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**WORKING WITH
EMPLOYERS OF RECORD
A GUIDE FOR GLOBAL EMPLOYERS**

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INTRODUCTION

With the increasing prevalence of flexible and remote working models, more and more companies are working to hire globally to gain access to a broader talent pool and build distributed teams. At the same time, travel and relocation restrictions have become more cumbersome and setting up legal entities in various countries is a slower than usual process. As a result, Employer of Record services have gained a new level of popularity as a solution to manage international hires and move into new geographies.

WHAT WE TACKLE IN THIS MANUAL:

- What Is An EoR?
- Remote Employment Models
- Benefits Of Working With An EoR
- Risks Of Permanent Establishment
- When To Employ An EoR
- How To Choose An EoR Provider
- Transitioning From Utilising An EoR To Operating A Legal Entity

This guide provides an overview of how to consider, approach, choose and work with an Employer of Record (EoR) Service. It is designed to help with the decision and the initial approach to employing an EoR provider.

WHAT IS AN EOR?

An Employer of Record provides employee management services, such as payroll, benefits, and the local entities required to recruit team members in new markets. For any business looking to outsource its HR function and remain compliant with local tax and employment laws, EoRs can offer extensive employment management services. EoRs become the legal employer for the employees of the contracting company in a local jurisdiction. They act on behalf of the companies employing the talent for their clients via a service agreement. This means EoRs take on the responsibility of complying with local employment laws on behalf of their client company.

EoRs ensure compliance with local regulations regarding:

- Compensation
- Holidays
- Benefits and welfare
- Severance and termination
- Payroll tax
- Collective agreements

An EoR can be a good option to consider when building a fully distributed team. It is also an excellent short-term solution before setting up a local entity in a new country. This is particularly important to consider in countries where there is an enforced limit on how long you can use an EoR, such as Germany, where it is capped at 18 months.

REMOTE EMPLOYMENT MODELS

Model	How It Works	Working Together
Legal Entity	Your company establishes a permanent presence in a foreign geography.	Incorporating your company in the desired geography and taking on all registration fees, tax burdens, and costs associated with maintaining ongoing legal, financial, and fiscal compliance. With this model, you can also become a visa sponsor.
Contractor	You employ contractors, self-employed independent workers hired for a specific task with a fixed fee.	<p>As independent workers, they are responsible for their own admin. The employer does not need to withhold taxes or provide benefits. All legal liability remains with the contract worker. However, the employing entity may be exposed to Contractor Misclassification risk if local authorities deem this team member to be a full-time employee equivalent.</p> <p>It is illegal to misclassify an employer as a contractor or freelancer, and you'd be liable for all employment taxes that may have been missed.</p> <p>A contractor can be deemed misclassified if:</p> <ul style="list-style-type: none"> • They enjoy all the benefits of a full-time employee. • They have a long-term contract with your company. • Your contract accounts for the majority of their income. • Your company is their only, or their primary client. <p>You control their working hours and their rates.</p>
Non-Resident Payroll	<p>With Non-Resident Payroll, you can hire employees legally without creating a legal entity in a separate country.</p> <p>Although it does not constitute a formal presence in the country, it does leave your company responsible for worker liability (<i>any amount you as the employer would have to pay to any employees in respect of injury, disease, illness, or death caused during employment in the business</i>).</p>	<p>Hiring Non-Resident Payrolls depends largely on what activity you want the employees to carry out abroad. They are a good option if the office is for:</p> <ul style="list-style-type: none"> • Marketing and promotions.; or other activities not designed to raise revenue directly.

Working with Employers of Record

Employer of Record	For small or medium-size companies looking to hire 1-10 workers in a foreign country for a short, or open-ended period.	The EoR or an associated local vendor becomes the legal employer, assuming responsibility for payroll, workforce management, taxes, insurance, benefits, worker's compensation, and all other aspects of legal compliance. The EoR will hold the legal liability for the worker, but it cannot sponsor visas. Your company will onboard the worker as a regular full-time employee. The EoR will handle all human resource functions such as work hours, holiday time, or sick leave for the worker in the chosen geography.
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Note: The terms Global EoR, PEO, and EoRs refer to the same type of service, and sometimes the terms will be used interchangeably. The key difference comes when operating in a US jurisdiction, where PEOs or Professional Employer Organizations take over certain elements of the employee management and require your company to have a legal entity present set up in-country.

BENEFITS OF WORKING WITH EORS

EoRs allow your company to enter new markets quickly and vastly increasing your talent pool without the burden of opening a legal entity in a foreign country.

This approach also has an advantage over hiring contractors, in that the employees hired are full team members, immersed in the culture and managed by the hiring company.

One of the less obvious benefits is also risk mitigation. As the EoR will be the local employer, they take on many of the local compliance risks. An EoR is responsible for administering all payroll accurately and compliantly, while calculating the appropriate taxes. An EoR will also take out all the necessary local insurances, including Employer Liability.

A good EoR will keep abreast of local law changes and manage the ramifications. They can also provide insights into locally competitive compensation and benefits packages. Lastly, in sensitive cases such as termination, the process (and the risks associated with it) will be managed for you, with your oversight.

In working with an EoR you can expect:

- Simplified payroll process and tax preparation across geographies
- Better regulatory compliance and management of legal risks within various jurisdictions
- Advice on industry best practices and benchmarks in different countries
- Handling of benefits, including insurance and pension schemes according to jurisdiction
- Improved employee experience for remote working by being knowledgeable and compliant with in-country processes
- Flexibility in hiring anywhere in the world

PERMANENT ESTABLISHMENT RISK

Employers of Records have a multitude of advantages, especially with a few employees across multiple countries. The main consideration to have when deciding to employ one is your exposure to a very important factor: Permanent Establishment (PE) Risk.

PE is a concept relating to taxation that varies by jurisdiction, but it generally means that a tax authority can at a certain point in the company's in-country operations determine whether a business has sufficient activity to create a taxable presence in that territory from a corporate tax perspective. In some instances, this also includes VAT.

If a company is deemed to have PE, it will be subject to all of the taxes it would pay for profits generated in the country, according to the local tax rates. In addition, the company can be levied charges for penalties and interest on the taxes, be required to restate financial accounts, be subject to increased audits, and incur severe damage in reputation in that country.

One of the main ways authorities identify a company (particularly those with a small presence) as PE when using an EoR, is via disgruntled employees. It is difficult for authorities to perform PE threshold tests otherwise. Simply put, an employee will alert authorities, highlighting that they have an issue with your organisation and not the EoR. This can result in a closer evaluation of your in-country operations and if your organisation's activities are deemed to create a taxable presence locally, your company may then be deemed to have a permanent establishment.

As the PE threshold varies by country, always consult your EoR and the local tax authorities to determine what activities would put you at risk of being an unintentional PE.

Some general examples of key indicators of pe risk include:

- Having a fixed place of business in that country, i.e. a set office
- Someone other than an independent contractor acts on the company's behalf to conduct business or close contracts (particularly within the country)
- How long you've operated in said country (which varies by country), but if you have generated profits in-country, time may be irrelevant
- The number of employees employed in-country

WHEN TO WORK WITH AN EOR.

The following scenarios are the most common circumstances for employing an EoR:

Testing a new location before incorporating in-country	✓
Short term engagement of a candidate in a new location, or otherwise	✓
Placeholder service while in process of setting a legal entity	✓
Full hiring in a new location	✓

HOW TO CHOOSE AN EOR.

When choosing an EoR for a particular jurisdiction, three overarching considerations should be taken into account:

1. Local partners or in-country presence

The EoR you choose to hire should have clear knowledge of compliance regulations, culture, and employer expectations in the local jurisdiction. They will need have an in-country presence themselves, or work with a local partner who can ensure you are in compliance with all local regulations and can handle disputes.

Broadly, EoRs operate under two models:

- Aggregated partnership whereby the EoR works through an in-country partner. You as the client company will deal directly with the EoR. Examples of EoRs that operate under this model: OysterHR, Papaya Global. These providers are able to expand quickly on demand to new locations.
- Owned infrastructure whereby the EoR will open a local office in each jurisdiction and operate as a single company globally. Globalization Partners is an example of a provider that operates under this model.

The ideal model depends on your expansion plans, specific local needs, and the jurisdictions involved.

2. Time & size limitations

Some countries put limitations on the length of time you are permitted to hire employees through an EoR. For instance, as previously mentioned, Germany will only allow a company to use an EoR service for 18 months, after which, the company will be required to set up a legal entity. Though the limit exists in most countries, the length of time varies in each jurisdiction.

The other consideration is the size of your local team. Once your company reaches 20-30 employees in a certain country, the cost of employing an EoR and the fees the company will incur for each employee will be considerable. At this point it will be worth the hassle and the cost to establish your own entity. Choosing an EoR that can aid in making this transition seamless via their expertise or local partners, will be a great advantage.

3. Pricing

EoRs will either charge a fee for each employee handled, or a percentage of each employee's salary.

There are two advantages to the fixed fee model. One, it allows for greater flexibility when just entering a new location. This is useful when you are iterating on your expansion plan or simply testing a location. And two, having a single fee helps you avoid unforeseen costs when hiring more senior employees with higher salaries.

SHIFTING FROM EOR TO ESTABLISHING A LEGAL ENTITY.

EoRs are not meant as a long-term solution to company expansion. Therefore, it is important to recognise when it is time to establish a local entity and transition out from the EoR. When the time for this transition comes, it will also signal to your local customers that your company is stable enough in their country to merit long term investment.

This transition will undoubtedly be complex. Your firm can utilise the EoR partner's expertise in the country to incorporate your company. From the point of incorporation, you can either continue with the EoR as a single payroll service or cease the relationship completely and take on the HR responsibilities internally.

EoRs are now more ubiquitous and accessible than ever. With remote and flexible working models representing the (near) future of work, we encourage our portfolio companies to explore the benefits these services can offer to enable you to move fast and scale your global ambition

THANK YOU

Thank you to the team at OysterHR for their valuable input.

FURTHER READING

- [Remote hiring laws by country](#)