

University of Massachusetts
International Engagement Parameters

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Currently, the University of Massachusetts (including the 5 campuses and the system office) is unable to directly employ staff abroad because our systems are not capable of processing multi-currency payrolls or complying with country-specific tax and labor regulations. The evolving nature of remote-work and the University's international mission and operations require examining alternative methods to meet the University's international engagement needs and maintain full compliance. Therefore, the University has vetted four alternative international engagement methods for the UMass community. These parameters outline four methods to address the global employment landscape, provide considerations when staffing for a project outside the U.S., and present next steps for each method. Finally, the document offers considerations for current employees working outside of the U.S.

The following guidance is provided to assist with mitigating University risk and navigating through the challenges and the complexity in placing or hiring employees abroad. However, the methods don't eliminate risk completely. Engagements in foreign countries may subject UMass to permanent establishment (PE) risk as well as additional risk considerations such as other employment and labor compliance requirements (e.g., retirement, health insurance, etc.), export control, or security. These risks should be evaluated in conjunction with tax and payroll risks.

Please note that the information provided in this document is not intended as personal income tax advice.

Definitions

Short-term traveler: UMass employees working outside the U.S. on University business for less than three months (up to six months may be considered short-term in certain situations and countries). Examples may include:

- Faculty/staff conducting research for the summer in the UK
- Faculty/staff traveling for six weeks to conduct research in the UAE
- Faculty/staff traveling for a conference

Current employee spending majority of time abroad: An individual hired in the U.S. on UMass payroll who, foreseen or not, travels to and spends more than three months working in a country other than the U.S. Examples may include:

- A faculty member takes multiple trips to Mexico in a twelve-month period on UMass business and spends more than three months at one time or over 200 days in total in Mexico

Expatriate (also "expat"): An individual living and working in a country other than his or her country of citizenship and not maintaining residency in the U.S. For the purposes of the international employment methods, this strictly refers to U.S. citizens or permanent residents working for UMass in a foreign country. Example may include:

- A UMass department seeks to hire a U.S. citizen to live and work in Japan for a two-year project.

Local National (also "host country national," "local hire," or "local"): A citizen or permanent resident of the country in which the work is based. Example may include:

- A UMass research project seeks to engage a local resident as a research assistant for a field study in Switzerland. This person would have a local tax identification number (similar to a U.S. Social Security number) and already have legal authorization to work in Switzerland.

Third-Country National ("TCN"): An individual working in a country outside his or her country of citizenship and the employer's country of operation (i.e., UMass in the U.S.), and who does not have U.S. immigration status. For such employees, the laws and treaties of all three countries may be considered in determining applicable labor laws and tax regulations—the person's home country, the country in which the person is working, and the country in which the employer is based. Example may include:

- A UMass department wants to engage a Canadian national to work in Italy for a one-year program.

International Engagements

There is considerable time, planning and evaluation necessary when considering expanding your program in another country, engaging international staff to perform work on behalf of the University, and placing or hiring employees to work abroad. There are a range of factors to consider beyond the typical requirements when performing the same work domestically.

Each country has different employment and taxation laws; therefore, it is important to determine the appropriate method to secure and compensate individuals working outside of the United States. Please be advised that compliance with international tax and employment laws may be costly. Additionally, depending on the method and personal circumstances, the individual may be personally responsible for handling the tax obligations in the country where they are working and should seek individual tax advice from their own tax advisors.

University Employment and U.S. Payroll – Domestic and Short-Term International Travel

The University's payroll is limited to employees based in Massachusetts (and in selected other states) for the majority of the year. The University only permits employees to work in another country for limited reasons. For example, required on-site research or data collection abroad for short durations, typically three months or less in aggregate for a twelve-month period. While under certain circumstances and in some countries a US tax resident employee may be able to work up to 183 days in a twelve-month period outside of the U.S. and remain on the University's U.S. payroll, this should be reviewed in advance to ensure that the University is compliant with local regulations. Such factors may include treaty considerations, the employee's responsibilities while working abroad, and local country labor regulations.

An employee may also be obligated to report and remit his or her own personal income tax in the local country regardless of time spent working. As the University does not provide personal income tax guidance, an employee working abroad should seek advice from a tax advisor.

International Engagements Not Supported by University Employment and U.S. Payroll

This section describes international staffing engagements that generally cannot be facilitated through UMass' employment and U.S. payroll, and therefore, will not be eligible for UMass benefits including health insurance, retirement, travel reimbursement, etc.

- Required to work in a country other than the U.S. for **more** than three months in a twelve-month period.
 - As mentioned above, travel for three to six months may be considered when determining whether to keep the employee on the University payroll, but it will depend on location and reason.
 - Under limited circumstances, exceptions for a period of greater than six months, but not to exceed twelve months, will be reviewed and considered to determine whether to keep the employee on the University payroll (for example, Fulbright Scholarships and Sabbaticals will be treated as exceptions however, the University will need to know length of travel, location, and visa type).
 - As labor laws become more stringent across the globe, some countries may necessitate a local employer for UMass employees working in countries **less** than 3 months.
- Expatriate employee, as defined above.
- Local National, as defined above.
- Third-Country National, as defined above.

Absent an approved exception, when international staffing needs fall into one of the above categories, an alternative to University employment and U.S. payroll will need to be considered. Please refer specifically to international engagement methods 2, 3 and 4, which are outlined in the next section of this document.

Engagement Methods for Staffing Abroad

UMass typically utilizes one of these four engagement methods to staff international projects. The methods are based on University standards and guided by host country laws (table below):

1. Use staff who remain on or join the UMass' Payroll (must meet definition of a Short-term traveler as defined above)
2. Partner with an established organization in the host country who can legally act as immigration host or employer of record and comply with local reporting requirements on behalf of UMass (Note that such arrangements may trigger a permanent establishment, or nexus, for the University and should be evaluated)
3. Contract with a Professional Employment Organization, or PEO (the Note above in #2 also applies to PEO arrangements)

4. Enter into an independent contractor arrangement that has been legally vetted as a compliant arrangement based on local labor law

The most compliant method for the University will depend on the host country, length of your project, the individuals you seek to engage, and your funding source.

A more detailed description of the four methods is provided in the following table.

METHOD	DESCRIPTION
1. U.S.-BASED UMASS EMPLOYEE TRAVELING/WORKING ABROAD ON BUSINESS (FULL/PART TIME)	<p>Short-term business travel to a foreign location may avoid many foreign employment complications when:</p> <ul style="list-style-type: none"> • long-term, full-time work abroad is not needed; • business activities can be lawfully performed as a business visitor; and • employee travels to a U.S. treaty country and spends less than three months of their total time outside the U.S (in a twelve-month period). <p>Three to six months may be possible, but it will depend on location and other factors, such and whether there is a treaty between the US and the foreign location which permits longer periods.</p>
2. IN-COUNTRY PARTNER	<p>Risk may be mitigated by the University when paying the employee through the department’s in-country partner. Assuming the in-country partner is legally allowed to do so, the partner would hire and compensate the employee while compliantly withholding and remitting tax and social security (if required) on behalf of UMass, and UMass would reimburse the in-country partner. If available, this is usually the most cost-effective, expedient, and risk mitigating solution.</p> <p>Note that there may still be PE risks to consider and there may be some countries in which this approach is not compliant or advantageous for the University.</p>
3. PROFESSIONAL EMPLOYMENT ORGANIZATION (PEO)	<p>Although hiring through a PEO does not address potential PE risk to the University, paying employees through a PEO may reduce the risk to the institution from an employee withholding and employment law perspective. Usually, a PEO will charge a percentage of administrative fee in addition to the employee’s salary. A PEO acts as employer of record on behalf of the University and should handle all employer reporting requirements in hiring an employee abroad.</p>
4. INDEPENDENT CONSULTANT/CONTRACTOR	<p>Risk is moderate to high to the institution when engaging an individual in another country as an independent consultant/contractor. An independent consultant/contractor is a person contracted to perform work or provide services to UMass as a non-employee. If the characteristics of engaging a person are consistent with an employer-employee relationship as defined by local labor law, then this will not be an appropriate method in paying a person. It is generally not advisable to engage individuals</p>

for open-ended, longer term engagements if the arrangement has not been evaluated by a local labor attorney. A legally compliant independent consultant/contractor arrangement will typically require the individual to perform his or her own tax reporting, though there may still be tax withholding requirements in certain countries. Characteristics which may be problematic when hiring an independent contractor and should be further evaluated are as follows (*not an exhaustive list*):

- The worker is paid a fixed amount per month or some other period, rather than payments being invoiced based on the completion of tasks
- The worker has decision-making authority and can sign or negotiate contracts on behalf of the University
- The worker does not have discretion on his or her work hours and how to complete required tasks
- All or a high percentage of the worker's annual income comes from the University
- The worker is not part of a separate organization of 3 or more people, and does not have a distinct legal identity as a business
- The worker is offered benefits, such as paid leave, bonuses or health insurance
- The worker is provided with equipment or tools of trade (such as a University computer)