Global Social Security: European Court defines multi-state workers further

26 May 2021

In brief

On 20 May 2021, the Court of Justice of the European Union (CJEU) gave its judgement on the so-called Format II-case. The judgment is the latest development in several cases, which has defined conditions of when an employee is covered by special multi-state worker rules for the purpose of coordinating social security within the EU.

The Court found that an individual, who works in two or more EU/EEA countries in alternation can be considered a multi-state worker. However, it went further and confirmed that, if an employee works continuously within a single EU Member State for one year or more, then the multi-state worker rules should not apply.

Managing 'multi-state workers' is one of the hottest social security topics and a cornerstone consideration for managing social security compliance for a modern workforce.

In detail

The Court case regards a Polish company, FORMAT Urządzenia i Montaże Przemysłowe (Format), employing a Polish national resident in Poland to work within the EU. The employee worked in France for 12 months and half (from 23 October 2006 to 4 November 2007), in the UK for two months (from 5 November 2007 to 6 January 2008) and then returned to work in France.

Under EU-law, an employee is covered by the social security rules of a single Member State. This Member State is usually the country of work. However, an exemption to this rule states that an employee who normally work in two or more Member States is socially secured in the country in which he/she lives, unless less than 25% of the work is performed there, in which case the employee is socially secured in the Member State in which the employer is established.

The EU Court recalls previous 2012 case-law regarding the same company, in which the Court held that multi-state rules could only be applied if the employee could be said to work normally in two or more Member States. The 2012 decision found that the condition was not met as there were "interruptions" between the work periods in the Member States and that work in each State was governed by an individual time-limited employment contract.

In contrast, the current case regarded an individual who has an uninterrupted work record, but the period of work in each location was long.

The question before the Court was: Which period of reference should be operated, when considering the multi-state worker regulations?

The Court held that the multi-state rules must be interpreted consistently with the posting rules. The posting rule – as it was designed at the time – provided for an employee to be sent to another Member State by his employer for 12 months while maintaining home social security coverage. As such the EU-legislator has found that 12 months is a suitable timeframe for avoiding short-term changes in social security affiliation, and therefore the period of reference in the multi-state rules should also reflect this understanding.

The judgment is given under old (1408/71) EU social security coordination rules generally applicable until 1 May 2010 and are now only relevant to a very limited number of cases. Under these rules there was no 'period of reference' specified within the regulations.

This contrasts with current EU rules (883/04) which do include a period of reference within the multi-state rules of 12 months. However, 883/04 also extends the posting period from 12 months to 24 months. Therefore, the current EU-rules do not create the coherence that the Court calls for.

However, according to pending amendments being discussed at EU-level, it has been proposed to extend the reference period to 24 months thus re-establishing coherence between the posting provision and the multi-state rule. It is unknown if and when such an amendment is adopted.

The takeaway

As work patterns within the EU become more complex, the specific framework of the multi-state rules holds a great opportunity for redesigning workforce management. It should be ascertained that the work pattern falls within the rules and that the work has the necessary predictability.

Companies that cannot take advantage of the posting rule due to legal or practical circumstances should explore the precise boundaries of the multi-state rules.

As business travellers are about to re-emerge following COVID-19, the guidelines provided by the CJEU are imperative, when setting up a corporate function for managing A1 certificates for this employee population group.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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