider's website may suggest their services are seamless but their agreement with you needs to match what you need. Our clients often find in the detail that they were at risk of paying for a service the provider wasn't committing to supply;
3. **Get a right of approval over the terms between the individual and the employer of record.** There are two reasons for this. You want to see the proposed contract of employment so that you can see the costs you are paying are consistent with the payments to the individual. Additionally you want to ensure that any intellectual property is validly transferred to you (and if not that you can put your own agreement in

place)

4. **Don't agree to co-employ the individual (unless you intend to).** You undo the benefit of an employer of record arrangement.
5. **Check who you partner with.** The growth in employers of record means you will often have a choice between several providers. You want to ensure that you are dealing with a reputable business with sufficient expertise to comply with the local law. You are relying on that employer of record staying in business for years to come and, if the worst happens, being able to bear any financial liability if the employee makes a claim.

[\[1\]](#) Autoclenz, Uber

## How we can help

Our [employment law team](#) advises businesses owners, executive level managers, HR directors and managers at mid-market corporations and smaller SMEs. If you'd like to discuss any employment law issue, [please get in touch](#).



[Melanie Stancliffe](#)

Partner