

Do Telecommuters Have the Right to Work from Outside Canada? – Ask The Expert

written by Tina Tsonis | November 17, 2021



The right to telecommute doesn't necessarily mean the right to work from anywhere in the world.

QUESTION

We just learned that an employee we approved for telecommuting has been working from Miami. Are we allowed to make her return to Canada?

ANSWER

Probably, especially if the telecommuting agreement specifies that she must work in the country or at least get your [permission to relocate outside Canada](#).

EXPLANATION

One possible exception would be where letting the employee work in her chosen location is a required accommodation under human rights law. A case addressing this question took place in Québec in January. The protagonist was a university professor who didn't want to return to Canada after his one-year sabbatical in Hawaii. The university agreed to let him keep working remotely, but only if he did so from Canada. The professor refused. It wasn't just the tropical beaches that made him want to stay in Hawaii. One of his kids was in fragile health and the professor feared that returning to Canada during the winter COVID-19 outbreak would endanger her.

The Québec arbitrator sided with the professor. The university's no-telework-from-abroad [policy](#) was reasonable given the tax and insurance implications of international arrangements. The arbitrator also sympathized with the university's wish not to set the precedent of letting employees work from wherever in the world they want. Still, it ruled that the university should consider exceptions to the policy [*Syndicat des professeurs et professeures de l'Université Laval (SPUL) and Université Laval*, January 28, 2021].

The factors the arbitrator cited are the ones you need to consider in your situation:

- Is teleworking mandatory for your industry or workplace under current COVID rules?
- Must the employee be [physically present to perform his/her work duties](#)?
- Would time zone differences affect the quality of work?
- Is the request to telecommute based on legitimate concerns about the [health and safety](#) of the employee or a household family member?