

Employer of Record – (how) does it work in Poland?



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In recent years, Poland has seen significant changes in its labour laws, creating both challenges and opportunities for businesses. One innovative solution for navigating these complexities is the Employer of Record (EOR) model. This model allows companies to hire employees in Poland without the need to establish a legal entity. But how exactly does it work in Poland, and what are the potential risks and opportunities?

Understanding the Employer of Record (EOR) model

An Employer of Record (EOR) is a third-party organisation that takes on the legal responsibilities of employing staff on behalf of another company. The EOR handles all employment-related tasks, including payroll, taxes, benefits, and compliance with local labour laws, allowing the client company to focus on managing the employee's day-to-day activities.

In Poland, where labour regulations are strict and continuously evolving, the EOR model can be particularly advantageous. It simplifies the complexities associated with hiring and managing employees in a foreign country.

Although new employment structures are increasingly emerging in Poland, Polish labour law struggles to keep pace with market changes, which in some situations can create risks for employers using such forms of employment, particularly due to the definition of an employer in the Polish Labour Code.

The EOR appears to be an intriguing alternative to hiring through a temporary employment agency, which comes with time limitations on the period a worker can be

assigned to a specific company, and to employee outsourcing, which in its legally permissible form should involve delineating and contracting out specific services or functions that would normally be performed by in-house employees.

Opportunities of using an EOR in Poland

Compliance with local labour laws

Poland has seen significant changes in its labour laws, with recent updates including new regulations on sobriety testing, remote work frameworks, and compliance with various EU directives. An EOR stays abreast of these legal changes and ensures that the client company remains compliant, thereby mitigating the risk of legal penalties and fines.

Cost savings

Establishing a legal entity in Poland involves substantial costs, including registration fees, legal expenses, and ongoing administrative overheads. Using an EOR can result in significant cost savings, allowing companies to allocate resources more efficiently.

Access to local expertise

An EOR in Poland brings local expertise and knowledge to the table. This includes understanding cultural nuances, market trends, and local employment practices, which can be invaluable for a company looking to build a strong presence in the Polish market.

Navigating the dynamic Polish labour landscape

The Polish labour market is characterised by its ongoing regulatory changes. The first half of 2023 alone saw the introduction of new laws regarding

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sobriety testing, remote work frameworks, and compliance with EU directives on transparent and predictable working conditions and work-life balance. These changes require businesses to continuously adapt their HR practices and ensure compliance.

For companies utilising the EOR model, staying compliant amidst these changes is significantly simplified. The EOR assumes the responsibility of implementing necessary adjustments in response to new laws, providing the client company with a buffer against regulatory shifts.

Moreover, upcoming changes such as the implementation of the Whistleblowing Directive, ESG measures, and the Pay Transparency Directive will further impact the HR landscape in Poland. An EOR can help businesses navigate these new requirements by providing updated guidance and ensuring compliance.

Risks associated with the EOR model in Poland

Control and dependence

One of the primary risks of using an EOR is the potential loss of control over certain employment-related aspects. Companies must rely on the EOR to manage compliance and HR functions, which can sometimes lead to misalignment of expectations and objectives.

Potential conflicts

There may be potential conflicts between the client company and the EOR regarding employment terms, performance

management, and other HR-related issues. Clear communication and well-defined agreements are essential to prevent and resolve such conflicts.

Intellectual property rights

When using EOR services, it is crucial to pay attention to the acquisition of intellectual property rights. Since the EOR is the formal employer, it is the EOR who acquires IP rights related to the work created by employees unless specified otherwise in the contract. Mismanagement in this area can lead to disputes over IP ownership, potentially hindering a company's ability to protect and leverage its innovations.

Determining the existence of an employment relationship

The lack of precise definition of an employer in the Polish Labour Code means that, despite having a formal employer 'on paper', there is a risk that the employment relationship could be established between the foreign company (the actual employer) and the employee. What matters is not just the contract's wording but how the employment relationship is genuinely structured.

Both the employee and control bodies, such as the National Labour Inspectorate, can seek such a determination through the courts. If it is determined that the employment relationship exists between the employee and the actual employer (the foreign company), that company will be treated as the employer from the start of employment. The most

significant risk arising from this is financial. The newly determined employer will have to retroactively settle all overdue contributions and tax advances, along with interest.

Conclusion

The Employer of Record model presents a viable and attractive solution for companies looking to expand their operations into Poland. By simplifying market entry, ensuring compliance with local labour laws, and allowing businesses to focus on their core activities, an EOR can significantly enhance operational efficiency.

This solution, like employee outsourcing, raises concerns under Polish regulations as it is not directly governed by them. The risk, especially from the perspective of a Polish entity using the services of a foreign employee formally employed abroad by an EOR, is the determination of an employment relationship between the Polish entity and the foreign employee.

In summary, while the EOR model offers significant advantages, it is essential for companies to maintain clear communication, establish well-defined agreements, and stay informed about local labour law changes to maximise the benefits and minimise the risks associated with this employment strategy in Poland. ■



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