

Implementations on social security for international staff assignments

Mobility, as an implementation adopted by multi-national companies, contributes to professional and individual progress of the employees meeting particular performance criteria through intra-company global exchange programs while requiring a cost planning for those multi-nationals' international assignment policies. Just at that stage, the question on where social security premiums would be paid accounts for a significant part within this cost planning.

The first to be taken into account in terms of the social security implementations is whether a convention on social security exists between the country of origin/assignment and Turkey or not.

The employee's being subject to the social security legislation of the country in which the employment occurs stands as the fundamental rule within the social security contracts. However, within the social security contracts, staff members temporarily sent to a contracting country by their employers have been excluded from that primary principle of the contract. In other words, in the circumstance that a worker of an employer resident in one of the contracting countries with its headquarters is sent to the other contracting country temporarily for the execution of a particular task or to work on behalf of his/her employer; it's indicated that the legislation of the contracting party where the headquarters exist would be implemented as if he/she works within the first contracting party, as long as the employee works for the secondary contracting country. Through this, pursuant to the principle of integrity in social security, prevention of being insured repeatedly is aimed. So, the worker would be subject to the social security legislation of the contracting country in which the employer actually employing him/her is resident and on the other hand will be exempt of the social security legislation of the other contracting country where he/she has worked temporarily for a period as indicated in the contract.

At the time that period of exemption identified within the social security contracts expires, pursuant to the principle of integrity in social security, the employee's state of being insured mandatorily in the country in which he/she is actually employed should be terminated and start to be existing under the social security legislation of the country temporarily worked.

Since each social security contract contains different terms, it would be appropriate to implement an exemption by taking the terms of the local legislation applicable in the concerning countries into account.

Although any clear regulation does not exist in the legislation concerning the principles on "temporary assignment" and "working on behalf of the actual employer" aforementioned in the Law no.5510 and international social security contracts, Social Security Institute of Turkey accepts the temporary assignment period as 6 months (maximum 1 year) in practice. At the same time, it's indicated that the employee could only be assigned at a group company abroad for the execution of a particular and specialty job, indicating that the employee should remain under the hierarchical formation of the employer in Turkey during that period; in other words handling the employee-employer affairs in Turkey. However, under these circumstances, submitting social security notifications for an employee temporarily assigned at a group company abroad would be appropriate as per the legislation.

In that direction, whether there is an international social security contract or not, in the circumstances that an employee, transferred to a group company abroad under "temporary assignment", works at that group company more than 6 months and receives his actual wage from the group company during that period besides paying income tax concerning the mentioned payment abroad and remaining under the staff of the organization resident abroad; a practice like "temporary assignment" cannot be in question and submission of social security notifications by the actual employer resident in Turkey would be considered as contrary to the legislation.

In case an employee assigned at a group company abroad would not be working on behalf of the actual employer resident in Turkey for that period, termination of the state of mandatory insurance will become a current issue. For those people, a disadvantage arising from the empty period to occur on the social security system would be at stake. So as to remove that disadvantage, an application for the other appropriate systems would be required.

On the other side, it's indicated within the Law no.5510 that people sent to Turkey by a non-resident company to work on behalf of itself for a task that would not exceed three months, able to document his/her social security abroad will not be considered as insured in Turkey. The aforementioned three months period of exemption here is applicable for the ones that are sent to our country temporarily by a company established in a country without a social security contract and for the ones subject to the social security legislation of the country of origin.

Accordingly, for an employer sent to Turkey by a company resident in a country where any social security contract does not exist, to benefit of the three month exemption period within the scope of the Law no.5510; his/her being assigned for a particular, short time and specialty task in Turkey while any relationship of employee-employer with the company resident in Turkey should not be installed. Within that context, in the circumstance that the employee assigned at the group company in Turkey documents his mandatory insurance within his country of origin, he/she would be exempt of social security premium payments in Turkey for three months. In case the temporary assignment period is extended, the concerning employee's insurance would be initiating following the submission of employment statement to the Institute, as of the date that the three month period expires.

The legislation does not contain a clear regulation concerning the principles of "temporary assignment" and "to work on behalf of the actual employer" that are mentioned both within the Law no.5510 and the international social security contracts. This uncertainty could lead to "fake insurance" and may cause some incorrect practices that can result in certain sanctions. In case those incorrect practices are detected, administrative fines, removal of the right to benefit from deduction incentives of five points for one year, cancellation of the social security notifications with the related people could be on the agenda.

Therefore, the job description of the person assigned for a task abroad should be handled both within the context of national/international legislation and the decision for the selection of country to notify on that person's insurance must be made in that direction.

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