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THE GLOBAL EMPLOYER: REGULATING CROSS-BORDER WORK THROUGH THE EMPLOYER OF RECORD MODEL

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Introduction

Beyond the impact of the COVID-19 pandemic, longer-term forces—such as digitization of work processes, globalization of firms and value chains, competition for talent, and shifting worker preferences for flexibility[1]—have also sustained the rise of distributed[2] and remote work.[3] Additionally, recent evidence

1. *See, e.g.*, Mila Lazarova et al., *Global Work in a Rapidly Changing World*, 34 Hum. Res. Mgmt. J. 1 (2022) (emphasizing the pandemic-accelerated digitalization of work); Etsuro Tomiura & Banri Ito, *Impacts of Globalization on the Adoption of Remote Work: Evidence from a Survey in Japan During the COVID-19 Pandemic*, 47 World Econ. 957 (2024) (finding firms with foreign investment more likely to adopt remote work); Fabian Braesemann et al., *The Global Polarisation of Remote Work*, 17(10) PLOS One e0274630 (October 20, 2022), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0274630 [https://doi.org/10.1371/journal.pone.0274630] (showing that remote work clusters in developed, high-skill regions); *Current Trends in Remote Working — Work from Anywhere*, KPMG International (September 2023), https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2023/07/current-trends-in-remote-working.pdf [https://perma.cc/V3B8-ZAKS] (reporting talent competition and worker demand for flexibility as leading drivers).

2. By "distributed" work, we refer to teams whose members are geographically dispersed—often across different cities, regions, or time zones—yet connected through digital communication tools rather than physical offices. This concept overlaps with "global remote work" when those dispersed team members reside in multiple countries. However, "distributed" work can also describe purely domestic scenarios (e.g., different states or provinces within one country). In contrast, "global remote work" more specifically emphasizes cross-border employment relationships, where workers and employers are based in separate national jurisdictions.

3. Cevat Giray Aksoy et al., Working from Home Around the Globe: 2023 Report (2023), https://wfhresearch.com/wp-content/

shows that a significant portion of those working entirely from home are employed by international companies and are therefore engaged in some form of cross-border remote work.[4] We have argued elsewhere that the current number of workers engaged in cross-border remote work would be close to three million, potentially rising to six million in 2030.[5]

For cross-border employment, companies seeking to hire abroad have traditionally relied on one of three methods, each with its own limitations. First, many turn to independent contractors for the sake of simplicity. But this worker status is only applicable to certain types of work, and when used incorrectly, it can deprive workers of certain benefits and expose firms to misclassification fines or even litigation if the work arrangement mirrors standard employment.[6] Second, some businesses establish a legal entity in the foreign jurisdiction, an approach that is prohibitively costly for small- to medium-sized businesses (SMBs) and requires ongoing compliance with local labor laws.[7] Third, some companies attempt to hire employees directly.[8] But this is a complicated solution and is only allowed in some legal

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uploads/2023/06/GSWA-2023.pdf [https://perma.cc/HWT3-R3RY]. The Global Survey of Working Arrangements (G-SWA) is "an online survey of full-time employees aged 20–64 who have completed secondary or tertiary education. Sample sizes range from slightly more than 700 respondents in New Zealand to more than 2,500 respondents in France, Germany, Italy, the UK, and the US." *Id.* at 2. This analysis sample contains 42,426 observations across thirty-four countries. *Id.* at 12. Aksoy et al. show that 67% of full-time employees work five days per week on business premises; a significant 25% have hybrid arrangements, in which they divide the workweek between home and the employer's premises; and 8% of full-time employees work entirely from home. *Id.* at 4.

4. Jeanine Crane-Thompson, NelsonHall, Market Update: Global Employer of Record Services (2023), https://research.nelson-hall.com/get_file.php?fn=Market+Update-Abstract-Global+EOR+Services-2023Aug17-Published.pdf; Samuel Dahan & Philippe Bouaziz, *The State of Global Work Law: A Call for a New Policy Infrastructure* (Oct. 17, 2023) (Queen's U. Legal Rsch. Paper), https://papers.ssrn.com/abstract=4484981 [http://dx.doi.org/10.2139/ssrn.4484981].

5. Samuel Dahan, The Rise of Global Work: How Distributed Hiring Is Redefining the Workforce (Feb. 20, 2024) (unpublished manuscript), https://papers.ssrn.com/abstract=5027779 [https://dx.doi.org/10.2139/ssrn.5027779].

6. Dahan & Bouaziz, *supra* note 4, at 7, 8. Interview with Senior Employee Counsel, Deel (Mar. 2024) (noting multiple audits by tax authorities over misclassification of remote contractors).

7. Dahan, *supra* note 5, at 1.

8. Interview with Legal Counsel, Deel (May 2024) (explaining that minimum capital requirements in Asia and Latin America often deter SMB clients).

systems. While certain jurisdictions (e.g., Canada[9] and certain EU member states)[10] permit non-resident employers to register for payroll and tax withholding, others (e.g., Brazil, China, and Russia) require a formal corporate presence to fulfill social security and tax obligations.[11] In these jurisdictions, employing a local workforce without a recognized local presence may inadvertently create a "permanent establishment" with attendant corporate tax liabilities.[12] In our view, none of these three methods aligns with the realities of global remote work, especially for SMBs with limited resources looking to expand across borders.

Given these complications, the Employer of Record (EOR) model has emerged as a compelling solution for companies, especially SMBs, expanding into new markets. For companies, the EOR model eliminates the need to establish a local legal entity while still ensuring compliance with domestic regulations. In this arrangement, full employer responsibilities are held by a third-party EOR provider, which ensures that workers are properly classified as employees—and therefore entitled to essential protections such as minimum wage and applicable benefits—and protects companies from non-compliance and the risk of misclassification liability.[13]

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9. Hugh A. Christie, Shir Fulga & Ryan Martin, *Three Options for Non-Canadian Employers Hiring Remote Employees in Canada*, Ogletree Deakins (June 22, 2023), https://ogletree.com/insights-resources/blog-posts/three-options-for-non-canadian-employers-hiring-remote-employees-in-canada/ [https://perma.cc/L4PR-6VLK].

10. *Going Global? Top 5 Labor and Employment Issues When Expanding Outside the US*, DLA Piper Accelerate, https://www.dlapiperaccelerate.com/knowledge/2017/top-5-labor-and-employment-issues-when-expanding-outside-of-the-US.html (last visited Jan. 1, 2025).

11. *Id.*

12. *See* Organisation for Economic Co-operation and Development [OECD], *Model Tax Convention on Income and on Capital*, arts. 5–7 (Nov. 21 2017), http://dx.doi.org/10.1787/g2g972ee-en (defining permanent establishment as a fixed place of business or dependent agent); Pasquale Pistone, *Permanent Establishment and Remote Work: Tax Challenges in a Digitalized Economy* (Ca' Foscari Univ. of Venice, Working Paper No. 2022/03), https://unitesi.unive.it/handle/20.500.14247/9639 (analyzing how remote work arrangements may create PE exposure in host states); Interview with Tax Specialist, Deel (Apr. 2024) (emphasizing that risk of creating a PE was decisive in choosing an EOR solution).

13. Samuel Dahan & Philippe Bouaziz, *What Is an Employer of Record? Here's How They Can Help Firms Embrace Global Working*, World Econ. F. (Aug. 21, 2023), https://www.weforum.org/stories/2023/08/what-is-employer-of-record-global-remote-working/ [https://perma.cc/2WCN-HSSJ] (noting that the EOR model benefits employers by taking on employment functions

For workers, the EOR assumes responsibility for employment-related administrative and legal obligations, such as payroll, taxes, benefits, and compliance with local labor laws, and offers employment protections as well as a clear point of contact for addressing employment issues.[14] Finally, for governments, EORs streamline tax administration, allowing them to pursue unpaid taxes from a single accountable entity rather than a foreign company with no local presence.[15]

Despite its growing popularity, the EOR model remains underexplored in academic literature. We seek to address this deficit by analyzing how EOR arrangements fit into domestic labor laws in jurisdictions where the model has gained significant traction. While this paper does not focus on private international law, it is important to note that cross-border work does raise international legal issues,[16] especially regarding the

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where the worker is based); Elliot Raba, *Employer of Record (EoR) Explained: Hire Globally Without Setting up Local Entities*, Zalaris (June 18, 2025), https://zalaris.com/managed-services/resources/blog/employer-of-record-eor-explained-hire-globally-without-setting-up-local-entities [https://perma.cc/6YZ2-TW4B] (observing that EORs handle employment, legal, and payroll responsibilities for client firms); Jemima Owen-Jones, *Employer of Record Risks (EOR) and How to Avoid Them*, Deel (Sep. 30, 2025), https://www.deel.com/blog/employer-of-record-risks-and-how-to-avoid-them/ [https://perma.cc/6K2J-MRNQ] (explaining how EOR structures absorb misclassification risk).

14. *See* Dee Coakley, *Understanding Employer of Record Services*, Boundless (June 16, 2022), https://boundlesshq.com/blog/employer-of-record-employ-globally/ [https://perma.cc/4N9L-94DM] (noting EOR "assume[s] responsibility for processing local payroll . . . filing employment-related taxes . . . issuing payslips"); *Employer of Record (EOR)*, ADP, https://www.adp.com/resources/articles-and-insights/articles/e/employer-of-record.aspx [https://perma.cc/TU42-778R] (last visited Oct. 13, 2025) (explaining that the EOR "handles employment administration, such as payroll and regulatory compliance").

15. Shannon Ongaro, *How EORs Protect Companies from Permanent Establishment Risk*, Deel (Aug. 20, 2025), https://www.deel.com/blog/using-an-employer-of-record-to-mitigate-permanent-establishment-risk/ [https://perma.cc/ZW7P-LU6M]; *G-P EOR*, Globalization-Partners, https://www.globalization-partners.com/employer-of-record-solutions/ [https://perma.cc/9MSP-J8TL] (last visited Oct. 13, 2025); Kenn Walters & Luis Praxmarer, The IEC Grp. Consulting, Global Employer of Record Study 2024 (2024), https://theiecgroup.com/reports/global-employer-of-record-study-2024/; Jeanine Crane-Thompson, NelsonHall, Global Employer of Record (EOR) Services 2024 (2024), https://research.nelson-hall.com/sourcing-expertise/hr-technology-services/global-eor/?avpage-views=article&id=82205&fv=1.

16. Uglješa Grušić, *Remote Work in Private International Law*, *in* The Future of Remote Work 185 (Nicola Countouris, Valerio De Stefano, Agnieszka Piasna & Silvia Rainone eds., 2023).

applicability of domestic employment regulations. In principle, employment contracts are governed by the laws of the country where the employee habitually works, or, in some cases, the country of the engaging place of business if no single habitual place of work exists.[17] That said, parties are in some cases free to choose which country's laws govern their agreement, although in some cases workers cannot be deprived of the protections guaranteed by the law that would otherwise apply.[18]

In focusing on employment relationships lasting at least six months in highly trained occupations, this study distinguishes itself from research on shorter-term contractor or gig work models such as Upwork and Uber.[19] Additionally, we use the term "global worker" more broadly than the stereotypical so-called "digital nomad." In this paper, a global worker refers to employees with a clearly defined habitual place of work in a single country, whether due to longer-term residence or an explicit agreement between the parties.

This excludes more complex situations in which digital nomads habitually work in one country, but subsequently relocate elsewhere. In the latter scenario, the "habitual place of work" becomes unclear, potentially requiring the application

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17. A growing body of case law addresses the question of which courts have jurisdiction over disputes arising out of the employment contracts of remote workers, and which laws apply to such contracts. For instance, in the EU, the Brussels I Regulation addresses the jurisdiction of the courts of the Member States over disputes arising out of individual employment contracts and the recognition and enforcement of the judgments of those courts in employment matters. *See* Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 Dec. 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast), 2012 O.J. (L 351) 1. The Rome I and II Regulations address the law applicable to the contractual and non-contractual obligations arising out of or in relation to individual employment contracts. The Posted Workers Directive guarantees to workers posted by their employer from one member state to another, under a service contract that the employer has obtained in the host member state, the application of certain employment standards that are in force in that member state. *See* Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I), 2008 O.J. (L 177) 6 [hereinafter Rome I].

18. Rome I, *supra* note 17, at art. 8(1).

19. *See, e.g.*, Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdwork, and Labour Protection in the 'Gig Economy'*, 37 COMP. LAB. L. & POL'Y J. 471 (2016); Jeremias Prassl & Martin Risak, *Uber, TaskRabbit, & Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork*, 37 COMP. LAB. L. & POL'Y J. 619 (2016).

of multiple sets of labor laws.[20] Likewise, we do not examine scenarios involving workers sent abroad under service contracts governed by the EU's Posted Workers Directive[21] and its Enforcement Directive.[22] The legal framework for the EU's posted workers typically imposes a separate set of mandatory standards from the host country,[23] making the analysis more complicated than merely identifying a habitual place of work. Such scenarios, while worthy of study, are beyond the scope of this paper. In choosing to focus on stable remote-hiring arrangements, we hope to shed light on how the EOR model operates where local labor law is clearly determined by the worker's established place of residence.

The paper is structured as follows: Part I provides a closer look at the EOR model, describing its recent emergence in cross-border work and explaining its benefits for both employers and employees. Part II discusses what EOR is not, outlining how an EOR differs from other labor intermediaries such as Professional Employer Organizations (PEOs) and temp agencies. In Part III, we offer a survey of how EOR arrangements are currently defined and regulated in a wide variety of jurisdictions.

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20. Whether the "habitual place of work" has changed might depend on the parties' intentions, as well as the duration of the assignment. *See* Case C-37/00, Weber v. Universal Ogden Servs. Ltd., 2002 E.C.R. I-2013; Rome I, *supra* note 17, at recital 36. For instance, according to the Rome I Regulation, the parties to an individual employment contract are allowed to choose the applicable law, Rome I, *supra* note 17, at art. 8(1), although the choice cannot deprive employees of the protections afforded to them by the mandatory provisions of the law applicable in the absence of choice. In the absence of choice, the contract is governed by the law of the country of the habitual place of work, Rome I, *supra* note 17, at art. 8(2), or, if there is no habitual place of work, by the law of the country of the engaging place of business, Rome I, *supra* note 17, at art. 8(3). However, where it appears from the circumstances as a whole that the contract is more closely connected with another country, that country's law applies. Rome I, *supra* note 17, at art. 8(4).

21. Directive 96/71/EC of the European Parliament and of the Council of 16 Dec. 1996 Concerning the Posting of Workers in the Framework of the Provision of Services, 1997 O.J. (L 18) 1; Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 Amending Directive 96/71/EC Concerning the Posting of Workers in the Framework of the Provision of Services, 2018 O.J. (L 173) 16.

22. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the Enforcement of Directive 96/71/EC Concerning the Posting of Workers in the Framework of the Provision of Services and Amending Regulation (EU) No. 1024/2012 on Administrative Cooperation Through the Internal Market Information System ('the IMI Regulation'), 2014 O.J. (L 159) 11.

23. *See* Grušić, *supra* note 16, at 187.

In doing so, we expose the "constructive ambiguities" that arise at the intersection of preexisting labor frameworks and global hiring. In Part IV, we isolate the thorniest issues arising from those ambiguities—most notably, uncertainty in determining who qualifies as an employer—and propose practical solutions for policymakers and industry stakeholders. This paper uses the term "accountable employer" to refer to the entity that holds *local legal personality, financial capacity, and regulatory reach* sufficient to satisfy employment-law and tax obligations, regardless of who directs day-to-day work. We adopt a doctrinal legal approach, enriched by empirical insights from labor codes, practice-based evidence, and interviews with legal experts at leading EOR providers.

I.
Emergence of the EOR Model

Global hiring creates opportunities for both employers and workers: companies gain access to new markets and global talent, while workers benefit from expanded career prospects, often with higher pay and fewer geographic barriers. Yet it also brings uncertainties around administrative setup, regulatory compliance, and the effective application of labor protections across jurisdictions. In many regions, companies are not required to have a local entity to enter into direct employment.[24] However, hiring workers across borders without establishing a legal entity in the worker's location can be complex, typically

24. For instance, in Canada, non-resident employers can register with Canadian tax authorities to handle payroll and withholding taxes appropriately. Foreign companies can register as non-resident businesses in Canada. The client company is required to register with the Canada Revenue Agency (CRA) to obtain a business number and payroll number so that employee pay and government remittances (as applicable) can be processed. This method requires the foreign entity to assume any employment or labor risks. Not every non-resident employer qualifies, and it depends on whether the client company's country has a tax treaty in place with Canada. Along these lines, many European countries and the United States permit foreign companies to hire employees without setting up a local entity, provided they comply with local employment laws and tax regulations. In these cases, the foreign company may need to register as a foreign employer, obtain a payroll ID, and adhere to all applicable labor and employment laws. However, several jurisdictions require foreign companies to establish a local legal entity before hiring employees within their borders. For instance, countries such as Brazil, China, and Russia mandate that foreign employers have a corporate presence to enroll employees in mandatory social security systems. *See Going Global, supra* note 10.

governed by the labor law of the "habitual place of work."[25] As mentioned, this raises concerns for both parties. Employers risk fines or liability for noncompliance, while workers may struggle to secure local employment benefits, statutory protections, or clear legal recourse in the event of conflicts. Even where forming a local entity is not compulsory, mature companies often do so anyway,[26] retaining local tax and HR counsel at significant cost.[27] As a result, only large multinational firms tend to have the capacity to establish and maintain foreign subsidiaries or branches. SMBs, on the other hand, may struggle with these expenses and the ongoing need to comply with changing local regulations, potentially driving them to rely on independent contractors, exposing both the company and the worker to misclassification risks if the contract does not reflect a genuine business-to-business arrangement. This dynamic highlights how both employers and workers face heightened vulnerabilities in cross-border hiring, reinforcing the need for robust and

25. Rome I, *supra* note 17, at art. 8(2) ("[A] contract of employment shall, in the absence of a choice of law, be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work."); Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, art. 19 (Brussels I) (defining habitual place of work for employment disputes).

26. Organisation for Economic Co-operation and Development [OECD], *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, at 52–53 (2023), https://www.oecd.org/investment/mne/ [https://doi.org/10.1787/81f92357-en] (noting that multinational enterprises typically establish local subsidiaries to manage regulatory compliance and tax obligations); Interview with Corporate Counsel, Global EOR Provider (Apr. 2025) (explaining that most large companies still prefer entity establishment over EOR hiring when entering key markets to mitigate long-term compliance and reputational risk).

27. To illustrate, establishing a legal entity in Indonesia, specifically a Foreign-Owned Limited Liability Company (PT PMA), involves significant financial commitments due to regulatory capital requirements. Minimum Capital Requirements: 1. Authorized Capital: The Indonesian Investment Coordinating Board (BKPM) mandates a minimum authorized capital of IDR 10 billion (approximately USD 635,000); 2. Paid-Up Capital: At least 25% of the authorized capital must be paid up, equating to IDR 2.5 billion (around USD 161,000). *Indonesia: Increased Paid-up Capital Requirements for Foreign Companies*, UN Trade and Development Investment Policy Hub (June 2, 2021), https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3711/increased-paid-up-capital-requirements-for-foreign-companies [https://perma.cc/3MBK-5L4Q]; *Indonesia Launches 'Golden Visa' to Lure Foreign Investors, Boost Economy*, Reuters (July 25, 2024), https://www.reuters.com/markets/asia/indonesia-launches-golden-visa-lure-foreign-investors-boost-economy-2024-07-25/ [https://perma.cc/NW2T-3V5L].

clear labor-law frameworks that allow companies of all sizes and stages of maturity to compete equally.

A. *The Functioning of the EOR: Administrative and Compliance Support*

The EOR model has emerged as a compelling solution for making global hiring more accessible, particularly for SMBs. Under this arrangement, a third-party EOR is intended to serve as the sole legal employer for workers, assuming responsibility for compliance, payroll, benefits, and tax obligations in the relevant jurisdiction.[28] By centralizing these administrative requirements, EORs help client companies meet local labor standards without the need to build in-house teams to manage complex, country-specific regulations. Although the EOR is formally recognized as the employer, the client company retains control over daily tasks and performance management.[29] This separation clearly delineates responsibilities, ensuring that the EOR handles all legal and administrative aspects of employment while the client company manages operational tasks. However, it is important to acknowledge that the legal classification of the EOR can vary across jurisdictions, which may influence the nature of the employment relationship and lead to questions about co-employment arrangements. This nuanced relationship between the EOR and client companies will be explored in detail in subsequent sections of this paper.[30]

To illustrate how the EOR model works in practice, consider the example of a Canadian software startup that wants to hire a developer based in Brazil. Setting up a local entity is time-consuming, costly, and legally complex. Instead, the startup

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28. Dahan & Bouaziz, *supra* note 13 (explaining that EORs function as the legal employer responsible for payroll, taxes, and compliance in the worker's jurisdiction).

29. Julia Hauck, Employers of Record: The Solution for a Compliant "Work-From-Anywhere" Future? 4–6 (Jan. 10, 2021) (Paper for MasterCourse Human Resources and Global Mobility, Expatise Global Mobility Academy & Erasmus University Rotterdam), https://feibv.nl/wp-content/uploads/2022/06/Employers-of-Record-The-Solution-for-a-Compliant-Work-from-Anywhere-Future_Hauck_final.pdf [https://perma.cc/RM7L-TDWX] (explaining that EORs assume many administrative and legal employer responsibilities, while the client organization retains control over the employee's day-to-day work).

30. Throughout this paper, we will refer to the EOR as the legal employer of the workers, while the client companies will be referred to as clients rather than employers. This distinction helps maintain clarity, although the potential for legal debate over co-employment status will be discussed later in the analysis.

partners with a Brazil-based EOR. That EOR formally becomes the developer's legal employer, handling payroll, social contributions, statutory benefits, and compliance with Brazilian labor law. Meanwhile, the startup retains full control over the developer's day-to-day tasks and project performance. This arrangement enables rapid, compliant global hiring without establishing a local entity, while ensuring the worker receives the protections of formal employment under Brazilian law.[31]

Originally introduced to simplify cross-border hiring, the EOR model has evolved into a comprehensive international HR function. Beyond acting as the "employer on paper," EOR providers typically manage the following:[32]

- **Onboarding and Contracts:** Drafting and signing employment agreements that comply with local labor standards. Although an EOR may assist with background checks, statutory and mandatory training, and basic recruitment functions, most day-to-day hiring decisions and performance management remain with the client.[33]
- **Payroll Services:** Handling tax withholdings and social security contributions, ensuring that workers are paid accurately and taxed compliantly. Note that deposits and currency conversions remain the responsibility of the customer, to be paid directly to the EOR.[34]

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31. *See* Table 1 for a demonstration of how these responsibilities are split up in different employment structures.

32. Crane-Thompson, *supra* note 4 (noting that the EOR model has "matured into a global HR delivery ecosystem encompassing onboarding, payroll, and benefits administration"); Dahan & Bouaziz, *supra* note 13; Interview with Head of Legal Compliance, Global EOR Provider, in Amsterdam, Neth. (Apr. 2025) (noting that EOR functions now include "employee lifecycle management, visa support, and benefits harmonization across multiple jurisdictions").

33. *About EOR Consultants (In Select Countries)*, Deel, https://help.letsdeel.com/hc/en-gb/articles/22108021674769-About-EOR-Consult.ants-In-Select-Countries [https://perma.cc/9HM4-Y3JS] (last visited Oct. 20, 2025) (stating that EORs handle compliant employment contracts, onboarding, and statutory documentation); Globalization-Partners, *supra* note 15 (noting that EORs manage onboarding and HR documentation for global hires while clients retain day-to-day management control).

34. Globalization-Partners, *supra* note 15 (noting that the EOR "calculates and processes payroll, manages statutory deductions, and issues payslips

- **Compliance and Reporting:** Aligning payroll practices with the relevant jurisdiction's reporting requirements and labor regulations, including reimbursements and overtime.[35]
- **Benefits Administration:** Providing both legally required benefits (e.g., healthcare, pensions, and paid leave) and supplemental perks (e.g., equity and visa support) in some cases.[36] We note that some EORs customize benefits to fit the unique needs of international employees, ensuring that small businesses can offer competitive and comprehensive packages that align with their workforce's expectations.[37]
- **Employee-Client Relationship.** The EOR typically prepares employment contracts and legal documentation to ensure consistency across jurisdictions and clarify the end-user's responsibilities.[38] An EOR also handles termination procedures, providing appropriate notice periods, severance pay, and termination settlements. They negotiate severance packages to minimize legal liabilities and help companies align termination practices with their corporate policies.[39]

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compliant with local regulations"); Ian Giles, *What Is an Employer of Record*, Papaya Global (Aug. 3, 2025), https://www.papayaglobal.com/blog/employer-of-record-explained/ [https://perma.cc/VWJ2-SDHU] (stating that the EOR handles employee payroll and local tax compliance, including required social-security filings); Interview with Glob. EOR Provider (Mar. 2025) (confirming that "EORs execute payroll and remit statutory deductions, while clients remain responsible for prefunding and currency conversions").

35. Katherine Sanford Goodner & Ursula Ramsey, Certified Professional Employer Organizations and Tax Liability Shifting: Assessing the First Two Years of the IRS Certification Program, 16 Berkeley Bus. L.J. 571 (2019); Natalya Shnitser, "Professional" Employers and the Transformation of Workplace Benefits, 39 Yale J. on Reg. Bull. 99 (2021).

36. Hauck, *supra* note 29, at 15–16.

37. Shnitser, *supra* note 35.

38. Hauck, *supra* note 29, at 5.

39. *What Is an Employer of Record?,* Globalization-Partners (Oct. 13, 2025), https://www.globalization-partners.com/blog/what-is-an-eor/ [https://perma.cc/F68X-C8RJ] (describing how an EOR "manages … human resources tasks, and compliance" as the legal employer); *What Every HR Team Needs to Know About Remote Employee Offboarding,* Globalization-

Some EORs act as compliance information hubs, staying up to date on changing labor laws and regulations to ensure both employees and clients receive accurate information on new requirements.[40] Moreover, they offer HR consultancy services to help clients navigate the complexities of local employment markets, providing guidance on training, termination, and compliance.[41] Deel, for instance, is developing a predictive AI system trained on case law from over a hundred different legal systems, which will provide actionable compliance insights, such as the risk of misclassification.[42]

We also note that tech-enabled EORs appeal to clients because they tend to offer user-friendly platforms designed to automate payroll calculations, compliance, hiring, and benefits management.[43] For workers, tech-enabled EORs might also offer a superior user experience in the form of a single interface for payroll, benefits, questions, and support. Finally, a crucial aspect of this international hiring system involves maintaining registered entities in multiple jurisdictions, enabling EORs to hire full-fledged employees rather than contractors.[44] For

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Partners (Sep. 29, 2021), https://www.globalization-partners.com/blog/what-every-hr-team-needs-to-know-about-remote-employee-offboarding/ [https://perma.cc/YQ73-3H6A] (observing that employers must "ensure . . . severance packages . . . [under] local laws"); Robie Ann Ferrer, *Oyster HR Review: Pros, Cons, Features & Pricing*, Fit Small Bus. (Aug. 30, 2024), https://fitsmallbusiness.com/oyster-review/ [https://perma.cc/ZL5L-X4ZZ] (noting that Oyster "will manage the entire offboarding process . . . [including] preparing the necessary documents"); Interview with Head of Legal (Asia-Pac.), Global EOR Provider, in Singapore (Apr. 2025) (confirming that the EOR handles terminations, notice periods, and severance negotiations with clients).

40. Hauck, *supra* note 29, at 6–7 (observing that EORs maintain up-to-date knowledge of national labor laws and ensure compliance with evolving regulatory frameworks).

41. Crane-Thompson, *supra* note 4 (noting that leading EORs "extend beyond compliance into advisory services, offering HR and legal guidance to clients on local labor practices"); *What Services Does an Employer of Record Provide?*, Globalization-Partners (2024), https://www.globalization-partners.com/blog/what-services-does-an-employer-of-record-provide/ (explaining that an EOR "provides strategic HR consulting, assists with compliance, and guides companies through onboarding and termination processes").

42. Dahan & Bouaziz, *supra* note 4.

43. Crane-Thompson, *supra* note 4 (observing that "leading EOR providers increasingly differentiate themselves through technology platforms that automate payroll, benefits, and compliance workflows").

44. *EOR vs. Entity Solutions for Global Hiring*, Globalization-Partners (Sep. 24, 2024), https://www.globalization-partners.com/blog/eor-vs-global-entity/ [https://perma.cc/2DKZ-XG89] (explaining that EORs own legal entities in multiple countries, allowing companies to hire full-time employees

instance, several EOR vendors claim to have registered entities in more than 100 countries.[45] This structure allows them to act as fully-functioning employers, relying on local legal, accounting, compliance, and tax experts.[46]

TABLE 1: KEY DIFFERENCES – EOR VS. DIRECT HIRE VS. CONTRACTOR

Feature	Employer of Record	Direct Hire via Foreign Entity	Independent Contractor
Legal Employer	EOR provider	Hiring company (must have a legal entity locally)	Self-employed individual
Payroll & Tax Compliance	Handled by EOR in the local jurisdiction	Hiring company responsible	Contractor responsible
Benefits & Social Security	Provided via EOR per local labor law	Provided by employer	Not required (unless specified in contract)
Control Over Work	Client directs day-to-day work	Client directs work	High autonomy over work methods
Entity Setup Required?	✕ No	✓ Yes	✕ No
Risk of Misclassification	Low (EOR ensures proper classification)	Low (if local compliance is ensured)	High (especially for long-term/full-time work)
Best Use Case	Long-term remote employees in foreign countries	Large-scale, long-term expansion in key markets	Project-based, short-term, or flexible work

without establishing a local subsidiary, and that this structure ensures compliance with local labor, tax, and benefits laws while avoiding the costs of entity setup).

45. CRANE-THOMPSON, *supra* note 4.

46. By contrast, some EOR vendors simply aggregate relationships with local partners in countries where they lack established entities, which adds a layer of complexity and potential communication challenges that could give rise to compliance concerns.

B. *The Intended Effects of the EOR*

Originally conceived to relieve the financial and administrative burdens of international hiring, the EOR model's appeal has grown significantly in recent years. As previously mentioned, the global EOR market is projected to reach $10 billion by 2030,[47] a trajectory driven by the post-pandemic surge in remote work and an increased reliance on digital collaboration tools. Beyond those pandemic-related factors, EOR arrangements address a range of organizational needs—including avoiding complex local entity setups, managing tax obligations, ensuring labor-law compliance, and facilitating cross-border mobility in an evolving global labor market.[48]

One key advantage of the EOR arrangement is that it is primarily designed to support customers in hiring employees who receive full statutory benefits and protections.[49] By placing workers on the EOR's payroll through formal employment contracts, client companies can minimize the risk of misclassification and ensure compliance with local labor laws. That said, many global EOR providers—including Deel—also offer options to assist with contractor hiring when needed. However, the core value of the EOR model lies in its ability to manage employee relationships.[50] When companies without a legal presence in a worker's jurisdiction rely solely on independent contractors, the boundaries between genuinely independent work and de facto employment can become blurred, potentially exposing them to legal penalties. By choosing the appropriate worker status through a trusted EOR, client companies can better manage risks and ensure that employees receive their full

47. Dahan & Bouaziz, *supra* note 4.

48. Crane-Thompson, *supra* note 15 (projecting the global EOR services market to exceed USD 10 billion by 2030 and attributing growth to the expansion of distributed and hybrid work models); Walters & Praxmarer, *supra* note 15 (finding that EOR demand is driven by "remote work normalization, digital collaboration infrastructure, and compliance complexity").

49. Dahan & Bouaziz, *supra* note 13 (noting that the EOR "takes on legal employer functions, ensuring employees receive statutory protections and benefits"); Ongaro, *supra* note 15 (stating that "EORs employ workers under compliant contracts, providing full employee rights and minimizing misclassification exposure"); Zalaris, *supra* note 13 (noting that "EORs hire employees under local labor law, providing full benefits and legal protections while clients avoid compliance risks").

50. Walters & Praxmarer, *supra* note 15 (noting that EOR providers are expanding their service portfolios through technology integration and next-generation solutions).

array of rights, such as social security and minimum wage protections.

It remains too early to say whether broader EOR usage will significantly affect the reliance on global contractors; however, recent evidence indicates that the number of EOR employees, though still relatively small, has nearly quadrupled since 2020.[51] Conservative estimates suggest that in 2023, global HR and EOR companies employed at least 1 million remote workers—a 500% increase since 2020—sourcing talent from over 150 countries.[52] If this trend continues and revenue per worker remains stable, the number of workers served by EORs could exceed six million by 2028, underscoring the durability of remote work models.[53] Despite return-to-office directives from Amazon[54] and similar mandates by federal[55] and state governments,[56] remote and decentralized work remains here to stay, reflecting a persistent shift in the global labor market.

The EOR model also enhances labor mobility in an era of increasingly distributed work. By managing visa and permit requirements for foreign employees, EORs simplify complex

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51. Deel, *State of Global Hiring Report* (2023), https://www.deel.com/resources/state-of-global-hiring-report-2023 [https://perma.cc/PXB8-9EJR] (last visited May 15, 2023).

52. Crane-Thompson, *supra* note 15 (estimating that global EOR employment reached over one million workers in 2023, representing a fivefold increase since 2020); Walters & Praxmarer, *supra* note 15 (reporting that EOR providers now operate in more than 150 countries, with employee headcount growth of approximately 400–500 percent since the pandemic).

53. Crane-Thompson, *supra* note 15; Priyanka Mitra, Samarth Kapur, Aman Kaushik & Pruthvi Sainath, *Employer of Record (EOR) Solutions PEAK Matrix® Assessment*, Everest Group (Sept. 28, 2022), https://www.everest-grp.com/peak-matrix/employer-of-record-eor-solutions.html.

54. Andy Jassy, *Message from CEO Andy Jassy: Strengthening Our Culture and Teams*, Amazon (Sept. 16, 2024), https://www.aboutamazon.com/news/company-news/ceo-andy-jassy-latest-update-on-amazon-return-to-office-manager-team-ratio [https://perma.cc/788C-STYU]; Bryan Robinson, *As Amazon Announces 5-Day RTO, Are Other Employers Rethinking Their Stance?*, Forbes (Sept. 21, 2024), https://www.forbes.com/sites/bryanrobinson/2024/09/21/as-amazon-announces-5-day-rto-are-other-employers-rethinking-their-stance/ [https://perma.cc/55ML-B5CH].

55. Daniel Wiessner, *Explainer: What Can Trump Do to Stop Federal Employees Working Remotely?*, Reuters (Jan. 21, 2025), https://www.reuters.com/world/us/what-can-trump-do-stop-federal-employees-working-remotely-2025-01-21/ [https://perma.cc/QAD8-5RJJ].

56. Alexei Koseff, *Return to Office: Newsom Orders California State Workers Back Four Days a Week*, CalMatters (Mar. 3, 2025), http://calmatters.org/politics/2025/03/california-employees-remote-work/ [https://perma.cc/664T-8WF9].

immigration procedures for SMBs that may otherwise lack the requisite resources or local expertise. Consequently, client companies can recruit talent from multiple regions without needing to establish a formal local presence. In turn, workers may choose either to remain in their home countries or to relocate under a flexible, transitional arrangement, secure in the knowledge that their payroll, benefits, and compliance obligations will be administered in accordance with local regulations. This configuration broadens employment opportunities for both large and small enterprises by enabling them to access global talent while mitigating administrative burdens. Moreover, early-career professionals can leverage EOR arrangements to explore international job prospects without the commitment of permanent relocation, and experienced workers can evaluate new markets before a long-term move.

Finally, tax considerations are another significant driver of EOR adoption, particularly regarding the risks of permanent establishment. When a foreign company is deemed to have a permanent establishment, it becomes subject to local taxes on profits attributable to that jurisdiction, along with additional reporting and administrative obligations such as corporate income tax, social security contributions, and statutory filings.[57] By using an EOR, companies can hire employees in foreign jurisdictions without the need to establish a local entity, thereby mitigating—though not eliminating—the risk of creating a permanent establishment. Under tax treaties like the OECD Model Tax Convention, a permanent establishment may still arise if the foreign firm maintains a "fixed place of business" or a "dependent agent." Placing the employment relationship under an EOR reduces that risk, but if the worker is deeply integrated into the client's core business, local tax authorities may

57. Organisation for Economic Co-operation and Development (OECD), Model Tax Convention on Income and on Capital: Condensed Version, 35, 116–17 (Nov. 21, 2017) (defining "permanent establishment" as a fixed place of business through which the business of an enterprise is wholly or partly carried on, and outlining related tax obligations); United Nations, Model Double Taxation Convention between Developed and Developing Countries, 11 (2021) (establishing a "services PE" standard for cross-border service provision); Zalaris, *supra* note 13 (noting that an EOR "reduces the risk of creating a taxable permanent establishment by serving as the legal employer in-country"); Deel, *supra* note 13 (explaining that EORs "help companies hire internationally while mitigating exposure to corporate income tax and payroll-related PE risk").

still determine that the foreign firm has established a taxable presence.[58]

II.
What the EOR Is Not: Differentiating the EOR from Other Labor Intermediaries

A common misconception is that the EOR model is simply another form of temporary staffing or PEO service. In reality, EORs serve a distinct purpose—particularly in cross-border contexts—and should be viewed as standalone labor intermediaries. This Section clarifies how EORs differ from other well-known intermediaries, including staffing agencies, temp agencies, and PEOs.

A. *EORs and Staffing/Temp Agencies*

Staffing agencies and temp agencies are generally domestic in scope, providing short-term workers to meet local, immediate workforce needs (e.g., holiday cover or short-term projects). Their core service is recruiting and placing workers at client sites, where these workers remain under the day-to-day supervision of the staffing agency or client, depending on the contract. However, staffing agencies typically do not assume full employer responsibilities such as long-term payroll and compliance for each worker; they focus on placement rather than comprehensive employee management.[59]

By contrast, EORs are inherently global. They enable businesses, especially SMBs that lack a local legal entity, to hire employees in foreign jurisdictions without needing to establish a full subsidiary. This arrangement is not intended to fill short-term roles or merely place temporary workers. Rather, EORs facilitate longer-term, skilled worker placements and assume the function of sole legal employer, managing payroll, benefits,

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58. OECD, *supra* note 57, at 32 (noting that a dependent agent or employee acting "on behalf of" a foreign enterprise may create a taxable presence even without a fixed place of business); United Nations, *supra* note 57, at 11 (recognizing a "services PE" where employees or contractors perform work for a sufficient duration in the source state).

59. Timothy J. Bartkiw, *Regulatory Differentials and Triangular Employment Growth in the US and Canada*, 19 Emp. Rts. & Emp. Pol'y J. 1 (2015).

tax obligations, and other compliance tasks.[60] Staffing agencies, by contrast, lack the infrastructure to handle cross-border complexities, and typically do not accept legal accountability for employees outside of short-term assignments.

These differences emerge across several key dimensions. First, while staffing agencies primarily focus on recruiting and placing workers for short-term needs, EORs manage the full spectrum of legal and human resources functions for employees. Second, staffing agencies tend to cater to temporary roles, whereas EORs offer fixed-term or permanent employment solutions in international markets. Third, the recruitment process in staffing agencies is typically agency-driven, while with an EOR, the client selects the worker, and the EOR then assumes formal employment responsibilities on the client's behalf.[61]

B. *Distinguishing EORs from PEOs*

PEOs are often confused with EORs, especially when terms such as "global PEO," "international PEO," and "EOR" are used interchangeably in marketing materials.[62] While there is some overlap—PEOs also manage HR and payroll functions—the main differences revolve around co-employment status, jurisdictional scope, and entity requirements.

A standard PEO is largely a domestic U.S.-based solution in which a co-employment arrangement is created between the PEO,[63] the client company, and the worker. In other words, the

60. Note that EORs are better suited to remote-first and distributed workforce strategies, especially with the rise of digital nomads and global hiring needs.

61. Janine Berg, *Staffing Agencies in Work Relationships with Client Companies: The Need for a Regulatory Framework*, 42 Emp. Rel. 525 (2020) (analyzing staffing agencies as intermediaries that recruit and place workers for short-term assignments, typically without assuming full employer responsibilities for payroll or benefits).

62. *See PEO vs. EOR: The Difference (and Why It Matters)*, Deel (Sept. 4, 2024), https://www.deel.com/resources/peo-vs-eor-difference; *EOR vs. PEO: Key Differences & Which Is Best for You*, Safeguard Global (June 9, 2025), https://www.safeguardglobal.com/resources/hr-glossary/eor-vs-peo.

63. Organized or intentional co-employment models, such as those involving Professional Employer Organizations (PEOs), are predominantly used in the United States. However, while co-employment exists in other legal systems, it is challenging to establish in some jurisdictions. For example, in France, the *Cour de Cassation* (French Supreme Court) has set stringent criteria for recognizing co-employment. In a 2024 decision, the court ruled that a company can only be deemed a co-employer if there is persistent interference

client remains a partial or joint employer under domestic law, while the PEO administers certain HR functions (e.g., benefits and payroll), and shares some legal responsibilities. This standard "domestic PEO" arrangement generally requires the client to already have a registered entity in the same jurisdiction, making it ill-suited for cross-border hiring in the majority of cases.[64] We note, however, that the concept of "co-employment" is not a legal category but rather a contractual relationship constructed between the PEO and the client firm.[65] For tax purposes, the IRS generally treats PEOs as third-party payers rather than as primary employers.[66] Finally, PEOs in the United States are subject to state-based regulations and voluntary certifications through organizations such as Employer Services Assurance Corporation, which sets industry standards.[67]

By contrast, a global PEO—which is often equated with an EOR—is specifically designed for international hires in which the client does not maintain a local entity.[68] In this scenario, the

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in the economic and social management of the employing company, leading to a total loss of autonomy for the latter. This high threshold makes it difficult to prove co-employment in France. *See* Katell Deniel-Allioux, *The Risks of Co-Employment Liability in France*, Mondaq (Aug. 22, 2016), https://www.mondaq.com/france/employee-rights-labour-relations/521094/the-risks-of-co-employment-liability-in-france [https://perma.cc/PSK2-PPUU]; *OD Flash: Co-Employment: A Company Bound to Another by an Operating Contract Cannot Be Deemed a Co-Employer in the Absence of Interference in the Economic and Social Management of the Other Company and the Preservation of Its Autonomy of Action*, Ogletree Deakins (Oct. 29, 2024), https://ogletree.fr/blog-posts/od-flash-co-employment-a-company-bound-to-another-by-an-operating-contract-cannot-be-deemed-a-co-employer-in-the-absence-of-interference-in-the-economic-and-social-management-of-the-other-company-a/?lang=en; Interview with French Law Couns., Deel (June 2024) (explaining the difficulty of establishing co-employment absent a total loss of autonomy).

64. *PEO Industry Overview*, Nat'l Ass'n of Pro. Emp. Orgs. (Oct. 3, 2025), https://napeo.org/intro-to-peos/industry-overview/.

65. The term "co-employment" is not explicitly defined under federal tax law. According to the IRS, while PEOs may claim to share control over employees as "co-employers," this concept is not recognized under federal tax law. Instead, PEOs are designated to perform acts required of an employer with respect to wages or compensation paid. *See* Treas. Reg. § 31.3504-2. This point will be discussed further in the next section.

66. Bartkiw, *supra* note 59; Ursula Ramsey, *The Professional Employer Organization Regulatory Regime*, 20 U.C. L. Bus. J. 95 (2024).

67. Ramsey, *supra* note 66, at 95. Some states, such as Florida, have specific licensing and reporting requirements for PEOs, while others permit compliance through private certifications.

68. See *What Is Global PEO?*, Pebl, https://hellopebl.com/glossary/global-peo/ (last visited Oct. 4, 2025) (explaining that, in contrast, a global PEO

PEO is intended to serve as the sole legal employer, assuming all employment-related obligations (e.g., onboarding, payroll, and taxes).[69] This includes ensuring international labor law compliance, offering global benefits packages, and navigating complex social security obligations in multiple countries.[70] The client is not meant to share legal employer status; instead, the PEO assumes it exclusively, although the ultimate determination of who holds "employer" or "co-employment" status can be contested in some legal systems. Thus, unlike a standard PEO that operates within one jurisdiction under a co-employment framework, the global PEO model provides a single-employer solution across multiple jurisdictions.

III.
The EOR Model Across Jurisdictions: Unraveling Constructive Ambiguities

Most elements of cross-border remote work are governed at the national level;[71] even within the European Union, there is no comprehensive supranational framework. In many continental European systems, EOR is routed through employee-leasing/temporary-agency rules—i.e., a triangular supply of labor rather than a bespoke EOR statute.[72] In practice, this makes the use of EORs more complex, as such frameworks often require prior authorization, registration, and compliance with equal-treatment and maximum-assignment limits. In some jurisdictions, profit-based labor supply is prohibited altogether, and

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acts as the legal employer in foreign jurisdictions, similar to an Employer of Record, allowing companies to hire internationally without establishing a local entity).

69. *Id.*

70. *What Is an Employer of Record?*, Omnipresent (May 30, 2024), https://www.omnipresent.com/articles/what-is-an-employer-of-record-eor [https://perma.cc/2W4B-H4YS] (noting that an EOR ensures compliance with local labor laws, payroll, and benefits administration).

71. *See* Grušić, supra note 16.

72. *Is Employer of Record Legal?*, Remotepeople (Apr. 21, 2025), https://remotepeople.com/is-employer-of-record-legal/ [https://perma.cc/RA88-QDYG]; *Directive 2008/104/EC of the European Parliament and of the Council on Temporary Agency Work*, 2008 O.J. (L 327) 9 (EU); Tanel Feldman, *European Court of Justice – Triangular Employment Relationships*, Immigr. Law Assocs. (Sept. 16, 2022), https://www.lexology.com/library/detail.aspx?g=ca12d7f5-f91c-4111-8fd2-260238aab742.

breaches can result in the user company being legally reclassified as the direct employer.[73]

Globally, EORs operate within a patchwork of legal regimes. EORs are used in at least a hundred countries,[74] yet few have a specific EOR statute. Instead, EORs are typically subsumed under rules designed for domestic work—temporary staffing,[75] payrolling,[76] or outsourcing[77]—creating what we describe as *constructive ambiguity* around employer status and compliance.

We describe this situation as one of constructive ambiguity around employer status and compliance. The term refers to a tolerated lack of legal precision that enables cross-border hiring to function under frameworks originally designed for domestic labor. Rather than prohibiting global employment arrangements outright, many jurisdictions allow EORs to operate under analog legal categories—such as employee leasing, payrolling, or service intermediation—even when these do

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73. Arbeitnehmerüberlassungsgesetz [AÜG] [Act on Temporary Agency Work], Aug. 7, 1972, BGBl. I at 1393, §§ 1, 1b, 8 (Ger.), https://www.gesetze-im-internet.de/englisch_a_g/englisch_a_g.html; Code du travail [C. trav.] [Labor Code] arts. L8241-1, L1254-1 (Fr.), https://travail-emploi.gouv.fr/le-portage-salarial; Italy—*Decreto Legislativo* 15 giugno 2015, n. 81, Disciplina organica dei contratti di lavoro . . . , G.U. n. 144 (24 giugno 2015), cap. IV, artt. 30–40 (It.), https://www.lavoro.gov.it/strumenti-e-servizi/pagine/albo-nazionale-delle-agenzie-il-lavoro; Spain — *Ley 14/1994*, de 1 de junio, por la que se regulan las empresas de trabajo temporal, B.O.E. n. 131 (2 junio 1994), art. 1 (Spain); *Real Decreto Legislativo* 2/2015, de 23 de octubre, *Texto refundido de la Ley del Estatuto de los Trabajadores*, B.O.E. n. 255 (24 octubre 2015), art. 43 (Spain), https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554. This legal characterization and its practical application were confirmed in interviews with German and Spanish labor-law counsel (June–Aug. 2024).

74. Walters & Praxmarer, *supra* note 15; Crane-Thompson, *supra* note 15.

75. *Hiring in Germany at a Glance*, Boundless, https://boundlesshq.com/guides/germany/ (last visited Jan. 6, 2025); Arbeitnehmerüberlassungsgesetz [AÜG] [Act on Temporary Agency Work], Aug. 7, 1972, BGBL. I at 1393, §§ 1, 1b, 8 (Ger.).

76. *Employer of Record in the Netherlands*, Rödl & Partner, (Apr. 26, 2024), https://www.roedl.com/insights/employer-of-record-in-the-netherlands (explaining that payrolling companies and clients may both be liable for payroll taxes); Interview with Dutch Labour Law Couns., in Amsterdam, Neth. (May 2025) (noting that while tax liabilities are jointly regulated, the division of responsibilities for dismissals and other HR matters remains ambiguous in practice).

77. Lei No. 6.019, de 3 de Janeiro de 1974, as amended by Lei No. 13.467, de 13 de Julho de 2017 (Braz.) ("The provision of services to third parties is defined as the transfer by the contracting party of the execution of any of its activities, including its core activity, to a private legal entity providing services that has the economic capacity to perform the assigned tasks.").

not neatly capture the EOR structure. This ambiguity is "constructive" because it allows firms and regulators to proceed pragmatically, ensuring that workers remain covered by local labor protections while formal rules catch up to new hiring models.[78]

Because these frameworks were designed for domestic employment, extending them to global hiring through an EOR raises unresolved questions. There is little case law directly addressing the EOR model in the jurisdictions we reviewed.[79] To map how national regimes capture it in practice, our analysis draws on three sources: (i) statutory instruments and official guidance; (ii) semi-structured interviews with in-house and external counsel, including from global EOR providers; and (iii) practice materials from major vendors and professional associations (e.g., Deel, G-P, Oyster, Remote). Based on this qualitative analysis and interview evidence, we identify four recurrent classifications of EOR arrangements:

- **Employee Leasing – Payrolling/*Portage Salarial*** (e.g., Netherlands, France)
- **Co-Employment/PEO** (primarily the United States—recognised mainly for tax/benefits rather than labor-law purposes)
- **Licensed Intermediation/Outsourcing** (e.g., Brazil, the Philippines, Colombia)
- **Temporary Agency Work** (e.g., Germany; parts of Central/Eastern Europe).[80]

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78. *See generally* Henry Kissinger, Diplomacy 807 (1994) (defining "constructive ambiguity" as a device for reconciling divergent interests); *cf.* Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Postnational Law 72–75 (2010) (discussing productive uncertainty in transnational regimes).

79. The jurisdictions reviewed include the United States, Canada, France, Germany, the Netherlands, Spain, Italy, Belgium, Brazil, Colombia, the Philippines, and Singapore. These were selected based on the maturity of their EOR markets, the availability of relevant statutory instruments, and interviews conducted with local labor-law counsel and compliance specialists between January and May 2025.

80. Methodology: qualitative analysis of statutes/regulations and semi-structured interviews with in-house and external counsel (Jan–May 2025); A sample questionnaire used in these interviews is included in Appendix A.

The subsections that follow examine how each of these four categories manifests across the jurisdictions reviewed, drawing on our qualitative analysis of statutory instruments, regulatory guidance, and practitioner interviews. Through this comparative approach, we identify recurring interpretive and enforcement ambiguities in how national labor frameworks define employer obligations, allocate liability, and ensure compliance in cross-border EOR arrangements.

A. *Leasing of Employees*

Employee leasing—known as *payrolling* in the Netherlands and *portage salarial* in France—entails a tripartite, longer-term relationship in which a specialized intermediary company formally employs workers who are then assigned to client companies. Although these frameworks share with EORs the principle of transferring certain employer obligations to an intermediary, payrolling and *portage salarial* are primarily domestic constructs that do not explicitly address cross-border hiring scenarios. Nonetheless, in those two countries, these systems function as the legal channel through which an EOR provider may formally employ workers and comply with local labor regulations.

B. *Payrolling and Portage Salarial*

Under Dutch law, *payrolling* is recognized as a specific form of hiring staff without directly becoming their legal employer.[81] This codification establishes a clear legal framework that delineates specific obligations, but also introduces complexities for companies using this model. Workers employed through payrolling companies are guaranteed protections equivalent

81. Art. 7:692a para. 5 BW (Neth.) (codifying payrolling as a distinct employment form and setting liability rules); *Mandatory Pension for Payroll Employees*, DENTONS (Mar. 5, 2021), https://www.dentons.com/en/insights/alerts/2021/march/5/mandatory-pension-for-payroll-employees (summarizing the 2020 reform and equal-treatment implications); *Employer of Record in the Netherlands*, RÖDL & PARTNER (Apr. 26, 2024), https://www.roedl.com/insights/employer-of-record-in-the-netherlands (explaining that payrolling companies and clients may both be liable for payroll taxes); Interview with Dutch Labor Law Couns., in Amsterdam, Neth. (May 2025) (noting that while tax liabilities are jointly regulated, the division of responsibilities for dismissals and other HR matters remains ambiguous in practice).

to those of non-payrolling workers legally entitled to work in the Netherlands.[82] This includes equal treatment in terms of working conditions, dismissal regulations, and wage standards, ensuring that there is no disadvantage due to employment type. Moreover, Dutch labor law addresses liability issues by holding both the client and the payrolling company jointly accountable for payroll tax and social security contributions. However, the legislation leaves ambiguities regarding the division of other employment responsibilities—such as dismissal procedures—since the payroll company is the formal employer but the client typically exercises day-to-day control.[83]

Although payrolling in the Netherlands can, in theory, be used by a foreign firm seeking to employ workers locally, it is not structured to account for international remote work or the complexities arising from multi-jurisdictional labor law. Dutch payrolling statutes are drafted on the assumption that the employment relationship is performed within the Netherlands and therefore subject to Dutch labor law. They do not explicitly address cross-border or remote-from-abroad scenarios, which may instead trigger the application of international private law instruments such as the Rome I Regulation.[84]

In France, *portage salarial* is similarly codified in the Labor Code. This model involves a tripartite relationship between a *portage* company, an employee (*porté*), and a client company, with a contractual agreement governing the arrangement.[85] Originally viewed with suspicion and faced with potential

82. Kamerstuk van 11 augustus 2018, Stcrt. 2018/19, 35074, nr. 3 (emphasizing that payroll workers must not be disadvantaged compared to direct hires); Interview with Dutch Labor Law Couns., in Amsterdam, Neth. (May 2025) (noting that payroll employees are guaranteed equal treatment, including wages, dismissal protections, and pension rights).

83. Walters & Praxmarer, *supra* note 15; Interview with Dutch Labor Law Couns., in Amsterdam, Neth. (May 2025) (confirming scope of art. 7:692a DCC and equal-treatment obligations in payrolling arrangements).

84. Art. 7:692a para. 5 BW (Neth.) (codifying payrolling as a distinct employment form within Dutch labor law, based on employment performed domestically); Rome I, supra note 17; Interview with Dutch Labor Law Couns., in Amsterdam, Neth. (May 2025) (explaining that the statutory framework presumes work performed in the Netherlands and does not clearly extend to remote-from-abroad arrangements).

85. *See* Code du travail [C. trav.] [Labor Code] arts. L1254-1, L1254-4, D1254-1 (Fr.) (defining *portage salarial*, mission duration, and financial guarantee); *Le portage salarial*, Ministère du Travail (Oct. 27, 2023), https://travail-emploi.gouv.fr/le-portage-salarial (official explainer with duration and guarantee rules).

legal challenges, the model was formalized and clarified by Ordonnance n° 2015-380 of April 2, 2015.[86] *Portage salarial* is primarily intended for tasks outside the client company's usual activities or for specialized expertise, and can be used across various sectors, excluding personal services.[87]

Under French *portage salarial* law, *salariés portés* enjoy many of the social protections of traditional employees—including health, retirement, unemployment insurance, and paid leave—and labor formalities must be respected. However, the statute delegates many details (such as how dismissals are handled) to common law and the applicable branch collective agreement, leading to variation in practice.[88] This ensures that individuals employed through *portage salarial* are not disadvantaged compared to their counterparts in standard employment relationships. For instance, *portage salarial* employees contribute to the general social security scheme and benefit from the protections offered by French employment law, including healthcare, pensions, unemployment rights, and paid leave.[89]

EOR workers under *portage salarial* can be employed on either fixed-term or indefinite-term contracts.[90] The arrangement between the client company and the EOR provider typically has a maximum duration of thirty-six months per service or project, although it can be renewed for different services with the same worker.[91] The *portage* company is primarily

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86. Ordonnance n° 2015-380 du 2 avr. 2015 relative au portage salarial, J.O. n° 0078 du 3 avr. 2015, texte n° 6, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000030431093/.

87. Code du travail [C. trav.] [Labor Code] art. L1254-5 (Fr.).

88. Code du travail [C. trav.] [Labor Code] arts. L1254-1–L1254-31 (Fr.) (establishing *portage salarial* as a lawful triangular employment relationship); Ordonnance No. 2015-380 du 2 avril 2015 relative au portage salarial [Ordinance No. 2015-380 of April 2, 2015 relating to salary portage], Journal Officiel de la République française [J.O.] [Official Gazette of France], Apr. 3, 2015 (Fr.) (formalizing *portage salarial* and requiring a financial guarantee from the portage company); *Le portage salarial,* Ministère du Travail (Oct. 27, 2023), https://travail-emploi.gouv.fr/le-portage-salarial (noting that *salariés portés* benefit from social protections comparable to those of employees, including retirement, unemployment, and health insurance); Interview with French Labor Law Couns. (June 2025) (explaining that while social protections and equal treatment are broadly guaranteed, dismissal rules and some working conditions are governed by general labor law and the sectoral collective agreement, creating practical ambiguities).

89. *Id.* ; Confirmed by Interview with French Labor Law Couns. (June 2025).

90. Code du travail [C. trav.] [Labor Code] arts. L1254-15, L1254-20 (Fr.).

91. Code du travail [C. trav.] [Labor Code] art. L1254-4 (Fr.).

responsible for the payment of the employee's salary and the associated social security contributions, and this responsibility is backed by a required financial guarantee to cover these payments in case the *portage* company fails to meet its obligations.[92] Finally, EOR workers are not automatically terminated at the end of the client contract. Instead, termination must follow standard employment procedures, either for cause or through mutual agreement (*rupture conventionnelle*), ensuring continued protection for the worker.[93]

Dutch payrolling and the French *portage salarial* arrangement arguably represent the closest formal analogs to an EOR. Both models are designed to centralize administrative and legal responsibilities under a specialized intermediary, while guaranteeing workers the full spectrum of national labor protections. However, neither system is inherently structured to accommodate *truly international* remote work. Instead, each assumes that the worker resides and performs duties *within* the home country (i.e., the Netherlands or France) and that the legal framework of that state applies.

C. *PEO – Organized Co-employment*

In certain jurisdictions,[94] EOR hiring effectively requires co-employment through domestic intermediaries such as PEOs.

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92. Code du travail [C. trav.] [Labor Code] arts. L1254-26, D1254-1 (Fr.).

93. Code du travail [C. trav.] [Labor Code] arts. L1254-1–L1254-3 (Fr.) (providing that the portage company, not the client, is the employer of record for the worker); Ordonnance No. 2015-380 du 2 avril 2015 relative au portage salarial [Ordinance No. 2015-380 of April 2, 2015 relating to salary portage], Journal Officiel de la République française [J.O.] [Official Gazette of France], Apr. 3, 2015 (Fr.) (requiring portage companies to assume full employer responsibilities, including contract termination under ordinary labor law); *Le portage salarial,* Ministère du Travail (Oct. 27, 2023), https://travail-emploi.gouv.fr/le-portage-salarial (noting that portage employees receive the same employment protections as other salaried workers); Interview with French Labor Law Couns. in Paris, Fr. (June 2025) (clarifying that termination does not occur automatically at the end of a client assignment but must follow standard French procedures such as dismissal for cause or *rupture conventionnelle*).

94. PEOs, with their co-employment arrangements, are largely unique to the U.S., where employer responsibilities—particularly healthcare and pension benefits—are deeply intertwined with federal and state regulations. While some countries (e.g., Canada, Mexico, and New Zealand) offer "PEO-like" services, these typically assume a full employer-of-record role rather than sharing responsibilities with the client. Consequently, the term "international PEO" often denotes an EOR solution abroad, rather than the classic

The term *co-employment*[95] generally refers to a situation in which two entities share employer responsibilities for the same worker. In the context of Professional Employer Organizations (PEOs), it typically describes the division of roles between the PEO—responsible for payroll, benefits, and tax administration—and the client company, which directs day-to-day work. However, co-employment can also arise in other contexts, such as staffing or subcontracting, whenever both entities exercise elements of employer control. U.S. law does not recognize *co-employment* as a distinct statutory category; rather, it is a contractual and practical construct assessed through common-law "control" tests and state-specific legislation.[96]

In the United States, for example, foreign companies wishing to employ American workers must typically incorporate in the United States (including obtaining a tax identification number and meeting state-specific requirements for unemployment and workers' compensation) before partnering with

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co-employment model seen in the United States. *See* Shane George, *EOR vs PEO: Navigating Global Employment Options*, GEOS (Nov. 14, 2024), https://geosinternational.com/eor-vs-peo/; Jessica Elliott, *PEO vs. EOR: Differences Explained*, Chamber of Com. of the U.S., (Sept. 19, 2024), https://www.uschamber.com/co/run/human-resources/peo-vs-eor.

95. The term *co-employment* has no uniform statutory definition but has been addressed across U.S. regulatory regimes under the related concept of "joint employment." Under the National Labor Relations Board's 2023 *Joint-Employer Rule*, two entities may be deemed employers if they "share or codetermine essential terms and conditions of employment." Standard for Determining Joint-Employer Status, 29 C.F.R. § 103.40 (2023); Similarly, the Department of Labor's 2016 *Interpretation No. 2016-1* recognized joint employment under the FLSA where multiple entities directly or indirectly control a worker's terms of work. U.S. Dep't of Lab., Administrator's Interpretation No. 2016-1 (2016); The IRS, in turn, treats PEOs as certified third-party payers under its CPEO program—acknowledging shared administrative responsibility but not full employer status. *See Department of Labor Attempts to Take Broad View of Joint Employment Status*, Jones Day (Jan. 2016), https://www.jonesday.com/en/insights/2016/01/department-of-labor-attempts-to-take-broad-view-of-joint-employment-status; Richard W. Fanning Jr., *Come Together Now: The NLRB Issues Final Rule on Joint Employers*, Clark Hill (Nov. 1, 2023), https://www.clarkhill.com/news-events/news/come-together-now-the-nlrb-issues-final-rule-on-joint-employers/.

96. *See Certified Professional Employer Organization (CPEO)*, Internal Revenue Serv. (Jun. 26, 2025), https://www.irs.gov/tax-professionals/certified-professional-employer-organization (describing the federal certification regime for PEOs); *PEO Industry Overview*, Nat'l Ass'n of Pro. Emp. Orgs. (Oct. 3, 2025), https://napeo.org/intro-to-peos/industry-overview/; Goodner & Ramsey, *supra* note 35, at 577–80.

a licensed PEO.[97] Once these steps are satisfied, the foreign client enters into a co-employment arrangement under which the PEO manages day-to-day HR functions such as payroll administration, benefits, retirement plans, and tax responsibilities.[98] As with EORs, businesses rely on PEOs as a long-term solution to reduce administrative complexity.

As noted above, however, standard PEOs and EORs are in principle different, with the PEO *sharing* employer responsibilities with the client rather than assuming sole legal employer status.[99] In other words, co-employment is central to the PEO arrangement, whereas an EOR is designed to stand as the *single* official employer of record on behalf of the client. Additionally, PEOs typically operate domestically, requiring the client to have a registered entity, while EORs facilitate international hiring without the need for local incorporation. Another difference is that while PEOs may reduce compliance burdens, EORs assume an active role in ensuring compliance.

In this regard, even though no direct EOR regulations exist in the United States, the EOR model does not operate in a complete legal vacuum. The framework that has evolved around PEOs, particularly at the state and federal levels, provides the closest analogue. At the federal level, the Internal

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97. *Cf.* Anja Simic, *PEO vs EOR: The Difference (And Why It Matters)*, Deel (Sept. 4, 2025), https://www.deel.com/blog/eor-vs-peo/ (stating unequivocally that "[i]f you plan to use a PEO, you need a legal entity in the US," because the PEO co-employment model means the client remains the legal employer, whereas the EOR model allows for global hiring "without local entities"); *see, e.g.*, *Consequence of Payrolling in the United States with a Foreign Entity*, Tabs, Inc. (Jan. 12, 2023), https://www.tabsinc.com/consequenses-of-payrolling-in-the-united-states-with-a-foreign-entity/ (noting that under U.S. laws, a PEO acts as a co-employer, which typically results in the foreign entity being deemed as "employing and doing business in the United States" and creating a "Permanent Establishment," concluding that one must contract with a PEO "via a U.S. subsidiary" to avoid the exposure of the foreign entity's assets).

98. Shnitser, *supra* note 35.

99. *See, e.g.*, Britton Lombardi & Yukako Ono, *Professional Employer Organizations: What Are They, Who Uses Them, and Why Should We Care?*, 32 Econ. Persp. 2, 2 (2008) (stating that PEOs "operate in a co-employment relationship with their clients" and "share legal responsibilities as co-employers," while the client maintains control over daily operations); *see also* James Kelly, *EOR vs PEO: Choosing the Right Global Employment Solution*, Boundless (Aug. 7, 2024), https://boundlesshq.com/blog/eor-vs-peo/ (explaining the key difference: with a PEO, the client company "retain[s] your status as the primary legal employer" in a co-employment model with shared liability, whereas an EOR "assumes legal responsibility for employment liabilities" as the sole legal employer).

Revenue Service's Certified Professional Employer Organization (CPEO)[100] program establishes bonding and reporting requirements for PEOs that assume payroll-tax liability on behalf of client firms, while clarifying that certification does not make the PEO the common-law employer. At the state level, more than forty states have enacted dedicated PEO or "employee leasing" statutes—such as Florida's Employee Leasing Companies Act and the Texas Staff Leasing Services Act[101]— which require registration, minimum capitalization, and ongoing reporting. Collectively, these frameworks illustrate how U.S. law has gradually formalized co-employment arrangements, providing a regulatory template that informs how EORs might be governed in cross-border contexts.

What has made PEOs successful in the United States is their positioning as a private-sector solution for the challenges traditionally faced by smaller employers.[102] Workers in the United States depend on their employers for a wide range of benefits beyond wages and salary, including health insurance, retirement benefits, student loan repayment, dependent-care spending plans, disability benefits, and family and medical leave. Larger employers typically offer more comprehensive benefits than smaller employers. By pooling employees from multiple client companies, PEOs enable smaller employers to provide benefits comparable to those offered by Fortune 500 companies, including health insurance, retirement plans, and other essential employee benefits.

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100. *See Certified Professional Employer Organization (CPEO), supra* note 96; Florida's Employee Leasing Companies Act, Fla. Stat. §§ 468.520–.535 (2025); Texas Staff Leasing Services Act, Tex. Lab. Code Ann. §§ 91.001–.062 (West 2025); *PEO— Professional Employer Organizations Licensing by State*, StaffMarket, https://www.staffmarket.com/directory/licensing [https://perma.cc/Q2H9-JSZD].

101. *See, e.g.*, Florida Employee Leasing Companies Act, *supra* note 100; Texas Staff Leasing Services Act, *supra* note 100; Goodner & Ramsey, *supra* note 35.

102. *See, e.g.*, Laurie Bassi & Dan McMurrer, Nat'l Ass'n Pro. Emp. Orgs., PEO Clients: Faster Growing, More Resilient Businesses with Lower Turnover Rates 4–6 (2024), https://napeo.org/wp-content/uploads/2025/03/2024-white-paper-final.pdf (demonstrating that PEO client companies grow twice as fast, have 12% lower employee turnover, and are 50% less likely to go out of business than comparable small businesses); *see also* Interview with (US Legal Counsel, Deel) (Aug. 2025) (confirming the PEO value proposition is the ability to offer Fortune 500-level benefits and offload increasing HR compliance burdens).

PEOs came to prominence in the 1970s, influenced by the Employee Retirement Income Security Act of 1974, which included provisions that allowed employers to structure their workforce in a way that could exclude leased employees from pension plans.[103] The legal landscape for PEOs is predominantly governed at the state level, with 41 states enacting specific PEO legislation.[104] The PEO industry serves about four million worksite employees,[105] with especially high usage in states like Arizona, California, Delaware, Florida, New York, and Texas.[106] These services are particularly common in the transportation and repair service industries.[107] State-level legislation varies. California,[108] Texas[109], and Florida[110] have specific laws govern-

103. *See* I.R.C. § 414(n)(2) (defining "leased employee" as added by the Tax Equity and Fiscal Responsibility Act of 1982, thereby addressing a critical gap in ERISA's original pension rules which companies used to structure employee leasing arrangements); *see also Explanation No. 8 Employee Leasing*, Internal Revenue Serv., https://www.irs.gov/pub/irs-pdf/p7003.pdf (last visited Oct. 3, 2025) (explaining that the "leased employee" specification was added by Pub. L. 98-369 (DEFRA) in 1984 to regulate practices that arose after the enactment of ERISA).

104. Practical Law: Labor & Employment, State PEO Laws Chart: Overview, Westlaw (database updated Sept. 2024); *PEO Licensing and Registration Requirements by State*, Nat'l Ass'n of Pro Emp Orgs. (2024), https://napeo.org/peo-resources/resources-by-topic/regulatory-database/.

105. Laurie Bassi & Dan McMurrer, Nat'l Ass'n Pro. Emp. Orgs., The PEO Industry Footprint 2021 1 (2021), https://napeo.org/wp-content/uploads/2025/03/2021-peo-industry-footprint.pdf.

106. Laurie Bassi & Dan McMurrer, Nat'l Ass'n Pro. Emp. Orgs., PEO Client: An Analysis 5 tbl. 2 (2022), https://napeo.org/wp-content/uploads/2025/03/analysisofpeo_whitepaper-fin.pdf (detailing state distribution where Florida (25%), Texas (13%), California (11%), and New York (10%) account for approximately half of all PEO clients).

107. Lombardi & Ono, *supra* note 99.

108. *See, e.g.*, Cal. Lab. Code § 3700 (West 2024) (mandating that every employer, regardless of PEO arrangement, must secure workers' compensation coverage); Cal. Lab. Code § 2810.3 (West 2024) (establishing shared civil liability between a "client employer" and a "labor contractor" for payment of wages and failure to secure workers' compensation). While California does not have a single, comprehensive "Professional Employer Organization Act" for mandatory licensing (unlike Florida or Texas), these sections create an analogous regulatory environment. Specifically, § 3700 imposes strict liability on the client employer for workers' compensation fraud—a primary risk PEOs are hired to mitigate—while § 2810.3 imposes joint and several liability on the client and the PEO (as a labor contractor) for wage theft and compliance failures. This system of shared liability is a major reason for high PEO usage in the state.

109. Tex. Lab. Code Ann. § 91.001(3-b) (West 2025).

110. Fla. Stat. § 468.524 (2025) (governing licensing requirements for PEO's in Florida).

ing PEO operations, and in Florida, New York, and Texas,[111] companies must obtain a license to provide employee leasing services,[112] with PEOs being responsible for workers' compensation and health benefits.[113] It is worth noting that several government organizations do not distinguish between PEOs and Employee Leasing Companies.[114]

California does not require PEOs to register or obtain a license to operate,[115] unless the PEO is operating in the garment industry.[116] The legal relationships between PEOs and client companies are mostly governed by contracts between the parties and common-law judgments.[117] However, the California Unemployment Insurance Code (CUIC) sets out specific criteria for determining who is considered an employer when multiple parties are involved in an employment relationship. Under CUIC Section 606.5, an "employer" includes any individual or entity that directly pays wages for employment, has control over the payment of those wages, or exercises control over the services performed.[118] When more than one entity is

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111. *See* N.Y. Lab. Law § 918 (McKinney 2025) (mandating registration for PEOs); Tex. Lab. Code Ann. § 91.061 (West 2025) (prohibiting offering professional employer services without a license); Fla. Stat. § 468.525 (2025) (setting forth licensing requirements for employee leasing companies).

112. Fla. Stat. § 468.520(4) (2025).

113. In Florida, the first state to license PEOs and a model for other states, a license is required from the Department of Business and Professional Regulation. The Board of Employee Leasing Companies (ELCs) licenses and regulates ELCs and promulgates rules to implement the provisions of the Florida Statutes. *See* Fla. Stat. §§ 468.520–468.535 (2025). It is worth noting that several government organizations do not distinguish between PEOs and ELCs.

114. For instance, the Florida Department of Revenue does not distinguish between PEOs and Employee Leasing Companies.

115. *Garment Manufacturers (and Contractors)*, California Department of Industrial Relations (May 2022), https://www.dir.ca.gov/dlse/New_Garment_Manufacturers_and_Contractors.htm.

116. *Id.*

117. *See, e.g.*, Bassi & McMurrer, *supra* note 102, at 1 (2024) (describing the co-employment relationship as an agreed-upon contractual allocation of employer rights and duties); *see also* I.R.S. Info. Ltr. 2002-0056 (May 23, 2002) (confirming the employment relationship in a PEO context is typically defined by common-law rules).

118. Section 606.5 specifically addresses the registered PEO relationship, stipulating that the PEO is the designated employing unit for "covered employees" under a service agreement. The crucial complexity is that while the PEO assumes the administrative burden and remits the tax (typically under a PEO master account), the client employer's individual Unemployment Insurance Experience Rate (SUI rate) must still be tracked, reported,

involved, the California Employment Development Department (EDD) and courts apply a *control and payment test*: the entity that both (i) directs and controls the manner and means of the worker's services and (ii) pays or has the right to pay wages is generally deemed the employer for unemployment-insurance purposes.[119]

At the federal level, the IRS operates a voluntary certification program for PEOs (CPEO Program) under the Tax Increase Prevention Act of 2014.[120] This certification program ensures that PEOs comply with federal requirements, such as filing employment tax returns and providing audited financial statements annually. Certified PEOs are also required to be bonded for up to one million dollars to ensure the timely payment of employees' wages, among other requirements.[121]

Additionally, the CPEO Program allows certain PEOs to assume payroll tax liabilities, providing greater security for clients.[122] However, for tax purposes—even with this certification—the IRS continues to treat PEOs primarily as administrators and third-party payers, rather than primary employers.[123] As noted earlier, the concept of "co-employment" is not a legal category but rather a contractual relationship constructed between the PEO and the client firm.[124]

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and linked to the PEO's account. This prevents PEOs from engaging in SUTA dumping (misusing the PEO's potentially lower tax rate to shield the client's poor UI history) and ensures accurate tax collection. CAL. UNEMP. INS. CODE § 606.5 (Deering 1986).

119. This means that in most PEO or staffing arrangements, the PEO will be treated as the employer for unemployment-insurance reporting and contribution obligations—since it issues paychecks and manages payroll—while the client may still be considered a joint or common employer for other purposes (e.g., wage and hour, discrimination, or workplace safety laws) if it exerts sufficient control over the worker's day-to-day duties. CAL. UNEMP. INS. CODE § 606.5(d) (Deering 1986).

120. The PEO certification program was enacted as part of the Tax Increase Prevention Act of 2014, which itself was Division A of a larger law. Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, div. A, 206, 26 U.S.C. 3511, 7705 (2014).

121. *Are PEOs Recognized as Employers at the State and Federal Levels?*, NETPEO, https://www.netpeo.com/faqs/are-peos-recognized-as-employers-at-the-state-and-federal-levels/ (last visited Oct. 1, 2025).

122. *See* I.R.C. § 3511(a)–(c); Treas. Reg. § 31.3511-1 (2016) (providing that certified PEOs, rather than their clients, are treated as the employers responsible for withholding and paying federal employment taxes).

123. Bartkiw, *supra* note 59; Ramsey, *supra* note 66.

124. The term "co-employment" is not explicitly defined under federal tax law. According to the IRS, while PEOs may claim to share control over

D. *Service Intermediation*

In some jurisdictions without dedicated EOR legislation, EOR arrangements are governed by general rules on third-party contracting or outsourcing. This arrangement is apparent in countries such as Brazil, the Philippines, and Colombia, where the EOR industry integrates its services into existing frameworks for domestic service provision.[125] In these legal systems, EOR providers effectively adapt the domestic intermediation rules—despite having originally been designed for local labor arrangements—to facilitate international remote hiring.[126]

In Brazil, the EOR model relies principally on third-party service rules that were initially drafted for domestic triangular arrangements rather than international hiring.[127] Under this framework, a local EOR provider formally employs workers on behalf of a local client, thereby centralizing tasks such as payroll, benefits, and tax compliance.[128] Article 4-A of

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employees as "co-employers," this concept is not recognized under federal tax law. Instead, PEOs are designated to perform acts required of an employer with respect to wages or compensation paid. *See* Treas. Reg. § 31.3504-2 (2014). This point will be discussed further in the next section.

125. *See, e.g.*, Lei No. 6.019 de 3 de janeiro de 1974, art. 4-A (Braz.) (governing third-party service provision and risk of subordination); Dep't of Labor & Emp., Rules Implementing Articles 106 to 109 of the Labor Code, As Amended, Dep't Order No. 174-17, § 3 (Mar. 16, 2017) (Phil.), https://www.dole9portal.com/qms/references/QP-OO2-11/DO%20174-17.pdf (defining and prohibiting "labor-only contracting"); Cód. Sust. Trab. art. 34 (Colom.) (establishing solidary responsibility for client employers using independent contractors).

126. *See, e.g.*, *Legal Implications of Engaging an Employer of Record in Brazil*, Int'l Bar Ass'n (June 20, 2023), https://www.ibanet.org/legal-implications-engaging-eor-brazil (explaining how Brazil's outsourcing framework under Law No. 6.019/1974 applies to EOR services); Valerio De Stefano & Antonio Aloisi, *European Legal Frameworks for "Digital Labour Platforms"*, JRC112243, at 25–27 (2018) (discussing the adaptation of intermediation laws to new cross-border labor models) [https://doi.org/10.2760/78590]; Jemima Owen-Jones, *How to Hire Using an Employer of Record in the Philippines (2025)*, Deel (June 27, 2025), https://www.deel.com/blog/employer-of-record-philippines/ [https://perma.cc/FWV9-ZVNU] (describing practical adaptation of local contracting laws for EOR compliance); Ellie Merryweather, *How to Hire Employees in Colombia Using an Employer of Record in 2025*, Deel (Dec. 19, 2025), https://www.deel.com/blog/employer-of-record-colombia/ [https://perma.cc/2ZX5-FCTB] (same).

127. Lei No. 13.467 de 13 de julho de 2017 (Braz.).

128. *See* Lei No. 13.429 de 31 de março de 2017 (Braz.) (authorizing outsourcing of any of the contracting entity's activities, including its core activity); *Legal Implications of Engaging an Employer of Record in Brazil*, *supra* note 126 (explaining how these provisions are applied to EOR arrangements).

regulation 6.019/74 expressly permits the outsourcing of "any of [the contracting entity's] activities, including its core activity," provided the service provider has sufficient economic capacity.[129]

While Brazilian law does not specifically address cross-border EOR arrangements, they are permissible in practice so long as the local EOR entity—rather than the foreign client—formally employs the worker and complies with domestic labor and tax obligations. In practice, a foreign company lacking a branch or subsidiary in Brazil cannot directly hire Brazilian workers;[130] instead, a local EOR company (e.g., "Deel Brazil") employs the worker under Brazilian law on the client's behalf. Brazil's regulatory framework imposes no fixed time limit on outsourced employment and explicitly stipulates that no direct employment relationship exists between the client and the worker, thus minimizing typical co-employment risks.[131] However, if the client company exercises subordination (i.e., direct control over daily tasks), Brazilian courts may reclassify the relationship and deem the client to be the de facto employer, incurring liability for wages, benefits, and social security obligations.[132]

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129. Lei No. 13.467 de 13 de julho de 2017 (Braz.) (amending Lei No. 6.019, de 1 de janeiro de 1974) ("The provision of services to third parties is defined as the transfer by the contracting party of the execution of any of its activities, including its core activity, to a private legal entity providing services that has the economic capacity to perform the assigned tasks.").

130. This interpretation was confirmed in an interview with in-house Brazilian counsel at Deel (Apr. 2025). Interview with In-House Braz. Couns., Deel (Apr. 2025); *see also* Patrícia Gomes, *EOR Brazil: A Comprehensive Guide on Employer of Record 2025*, Wide Brazil https://widebrazil.com/land/eor-brazil-973/ (confirming the EOR acts as the "legal employer on record" in Brazil, responsible for managing the intricate payroll, INSS (Social Security), FGTS (Severance Fund), and CLT (Consolidation of Labor Laws) compliance for the foreign client).

131. *See* Lei No. 13.467 de 13 de julho de 2017, (amending Decreto-Lei No. 5.452 de 1 de maio de 1943) (Braz.) (establishing the formal separation of the legal employment relationship from the client and allowing outsourcing for all business activities with no fixed term limit); *Legal Implications of Engaging an Employer of Record in Brazil*, *supra* note 126 (noting that the Brazilian outsourcing law allows indefinite arrangements and confirms the absence of a direct employment relationship between the client and the worker).

132. Zilma Aprecida, Juliana Campao Roque & Marcos Lobo de Freitas Levy, *Employment & Labour Laws and Regulations Brazil 2024-2025*, ICLG - Employment & Labour Laws and Regulations (Global Legal Group), https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/brazil (last visited Oct. 3, 2025); Geir Sviggum & Andrea Falcão,

In the Philippines, the EOR model generally falls under domestic contracting or outsourcing regulations[133] of the Department of Labor and Employment.[134] Although these rules were developed for local or domestic triangular arrangements (i.e., principal–contractor–worker),[135] it can be argued that EOR providers can adapt them to support international remote hiring, so long as they register as legitimate service contractors and abide by Philippine labor standards. Department Order 174-17 stipulates requirements such as substantial capitalization and contractual independence, but it does not expressly address cross-border EOR scenarios.[136] Notably, individual independent contractors with unique skills or specialized expertise are excluded from the DO 174 framework; their status is governed instead by general labor jurisprudence, which relies on the fourfold test, independent contractor test, and economic dependency test to distinguish a genuine contractor relationship from one of employment.[137] If the EOR vendor fails to demonstrate sufficient control or capital,[138] and the client exerts direct supervision, the arrangement risks being

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Manpower Outsourcing Problems under Brazilian Labour Law, CHINA BUS. L.J. (Nov. 1, 2011), https://law.asia/manpower-outsourcing-problems-brazilian-labour-law/.

133. Dep't of Labor & Emp., *supra* note 125.

134. *Id.* § 3; Dep't of Labor & Emp., Clarifying the Applicability of Department Order No. 174, Series of 2017, Dep't Circular No. 01-17 (June 13, 2017) (Phil.), https://www.scribd.com/document/435100474/Department-Circular-No-01-17-Clarifying-the-Applicability-of-Department-Order-No-174-Series-of-2017 (clarifying the applicability of Department Order No. 174-17 to legitimate contracting and subcontracting).

135. *See* Dep't of Labor & Emp., *supra* note 125 (defining the relationship as "an arrangement whereby a principal agrees to farm out . . . to a contractor the performance . . . of a specific job or work").

136. *Id.* (defining the trilateral relationship and setting the standards for permissible contracting, including the substantial capital requirement (Five Million Pesos paid-up capital stock or net worth) and the prohibition on the contractor assigning employees to work directly related to the principal's main business).

137. *Id.* § 8 (excluding individuals engaged in an independent business or with unique skills from the coverage of legitimate contracting rules); *Insular Life Assurance Co., Ltd. v. Nat'l Lab. Rel.s Comm'n*, G.R. No. 119930, 350 Phil. Rep. 918 (Mar. 12, 1998) (Phil.) (applying the fourfold test); *Atok Big Wedge Co., Inc. v. Gison*, G.R. No. 169510, 670 Phil. Rep. 615 (Aug. 8, 2011) (recognizing the independent contractor test); *Francisco v. Nat'l Lab. Rel. Comm'n*, G.R. No. 170087, 532 Phil. Rep. 399 (Aug. 31, 2006) (emphasizing economic dependence as a determinant of employment status).

138. Specifically, Department Order No. 174-17 mandates that contractors (i.e., EORs) must have substantial capital—at least PHP 5,000,000.00 (around

deemed labor-only contracting, thus exposing the client to full employer obligations such as wages, benefits, and social security contributions.[139]

Colombia is another noteworthy example. While the concept of an EOR is not explicitly recognized in Colombian law, the Colombian Labor Code provides for analogous arrangements, commonly referred to as *tercerización* (outsourcing) or *intermediación con provisión de personal* (intermediation for the provision of personnel).[140] These regimes are primarily governed by *C.S.T.* arts. 34, 71–80 (Colom.) and *Decreto 4369 de 2006* (Colom.), which regulate the authorization and operation of temporary service agencies and impose liability on intermediaries that supply personnel.[141] In domestic-to-domestic contexts, companies intending to supply personnel must register as temporary service agencies (*empresas de servicios temporales*), which may operate only for limited, short-term needs such as maternity replacements or peak workloads. These engagements are capped at one year and may be renewed once for an additional six months.[142]

However, regarding international services (i.e., where the foreign client has no local presence in Colombia), EOR-type services generally do not fall under these strict temp-agency rules. A local entity (i.e., the EOR) hires workers under Colombian law, and the foreign client is not required to establish or register a

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USD 90,000.00)—or significant investments in tools, equipment, or machinery. *See* Dep't of Labor & Emp., *supra* note 125.

139. *Id.* §§ 3(h), 3(l) (defining "labor-only contracting" and requiring legitimate contractors to have at least ₱5 million in paid-up capital or substantial investment in tools, equipment, or machinery); *San Miguel Corp. v. Semillano*, G.R. No. 164257, 637 Phil. Rep. 115 (July 5, 2010); *Baguio Central University v. Gallente*, G.R. No. 188267 722 Phil. Rep. 494 (Dec. 2, 2013) (holding that when the contractor lacks sufficient capital or independence, the principal is deemed the direct employer).

140. *Código Sustantivo del Trabajo* [C.S.T.] art. 34, 71-80 (Colom.). *See also* Decree 4369, diciembre 4, 2006, Diario Oficial [D.O.] (Colom.) (temporary service providers) and Ministry of Labor regulations on outsourcing/tercerización.

141. *E.g.*, L. 50, art. 71, diciembre 28, 1990, Diario Oficial [D.O.] (Colom.); *Decree* 4369, *supra* note 140; *See also Employment and Working Conditions of Temporary Agency Workers in Colombia*, ILO (2022), https://www.ilo.org/americas (noting that Colombian law treats labor intermediation as lawful only under registered and time-limited conditions).

142. *See* Decree 4369, *supra* note 140 (stipulating that the duration for temporary service contracts is limited to six (6) months, renewable only once for an additional six (6) months, for purposes such as replacing personnel or attending to increases in production).

local entity.[143] Unlike formal domestic temporary service agencies, EOR providers do not appear to be bound by a specific statutory limit on the duration of the employment contract. Still, it can be argued that an EOR constitutes a service provision under Article 35 of the Colombian Labor Code, meaning the EOR entity assumes full labor risk and obligations.[144] However, if a foreign client exerts daily control or integrates EOR workers into its core operations, local courts might apply the "unity of enterprise" rule (*unidad de empresa*),[145] making the client the direct employer and exposing them to joint liability for wages, social security, or severance. A 2016 Supreme Court ruling, *Sentencia SL6228-2016*, reinforced that employees may claim direct employer status if the client's control goes beyond simple contractual oversight, while the Colombian Constitutional Court outlines similar principles on "economic predominance" and co-liability.[146]

Finally, standard labor protections remain mandatory for all workers, regardless of the EOR label.[147] Colombia's consti-

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143. *Ministerio del Trabajo*, Concepto No. 161567 (Oct. 4, 2013) (clarifying that a Colombian company may employ workers on behalf of a foreign client without the latter having a local establishment, provided the employer complies with domestic labor obligations); Christina Marfice, *How to Hire Employees in Colombia Through an Employer of Record (EOR),* Rippling Blog (Jan. 14, 2025), https://www.rippling.com/blog/employer-of-record-guide-colombia (noting that foreign businesses may hire in Colombia through a local EOR without creating a legal entity, so long as the EOR assumes all compliance responsibilities); Interview with Colombian Couns., Deel (Apr. 2025) (confirming that Colombian labor authorities tolerate EOR structures when the local entity is duly registered and satisfies all employment and tax obligations).

144. *Código Sustantivo del Trabajo* [C.S.T.] art. 35 (Colom.) (imposing subsidiary liability on contracting entities when intermediaries fail to fulfill labor obligations); Katie Parrott, *Labor Laws in Colombia [Complete Guide]*, Remofirst (Sep. 9, 2025), https://www.remofirst.com/post/guide-to-labor-laws-in-colombia (noting that intermediaries providing personnel are treated as employers under Colombian law).

145. Corte Constitucional [C.C.] [Constitutional Court], septiembre 13, 2000, Sentencia C-1185/00, (Colom.) (on "unity of enterprise" and "economic predominance," and the notion that if subordination is proven, courts may hold the foreign client liable as a co-employer).

146. Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Lab. mayo 11, 2016, *Sentencia* SL6228-2016 (Colom.) (clarifying the factual inquiry into employer control and day-to-day supervision in claims of co-employment).

147. Constitución Política de Colombia [C.P.] arts. 25, 53 (guaranteeing the right to dignified and fair work and establishing that labor rights are inalienable); *Código Sustantivo del Trabajo* [C.S.T.] arts. 13, 14 (Colom.) (declaring that labor standards are of public order and may not be waived by

tution, labor statutes, and international agreements impose minimal, non-waivable conditions.[148] Employers cannot circumvent these—even with employee consent—or create disadvantages compared to regular in-house hires.

E. *Temporary Agency Work*

In some legal systems, such as those of Bulgaria, Poland, the Czech Republic, Italy, and Germany, an EOR arrangement may fall primarily within the legal framework governing temporary staffing agencies.[149] In Germany, for instance, the Employer of Record is generally regulated by the *Arbeitnehmerüberlassungsgesetz* (AÜG) [Employee Leasing Act],[150] which requires the

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agreement); *Convenio No. 87*, *Convenio No. 98*, and *Convenio No. 158* of the ILO (ratified by Colombia) (establishing core protections on freedom of association, collective bargaining, and termination of employment).

148. Additionally, new developments have emerged: Working Hours Reduction: Colombia is gradually lowering the maximum legal workweek. As of July 15, 2024, it is 46 hours, which will decrease further to 44 hours in mid-2025 and to 42 hours by mid-2026. L. 2101, julio 15, 2021, Diario Oficial [D.O.] (Colom.).

2024 Pension Reform: approved in June 2024, effective June 2025, this reform targets pension coverage expansion, providing a solidarity income for older adults lacking standard pension eligibility, as well as other changes to the public-private pension structure. L. 2381, julio 16, 2024, Diario Oficial [D.O.] (Colom.). With the reforms sanctioned in June 2025, additional changes–such as revised employment contract rules and telework modalities for cross-border work–were introduced. *See* Baker McKenzie, *Labor Reform in Colombia: What Changed and What Actions Should Be Taken* (July 17, 2025), https://insightplus.bakermckenzie.com/bm/employment-compensation/colombia-labor-reform-in-colombia-what-changed-what-actions-should-be-taken.

149. *See, e.g.*, *Arbeitnehmerüberlassungsgesetz* [AÜG] [Temporary Employment Act], Aug. 7, 1972, BGBl. I at 1393, §§ 1–3 (Ger.) (regulating the hiring-out of employees and requiring a federal license); Art. 1, Decreto Legge [Law Decree], n. 196, 24 June 1997 (It.) (establishing the legal framework for temporary work agencies); *Zakon za nasърчavane na zayetostta* [Employment Promotion Act], State Gazette No. 112/2001, art. 27 (Bulg.) (regulating temporary work agencies); *Ustawa z dnia 9 lipca 2003 r. o zatrudnianiu pracowników tymczasowych* [Act on the Employment of Temporary Workers], Dz.U. 2003 Nr 166, poz. 1608 (Pol.); Zákoník práce [Czech Labor Code] *Zákon* č. *262/2006 Sb.* §§ 308–309 (Czech) (governing agency work and assignment conditions); *see also Employer of Record – A country overview of opportunities and limits*, Rödl & Partner (May 13, 2024), https://www.roedl.com/insights/employer-of-record/ (noting that in countries like Bulgaria, the Czech Republic, Germany, and Poland, the EOR model is generally regarded as temporary employment and subject to strict legal restrictions).

150. Although *Arbeitnehmerüberlassung* (employee leasing) under the German AÜG is often compared to *portage salarial* in France or *payrolling* in the Netherlands, it differs in purpose and structure. The German model regulates

intermediary to obtain a specific "temporary employment" license from the Federal Employment Agency (*Bundesagentur für Arbeit*).[151] Under this structure, the EOR entity formally employs individuals who then operate under the client's daily supervision. The Employee Leasing Act also enforces an eighteen-month limit with the same end-user company, followed by a mandatory break of three months and one day before re-leasing that worker.[152] We note that EOR can also be used in Germany (and in jurisdictions such as Spain, the UK, and Belgium) via a separate "onboarding" model[153] in which employees remain fully integrated into the EOR vendor's workforce, akin to how large consulting firms deploy staff on client engagements. We will discuss this alternative approach in the following Section.

The "temporary leasing" model is designed to comply with Germany's principle of territoriality. In practice, the *Arbeitnehmerüberlassungsgesetz* (AÜG) applies when the work is performed in Germany, regardless of the location of the end-user company, and may also apply when the client company is based in

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the commercial supply of labor by licensed agencies, whereas the French and Dutch frameworks primarily govern administrative intermediaries that formalize existing work relationships rather than providing labor as a service.

151. *See Arbeitnehmerüberlassungsgesetz* [AÜG] [Temporary Employment Act], *supra* note 149 (defining employee leasing and mandating licensing by the Federal Employment Agency); *see, e.g.,* Christian Maron, Johannes Simon & Benedikt Groh, *10 pitfalls when using an EOR in Germany*, Taylor Wessing (Feb. 2, 2022) https://www.taylorwessing.com/en/insights-and-events/insights/2022/02/10-pitfalls-when-using-an-eor-in-germany (stating the EOR model "is qualified as employee leasing (*Arbeitnehmerüberlassung*), which is highly regulated and subject to strict formal requirements set out in the German Employee Leasing Act (AÜG)"); *see also* André Zimmermann & Marianna Urban, *Employers of Record (EORs) in Germany—What You Need to Know* Orrick (Nov. 14, 2023) https://www.orrick.com/en/Insights/2023/11/Employers-of-Record-EORs-in-Germany-What-You-Need-to-Know (noting that under German law, the EOR model "qualifies as employee leasing. . . [and] a company that lends employees. . . must obtain an employee-leasing license from the German Labour Agency").

152. *See* Arbeitnehmerüberlassungsgesetz [AÜG] [Temporary Employment Act], *supra* note 149 § 1(1b) (stipulating that a temporary worker may not be assigned to the same user undertaking for more than 18 consecutive months, with previous assignments counting fully if the break between assignments does not exceed three months); s*ee also* Zimmermann & Urban, *supra* note 152 (noting that under the AÜG, an employee may be leased for up to 18 months, after which the employment generally cannot be retained through the same EOR without a waiting period).

153. Internal Deel documentation and interviews with Deel's legal counsel (2024).

Germany even if the employee performs the work abroad.[154] However, in October 2024, the Federal Employment Agency (BA) issued new Technical Instructions expanding its interpretation: the AÜG may now also cover employees who perform their work entirely from outside Germany if the client company is based in Germany.[155] According to the BA, even "location-independent" work conducted abroad establishes a "domestic connection" sufficient to trigger AÜG requirements—namely, the need for a German leasing license and adherence to the eighteen-month maximum duration (plus mandatory break).[156] It has been argued that this broad reading lacks a solid legal foundation and that non-EU/European Economic Area EOR vendors cannot apply for a German license, thereby creating legal uncertainty for cross-border EOR arrangements involving German end users.[157]

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154. Arbeitnehmerüberlassungsgesetz [AÜG] [Act on Temporary Agency Work], Feb. 3, 1995, BGBl. I at 158 (Ger.), as amended by art. 3 of the Act of June 28, 2023 [BGBl.] I(Ger.).

155. Bundesagentur für Arbeit, *Fachliche Weisungen zum Arbeitnehmerüberlassungsgesetz (AÜG)*, Verfügungsn. 2024/10 (Oct. 2024) (Ger.) (clarifying that employee leasing may apply to remote workers abroad if the end-user is established in Germany); Thomas Leister, *Cross-Border Employee Leasing / Employer of Record*, Osborne Clarke (May 2024), https://www.osborneclarke-arbeitsrecht.de/article/cross-border-employee-leasing-employer-of-record/ (discussing the BA's 2024 guidance extending AÜG applicability to cross-border remote work); Maron, Simon & Groh, *supra* note 151 (warning that the AÜG licensing requirement may extend to non-resident EORs engaging German-based clients).

156. *See, e.g.*, Yannick Bähr, *Temporary employment without borders?*, Noerr (Oct. 22, 2024), https://www.noerr.com/en/insights/temporary-employment-without-borders (explaining the Federal Employment Agency's updated Instructions for Applying the Temporary Employment Act (FW AÜG), effective Oct. 15, 2024, which holds that a "virtual connection to Germany" is sufficient to satisfy the territorial principle and require an AÜG permit for remote employees based abroad).

157. Leister, *supra* note 155 (arguing that the BA's interpretation of the AÜG extends beyond the statute's territorial scope and creates uncertainty for non-German EORs); Maron, Simon & Groh, *supra* note 151 (noting that only German or EU-established entities can obtain employee-leasing licenses, excluding non-EEA providers); *Global Employment: Employers of Record in Germany* Lexology (Mar. 2023), https://www.lexology.com/library/detail.aspx?g=5443f744-8f83-4884-bc2a-dcaffb01bdd7 (highlighting the legal risk for foreign EORs that lack an AÜG license); Interview with German Counsel, Deel (Apr. 2025) (confirming that non-EEA EOR vendors face practical barriers in obtaining leasing licenses and that the BA's 2024 guidance has created interpretive uncertainty among practitioners).

When an employee-leasing arrangement is deemed ineffective due to non-compliance, such as the absence of a valid *Arbeitnehmerüberlassungserlaubnis* (employee-leasing license), exceeding the statutory eighteen-month limit, failure to respect mandatory rest periods, or the mischaracterization of a relationship as "service provision" (*Werk- oder Dienstvertrag*) when it in fact constitutes employee leasing, the leasing agency risks nullification of the arrangement.[158] This situation often leads to the leased employee being legally recognized as a direct employee of the end-user company.[159] As a result, the end-user company may face obligations such as back payment of wages, social security contributions, and other employment benefits that should have been provided during the period of employment. Additionally, there could be liabilities for equal treatment violations, wherein the leased employee might claim eligibility for compensation stemming from any disparities in treatment compared to permanent employees.[160]

A crucial aspect of the German EOR model is that while the worker is formally employed by the leasing agency, they typically follow the operational directives of the client company and are

158. *Arbeitnehmerüberlassungsgesetz* [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBl. I at 1393, §§ 1(1), 1b, 9(1)(1), 10(1) (Ger.) (invalidating leasing without a valid permit and providing that workers become direct employees of the end user); Maron, Simon & Groh, *supra* note 151 (explaining that unlicensed leasing, time-limit violations, or disguised service contracts can trigger automatic reclassification of the end user as the legal employer).

159. *See* Arbeitnehmerüberlassungsgesetz [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBl. I at 1393, §§ 9(1)(1) (Ger.) (stating that the contract between the leasing agency and the temporary worker is deemed invalid if the agency does not possess the required permit); *see also id.* § 10(1) (Ger.) (providing that in cases of an invalid leasing contract, an employment relationship between the worker and the end-user company is deemed to have been established at the time the worker began the assignment); Zimmermann & Urban, *supra* note 151 (noting that under § 10 AÜG, unlicensed or noncompliant leasing automatically reclassifies the worker as an employee of the client company).

160. *See* Arbeitnehmerüberlassungsgesetz [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBl. I (Ger.) (providing that in cases of illegal leasing, an employment relationship is deemed established between the worker and the end-user company); *see also Consequences of Illegal Supply and Use of Workers*, Zoll (May 2017) zoll.de (explaining that the end-user company is subject to retroactive liability for back payment of wages and social security contributions); *see generally* Zimmerman & Urban, *supra* note 151 (noting that the end-user may face liability for equal treatment violations and significant fines if the AÜG's "equal pay" principle was ignored).

integrated into the client's workforce.[161] The leasing agency handles administrative duties such as payroll and social security contributions, and the leased employee is entitled to the same working conditions as permanent employees of the client company. This arrangement provides a high degree of flexibility and can facilitate a leased employee's transition to permanent employment with the client, assuming the equal-treatment principles[162] are respected and the employer's administrative obligations are fulfilled.

It is important to note that, in the German EOR model, the leasing agency retains the employer's "operational risk"—that is, the agency must continue paying agreed-upon wages even during periods of non-assignment if no client is available.[163] Under Section 11 Paragraph 4 AÜG and Section 615 BGB,1 the leasing agency is obliged to pay remuneration despite an absence of active placement; the employee remains employed by the leasing agency unless validly terminated.[164] Consequently,

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161. *Arbeitnehmerüberlassungsgesetz* [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBL. I at 1393, §§ 1(1), 3(1) (Ger.) (defining employee leasing as the assignment of workers to perform work under the direction of the hirer); Zimmerman & Urban, *supra* note 151 (explaining that under the AÜG, leased employees are formally employed by the leasing agency but operationally integrated into the user company); Maron, Simon & Groh, *supra* note 151 (noting that leased employees typically work under the supervision and direction of the end-user company); Interview with German Counsel, Deel (Apr. 2025) (confirming that, in practice, leased employees under EOR arrangements are functionally integrated into the client's operations despite being formally employed by the EOR).

162. *Equal treatment* in this context means that the leased employee must receive the same core working conditions—including wages, benefits, and key terms of employment—as other comparable employees who work directly for the end-user client.

163. *See* Arbeitnehmerüberlassungsgesetz [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBL. I (Ger.) (implying that the leasing agency must assume the customary employer obligations or employer risk); *Bürgerliches Gesetzbuch* [BGB] [Civil Code], § 615 (Ger.), https://www.gesetze-im-internet.de/bgb/ (providing that an employer remains obligated to pay wages if an employee is ready and willing to work but cannot be assigned work); *see also* Mauricio Foeth, *Understanding Temporary Employment and PEOs in Germany*, FISHER PHILLIPS (Nov. 13, 2024) https://www.fisherphillips.com/en/news-insights/understanding-temporary-employment-and-professional-employer-organizations-peos-in-germany.html (explaining that leased workers receive continued payment of wages during holidays, illness, and non-working periods, as the AÜG provides them the same rights as permanent employees).

164. *See* Arbeitnehmerüberlassungsgesetz [AÜG] [Employee Leasing Act], Aug. 7, 1972, BGBL. I (Ger.) (stipulating that the right to claim remuneration for default in acceptance is determined by BGB); Bürgerliches Gesetzbuch

although the leasing agency can terminate its services contract with the end-user, the worker does not automatically lose employment status, but may be reassigned to another client or experience a temporary "non-assignment" period.[165]

IV.
From Control to Accountability: Towards the "Accountable Employer"

Governments have taken divergent approaches to triangular labor arrangements that were never designed for hiring across borders. As a result, EOR providers and their clients often operate in a regulatory gray zone where local rules only partially fit modern hiring patterns. A form of constructive ambiguity has emerged. Existing legal frameworks allow parties to divide or delegate employer functions across jurisdictions without a clear allocation of liability.[166] The ambiguity is *constructive* in that it allows global hiring to proceed without the need for bespoke regulation. Yet it is also *risky*: enforcement—not merely classification—often fails when the firm directing the work is located abroad and the nominal employer lacks the capacity to meet its obligations. These models also unsettle the classic idea of the employer as a single entity that both directs the work and bears the legal burden. To clarify this evolution, this Section draws on Jeremias Prassl's *functional* theory of the employer, which maps employment relations according to the actual performance of employer functions rather than formal status. Using that framework descriptively (*who does what*), the

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[BGB] [Civil Code] (Ger.) https://www.gesetze-im-internet.de/bgb/ (providing that the employer retains the risk of remuneration and must pay wages if the employee is ready to work but cannot be assigned); *see also* Zimmerman & Urban, *supra* note 151 (explaining that EORs bear the economic and operational risk of non-assignment).

165. Arbeitnehmerüberlassungsgesetz [AÜG] [Temporary Employment Act] Feb. 3, 1995, BGBl. I at 158, §11(4), as amended by art. 3 of the Act of June 28, 2023, BGBl. I No. 172 (Ger.), https://www.gesetze-im-internet.de/a_g/__11.html; Bürgerliches Gesetzbuch [BGB] [Civil Code] § 615 (Ger.), https://www.gesetze-im-internet.de/bgb/__615.html.

166. Judy Fudge, *The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory*, 59 J. Indus. Rel. 374, 374–92 (2017), [https://doi.org/10.1177/0022185617693877]. (analyzing how global production and subcontracting structures diffuse employer responsibility and expose gaps in labor-law accountability).

analysis then introduces an *accountability* lens to assess responsibility normatively (*who must answer and pay*).[167]

Our claim is simple: in cross-border triangular hiring, the entity that controls the work is often outside the forum and beyond effective enforcement. A rule anchored in accountability—the party with local legal reach and the financial capacity to meet statutory duties—yields clearer remedies for workers and simpler administration for states. This is the accountable employer, and the EOR model channels that accountability. The law should recognize and regulate it accordingly.

A. *Tensions with the "Functional Employer" Approach*

A defining feature of the EOR model is that it aims to provide a single, accountable legal employer, thereby enabling the client company to meet labor-law requirements across multiple jurisdictions. Depending on the local legal environment, EOR providers may adapt elements from other frameworks (e.g., temporary staffing licenses or co-employment rules) to ensure compliance, as outlined in Section III. Still, the core objective remains the same: to centralize employer responsibilities (such as payroll, social security contributions, and statutory protections) under one entity recognized by local authorities as the worker's legal employer.

For clarity, this paper uses the term "real employer"—to describe the entity that exercises genuine managerial authority and bears substantial economic risk—a notion aligned with Prassl's *functional* conception of the employer. The expression originates in early debates over agency and triangular employment relationships, most prominently articulated by Wynn and Leighton in their article *"Will the Real Employer Please Stand Up?"* (2006).[168] They used the phrase to capture the difficulty of identifying which entity—whether the agency or the client company—should be regarded as the genuine employer of

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167. *See* Jeremias Prassl, The Concept of the Employer, 22–30 (2015) (developing the "functional account" to analyze workplaces where the entity that exercises operational control is legally separate from the entity that maintains the formal contract and bears ultimate liability).

168. *See* Michael Wynn & Patricia Leighton, *Will the Real Employer Please Stand Up? Agencies, Client Companies and the Employment Status of the Temporary Agency Worker*, 35 Indus. L.J. 301, 303 (2006); *cf.* Prassl, *supra* note 167, at 42–47.

a temporary agency worker. In their view, formal contractual designations often obscure the substantive reality of control, supervision, and economic dependence. The *real employer*, therefore, is the party that effectively directs the work and bears the principal economic risk, regardless of how the legal documentation allocates responsibilities.

However, while an EOR arrangement purports to consolidate employer obligations under a single entity, it does not always align with the common notion of the *real employer*. Courts in many jurisdictions look beyond contractual form to determine who actually directs the work and derives its benefits.[169] Accordingly, if the EOR acts primarily as a nominal or administrative employer—without meaningful day-to-day oversight or risk-bearing—responsibility for the workforce may, in practice, remain with the client company.

More importantly, while EOR arrangements are designed to consolidate legal responsibilities in a single entity, they can also be misused to obscure or diffuse accountability. In some cases, multinational companies may contract with undercapitalized or purely nominal EORs that serve as formal shields—entities lacking the financial or organizational capacity to manage employment risks or uphold labor rights. For instance, a Milan court found that Loro Piana subcontracted through front firms that had "no actual manufacturing capacity".[170] These "figurehead employers" provide legal cover without substantive accountability, exposing workers to specific risks such as nonpayment of wages or severance, lack of social benefits,

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169. *See, e.g.*, Prassl, *supra* note 167, at 22–30 (developing the "functional account" to analyze the split between the legal contract and operational control); Joon Chong, *Beyond the contract: HR Focus and the commercial reality test*, Webber Wentzel (Oct. 2, 2025) https://www.webberwentzel.com/News/Pages/beyond-the-contract-hr-focus-and-the-commercial-reality-test.aspx (demonstrating how courts will pierce through contractual labels to examine the commercial reality of employment relationships); *see generally Cracking the Classification Conundrum*, Financial Executives International (Aug. 6, 2015) https://daily.financialexecutives.org/cracking-the-classification-conundrum/ (noting that "laws most everywhere elevate substance over form" to scrutinize the parties' actual working relationship).

170. *See* Emilio Parodi, *Classic Cashmere Purveyor Loro Piana Placed Under Court Administration in Italy Over Labour Exploitation*, Reuters (July 14, 2025), https://www.reuters.com/business/retail-consumer/lvmhs-loro-piana-put-under-court-administration-italy-over-labour-exploitation-2025-07-14/; *see also* Emilio Parodi et al., *How Migrant Workers Suffered to Craft the "Made in Italy" Luxury Label*, Reuters (Sept. 18, 2024), https://www.reuters.com/world/europe/how-migrant-workers-suffered-craft-made-italy-luxury-label-2024-09-18/.

unenforceable judgments or awards, insolvency-driven losses, and jurisdictional or structural evasion of liability. In practice, workers may win tribunal awards but never collect them, face barriers to claiming social protections, or find their legal claims dead against shell entities.[171] This risk becomes especially acute in cross-border settings where enforcement is weak and the client company lacks a meaningful presence in the worker's jurisdiction.

This pattern is not hypothetical. Similar abuses have been well documented in adjacent contexts such as platform work and outsourced labor chains. As Cynthia Estlund has noted, triangular employment structures often enable lead firms to shift costs and liabilities onto smaller intermediaries, who operate "under the radar" and are often exempt from direct enforcement or regulation.[172] Valerio De Stefano[173] and Jeremias Prassl[174] have likewise shown that platform-based work arrangements frequently involve intermediary entities that formally act as employers, yet lack the substance to fulfill that role in practice. Seth Harris, analyzing the United States gig economy, has warned that current legal frameworks fail to capture the reality of these fragmented employment relationships—allowing platforms and clients alike to avoid employer status despite exercising significant control.[175] These findings underscore the relevance of functional tests that look beyond contractual formalism and focus instead on which actors truly bear and exercise the powers of the employer.

For instance, according to Jeremias Prassl, labor law generally bundles five distinct employer functions: initiating and

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171. Joanna Stankiewicz, *Employee outsourcing / EOR - is it legal? What are the risks?*, Dudkowiak & Putyra (Apr. 16, 2024), https://www.dudkowiak.com/blog/employee-outsourcing-eor-is-it-legal-what-are-the-risks/ (explaining that when a "formal employer" defaults on payments, the risk of uncollected wages and legal fees is transferred to the worker because the shell entity is difficult to sue or trace); Andrew G. Simpson, *Use of Shell Companies in Construction to Evade Taxes, Workers' Comp on the Rise*, Claims Journal (Aug. 24, 2023), https://www.claimsjournal.com/news/national/2023/08/24/318723.htm.

172. Cynthia Estlund, *Who Mops the Floors at the Fortune 500?: Corporate Self-Regulation and the Low-Wage Workplace*, 12 Lewis & Clark L. Rev. 671, 687–88 (2008); Timothy P. Glynn, *Applyment*, 61 Hous. L. Rev. 1, 4–5 (2023).

173. De Stefano & Aloisi, *supra* note 126.

174. European Parliament Directorate-General for Internal Policies on Civil Liability Regime for Artificial Intelligence, at 8, PE 652.721 (2020).

175. Seth D. Harris, *Workers, Protections, and Benefits in the U.S. Gig Economy*, 40 Glob. L. Rev. 7, 9 (2018).

terminating employment; administering wages and benefits; supervising and disciplining workers; absorbing certain business and social risks; and representing the enterprise externally.[176] From a "substance over form" perspective, the entity that coherently exercises these overlapping responsibilities is the true employer. However, EOR models can dissociate certain tasks—such as payroll, legal compliance, hiring, and termination—from the user-firm's managerial control and strategic decision-making.[177] In this scenario, Prassl's "functional" test might reveal a potential mismatch between formal employer status and the actual exercise of employer authority.[178]

Judy Fudge's work on fragmenting work questions these bilateral employer-employee conceptions in an era of multi-agency or triangular setups.[179] Fudge argues that once key functions are diffused—be it via staffing agencies, subcontractors, or an EOR provider, for instance—it may become difficult to pinpoint where accountability truly lies.[180] She therefore warns against clinging too tightly to a model in which a single "master" is easily identifiable, because workers can slip through the cracks when the legally recognized employer (e.g., the EOR) is not in command of everyday supervision.[181]

In many respects, the evolving "functional" or "autonomous" EU notion of "employer" appears to echo Fudge's concern about fragmented accountability: multiple entities increasingly share or delegate core employer functions.[182] In *AFMB*, the Court of Justice of the EU underscored that determining the "true employer" can hinge on factual indicators of hierarchical control and economic risk, rather than mere contractual

176. Prassl, *supra* note 167, at 32–33.

177. For a functional map of how EORs and clients split these functions, see Box 1.

178. In decoupling accountability from the party actually overseeing the work, EOR arrangements may fail to align with the functional notion of employer. If control and economic risk-taking do not lie with the nominal employer, as is often the case with EOR setups, labor law frameworks may struggle to classify the arrangement as an employment relationship; Prassl, *supra* note 167.

179. *See* Fudge, *supra* note 166, at 376.

180. *Id.*; *See* Judy Fudge, *Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation,* 44 Osgoode Hall L.J. 609, 616–17 (2006).

181. *See* Fudge, *supra* note 180, at 624–39.

182. Matthijs van Schadewijk, *The Notion of 'Employer': Towards a Uniform European Concept?*, 12 Eur. Lab. L.J. 3, 23 (2021).

labels—particularly if EU-level rules require[183] clarity as to which single employer is liable for social security obligations.[184] Yet, under an EOR model in which the provider may handle payroll and formal registration while the client company exercises day-to-day managerial authority, that arrangement can diverge from the EU's focus on substantive, rather than purely formal, employer functions. Similarly, recent directives on platform work and temporary agency arrangements (e.g., the Platform Workers Directive)[185] highlight that when labor is funneled through intermediaries, EU law often looks beyond contract terms to discern which party truly "directs" and integrates workers into its business.[186]

Finally, many jurisdictions[187] have recognized scenarios in which multiple entities may share or coordinate employer responsibilities. For instance, in the United States and Canada, "joint-employment" (or "common employer") doctrines extend beyond the single "true employer" paradigm.[188] If an entity—be it the user firm or a PEO—exerts substantial control over the essential terms of a worker's job, it may incur legal obligations as an employer. The U.S. National Labor Relations Board's 2023 rule, for example, deems an entity a joint employer if it

183. Commission Regulation 883/2004 of the European Parliament and of the Council of 29 Apr. 2004 on the Coordination of Social Security Systems, 2004 O.J. (L 166) 1.

184. Case C-610/18, AFMB Ltd. and Others v. Raad van bestuur van de Sociale verzekeringsbank, ECLI:EU:C:2019:1010, ¶ 54 (Nov. 26, 2019).

185. Council Directive 2024/2831, 2024 O.J. (L 2831) 1 (EU).

186. *See* Silvia Borelli, Friedrich-Ebert-Stiftung, Labour Intermediaries and Labour Migration in the EU—A Framing Puzzle to Rule the Market (and Avoid the Market of Rules) 2 (2024); *see also Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work*, COM (2021) 762 final (Dec. 9, 2021).

187. While the term "joint employer" may not be explicitly used across all EU member states, the European Union emphasizes the "substantive employer" principle. This approach focuses on identifying the entity with genuine managerial authority and economic control over the worker.

188. *See, e.g.*, Jeffrey M. Hirsch, *Joint Employment in the United States*, Italian Lab. L. e-Journal 55, 55–56 (2020) (explaining that the doctrine arose because the simple, single-employer model has "never been the only model" and is necessary to address "fissured" work structures); *see also* Downtown Eatery Ltd. v. Ontario (2001), 201 D.L.R. 4th 353 (Can. Ct. App. Ont.) (upholding the common employer doctrine in Canada, where two entities can be treated as a single employer for labor relations purposes); *see generally* Browning-Ferris Indus., Inc., 362 NLRB No. 186 (2015) (U.S. NLRB decision expanding the joint-employer doctrine to cover entities, such as lessors of employees, who were previously considered separate employers).

"possesses the authority to control essential terms and conditions of employment," whether that control is direct or indirect.[189] Meanwhile, Ontario labor law allows for the designation of multiple businesses as joint or related employers when they sufficiently coordinate fundamental employer functions.[190]

Against this backdrop, PEO arrangements in North America, which closely resemble certain EOR services, have prompted courts to examine which party truly wields employer authority. Although industry associations (e.g., the National Association of Professional Employer Organizations)[191] explain a PEO's value proposition using a "co-employment" framework, co-employment is not itself a formal legal category. Because courts do not recognize co-employment, they necessarily inquire into who the "real employer" is.[192] In doing so, courts apply fact-intensive tests (the "common law control test" in the United States, or the "common employer doctrine" in Canada) to gauge how much managerial power the PEO actually exercises. And the following cases show that results can go both ways.[193]

Court decisions such as *Libardi v. Pavimento*[194] illustrate these complexities surrounding employer status in PEO arrangements. In this case, the appellate court evaluated whether the PEO could be considered an employer under the Americans with Disabilities Act.[195] The court emphasized the level of control exercised by the PEO in managing HR functions—including compliance and hiring—as a key determinant of employer status. The ruling reversed a lower court's decision that the PEO was not an employer, highlighting that substantial control over employment terms, rather than payroll processing alone, can establish a PEO as a joint employer under labor law.

Conversely, courts have found payroll companies and PEOs not to be employers when their roles were primarily

189. Standard for Determining Joint-Employer Status, *supra* note 95.

190. Ontario Labour Relations Act, S.O. 1995, c. 1, sch A, s. 1(4); Employment Standards Act, S.O. 2000, c. 41, s. 4.

191. *Home*, Nat'l Ass'n of Pro. Emp. Orgs. https://napeo.org/ (last visited Apr. 6, 2025).

192. *PEO Industry Overview*, Nat'l Ass'n of Pro. Emp. Orgs. (Oct. 3, 2025), https://napeo.org/intro-to-peos/industry-overview/.

193. *Id.*

194. *See* Libardi v. Pavimento, Inc., 362 So.3d 296, 298 (Fla. Dist. Ct. App. 2023).

195. The Americans with Disabilities Act, 42 U.S.C. § 12111(5)(A) (1990).

administrative or clerical without substantial managerial authority.[196] For instance, in *Serino v. Payday*, a federal district court dismissed an action for unpaid wages by workers on television commercial productions, concluding that "no reasonable trier of fact would find that Payday . . . was the plaintiffs' 'employer.'"[197] Similarly, in *Dianda v. PDEI, Inc.*, another federal district court granted a payroll company's motion for summary judgment, ruling that it lacked sufficient control to constitute an employer.[198]

At the state level, courts have similarly emphasized control in determining employer status. In the California decision *Futrell v. Payday*, a class action suit for unpaid wages resulted in the court concluding that although Payday was formally listed as the PEO, the plaintiffs' actual employer was Reactor Films.[199] The court relied on multiple tests—including the common law test and the "economic reality" test under the Fair Labor Standards Act—and found that the client company, rather than the PEO, controlled employment conditions and was therefore the true employer. In *Rodriguez v. Fairway Staffing*, the Workers' Compensation Tribunal found that the PEO was not the employer for workers' compensation purposes, as it did not control the worker's job or duties, despite handling administrative tasks and insurance coverage.[200]

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196. Along these lines, the IRS does not necessarily follow the designation that the PEO and the client-employer adopt in their agreement, but instead uses the common law "control test" to identify the common-law employer responsible for withholding federal employment taxes. Goodner & Ramsey, *supra* note 35, at 577–80. In the IRS's view, the client company bears sole responsibility for paying taxes on behalf of its workers as their common-law employer. However, as of July 2015, the IRS established a program to certify PEOs. This certification process places responsibility for employment taxes squarely on the shoulders of the certified PEO, while allowing the customer to remain the employer for purposes of claiming certain employment-related tax credits.

197. Serino v. Payday Cal., Inc., No. CV 07-05029-VBF(FFMx), 2008 WL 11411420, at *2 (C.D. Cal. June 19, 2008).

198. Dianda v. PDEI, Inc., 377 F. App'x 676, 677–678 (9th Cir. 2010).

199. Futrell v. Payday Cal., Inc., 190 Cal. App. 4th 1419, 1435 (Cal. Ct. App. 2010).

200. Rodriguez v. Fairway Staffing, Case Nos. ADJ 10651475 & ADJ 10762532 (Cal. Workers' Comp. App. Bd. Feb. 27, 2019).

Joint-employer doctrines echo the functional view of Hugh Collins[201] and Judy Fudge[202] by emphasizing real-world indicators of authority rather than contractual labels. Importantly, these developments do not render EOR or PEO structures unlawful; instead, they underscore the importance of genuine managerial and economic dependence, though we argue that this perspective may need to evolve to properly fit the cross-border nature of EOR arrangements.

Box 1: EOR through Prassl's five functions[203]

Employer Function (Prassl)	Client Company	EOR Provider
1. Hire / Fire	Initiates selection and termination decisions	Executes employment contract and local formalities
2. Receives Labor and Its Fruits	Directs work and benefits from output	None (acts as nominal employer)
3. Provides Pay, Benefits, Compliance	Funds payroll	Runs payroll, remits taxes, social insurance, maintains records
4. Direction and Discipline (Internal Management)	Manages day-to-day work	May handle HR documentation only
5. External Representation and Risk	Bears business and operational risk	Acts as legal employer for filings, statutory remittances

As shown in Box 1, the EOR model intentionally divides employer functions between the client and the provider. In cross-border contexts, however, that division tends to collapse at enforcement: effective control rests with a foreign firm that has no local standing, while the nominal employer may

201. Hugh Collins, *Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws*, 10 Oxford J. Legal Stud. 353, 356–57 (1990).

202. Fudge, *supra* note 166, at 387.

203. *See* Prassl, *supra* note 167, at 15–80, 155–194.

be unable to discharge statutory duties. Workers are thus left without an effective remedy. A rule that designates an accountable employer—a domestic entity with legal reach and financial capacity—closes this gap.

B. *Industry Reaction: The "Consulting" Turn*

Rather than turning EORs into de facto subcontractors, the better response to the limits of functional/control tests is to clarify who is accountable. Deepening day-to-day operational control by EORs can satisfy some control-centric frameworks, but it undercuts the EOR's core value and creates collateral frictions in tax and immigration. What regulators need is a clean allocation of statutory duties, not a role swap.

That said, because many legal systems have not yet delineated accountability, some providers have shifted toward a more managerial EOR model—taking on functions like onboarding, performance management, HR policy implementation, and systems administration to meet control-centric pressures.[204] The result is an EOR that manages aspects of work rather than merely administering compliance—a development emblematic of the model's "consulting turn," wherein EORs adopt quasi-managerial and advisory functions to satisfy control-centric regulatory expectations. Industry practice already reflects this shift. For example, Deel's "EOR Consultants" program offers an enhanced EOR model in select countries with stricter regulatory requirements, and client check-ins are required at defined intervals after onboarding (every three, six, or twelve months, depending on the country).[205]

Why the turn? Two incentives dominate. First, joint-employer and "real employer" doctrines reward entities that appear to control essential terms and conditions—not merely

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204. This trend was also confirmed in an interview with Deel's Head of Legal, who noted that clients increasingly expect EORs to handle aspects of local HR oversight to "demonstrate shared control" for compliance purposes. *See also PEO Responsibilities and Client Responsibilities*, DEEL, https://help.letsdeel.com/hc/en-gb/articles/26543769986833-PEO-Responsibilities-and-Client-Responsibilities (last visited Feb. 27, 2025).

205. *About EOR Consultants (In Select Countries)*, DEEL https://help.letsdeel.com/hc/en-gb/articles/22108021674769 (last visited Feb. 14, 2024); *When Do I Have to Complete the Deel Check-In Survey?*, DEEL https://help.letsdeel.com/hc/en-gb/articles/22326002233617 (last visited Feb. 13, 2025).

process pay.[206] The NLRB's 2023 joint-employer rule keyed on an entity's authority to control essential terms, even if indirect or unexercised (though the rule's fate has since been unstable).[207] After a federal district court vacated the rule, the Board noticed an appeal but then voluntarily dismissed it in July 2024.[208] Second, regulatory and judicial doctrine already treats operational indicia—such as supervision, scheduling control, reserved authority, work assignment oversight—as probative of employer status, so EOR providers have an incentive to "bulk up" those indicia (e.g., onboarding, performance systems, supervision) to lower reclassification risk.[209] But this consulting turn—where EORs assume quasi-managerial and advisory roles to demonstrate "control"—is a band-aid, not a

206. *See* Standard for Determining Joint-Employer Status, *supra* note 95; Jeffrey L. Harvey et al., *NLRB's Expanded Joint-Employer Rule Could Impact Third-Party Staffing and Outsourcing*, Hunton Andrews Kurth LLP (Oct. 30, 2023) https://www.hunton.com/insights/legal/nlrbs-expanded-joint-employer-rule-could-impact-third-party-staffing-and-outsourcing.

207. Standard for Determining Joint-Employer Status, *supra* note 95.

208. Chamber of Com. of the U. S. v. NLRB, 723 F. Supp. 3d 498, 518 (E.D. Tex. Mar. 8, 2024) (order vacating 2023 joint-employer rule), *appeal dismissed*, No. 24-40331, 1 (5th Cir. July 19, 2024); *see* also Daniel Wiessner, *Judge Blocks U.S. Labor Board Rule on Contract and Franchise Workers*, Reuters (Mar. 11, 2024, at 12:01 EDT), https://www.reuters.com/legal/us-judge-blocks-us-labor-boards-rule-involving-contract-franchise-workers-2024-03-09/; Nate Raymond & Daniel Wiessner, *U.S. Labor Board Drops Bid to Revive Rule on Contract, Franchise Workers*, Reuters (July 19, 2024, at 18:28 EDT), https://www.reuters.com/world/us/us-labor-board-drops-bid-revive-rule-contract-franchise-workers-2024-07-19/.

209. Wynn & Leighton, *supra* note 168, at 303 (discussing how control and integration are the core judicial tests used to pierce nominal arrangements); James Kelly, *Do You Lose Control of Your Employees with an EOR?*, Boundless: Glob. Emp. Blog (July 25, 2025), https://boundlesshq.com/blog/do-you-lose-control-of-your-employees-with-an-eor/ (illustrating the practice of EORs handling formal tasks like performance documentation and termination process to ensure the arrangement's compliance); *see also* Steven M. Applebaum & Joseph R. Holmes, Saul Ewing LLP, Update on Joint Employer Tests (Oct. 31, 2024), https://www.saul.com/sites/default/files/documents/2024-10/2024%20L%26E%20Executive%20Series%20-%20Session%202%20Slides%20-%20Update%20on%20Joint%20Employer%20Tests%20%2810.29.24%29.pdf (noting control or oversight is a key lever for joint-employer liability); *see* Paul Mengel, *4th Circuit Sets Forth Test for Determining What Constitutes "Joint Employer" for FLSA Purposes*, Piliero Mazza (Apr. 13, 2017), https://www.pilieromazza.com/4th-circuit-sets-forth-test-for-determining-what-constitutes-joint-employer-for-flsa-purposes/ (citing Bonnette v. Cal. Health and Welfare Agency, 704 F.2d 1465 (9th Cir. 1983)); Travis R. Hollifeld, *Integrated Employer/Enterprise Doctrine in Labor & Employment Cases*, Fed. Law., Dec. 2017, at 56 (discussing control and centralization factors).

solution. It papers over three structural problems. First, it collapses the distinction between an intermediary and a contractor. The classic value of an EOR is to serve as a domestic, solvent channel for statutory duties (wage payment, social insurance, tax withholding, notice, recordkeeping), while leaving operational direction with the end user. When EORs migrate toward ongoing supervision, performance management, equipment control, and access to internal systems, the EOR begins to look like a services firm delivering work product, not a statutory conduit administering employment law obligations. That shift invites courts and regulators to re-characterize the arrangement under doctrines developed for subcontracting and outsourcing rather than for triangular employment. It also muddies remedies. If the EOR is now the de facto manager of the work, is the end user still the "real employer" for discrimination, health and safety, and retaliation claims—or has the EOR assumed those risks as a contractor? The consulting turn therefore solves a control-test optics problem while creating a new line-drawing problem about who is the operative enterprise in fact.[210]

Second, it does not eliminate permanent establishment exposure. Under the OECD Model Convention, a non-resident enterprise has a permanent establishment where it maintains a fixed place of business or operates through a dependent agent who habitually concludes contracts or plays the principal role in their conclusion.[211] Many treaties influenced by the UN Model Convention also recognize a service's permanent establishment when services are performed in the source state for a threshold duration.[212] Elevating the EOR's role from administrative to managerial increases the risk that tax authorities will view it as a fixed place of business or a dependent agent—both triggers for permanent establishment under the OECD and UN Models. If EOR personnel (performing client functions) are embedded in a client's revenue-generating activities—such as participating in sales meetings, attending client calls, negotiating or finalizing contract terms, or otherwise playing the principal role in

210. Compare joint-employer/common-employer doctrine with subcontracting/outsourcing case law in your chosen jurisdictions.

211. OECD, *supra* note 12, art. 5 & comment. on art. 5 (agency PE; principal-role language post-BEPS).

212. U.N. Dep't of Int'l Econ. & Soc. Affairs, U.N. Model Double Taxation Convention between Developed and Developing Countries, art. 5(3)(b) (2017), https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf (services PE).

deal closures—tax authorities may attribute an agency permanent establishment to the client, even when payroll formally sits with the EOR. Further, if EOR staff provide ongoing services integral to the client's business for months in-country, they can meet a services permanent establishment threshold even without a fixed office. In short, the more "managerial" the EOR, the easier it becomes for revenue authorities to treat the client as having a taxable presence through the EOR's activities. [213]

Third, labor or social-insurance regimes may accept an EOR as the employer for resident workers, but work-authorization systems typically tie lawful presence to the entity that actually employs for its own business in the territory. Singapore is illustrative. The Ministry of Manpower recognizes a contract of service between an EOR and a local worker for Employment Act coverage and CPF obligations, yet will not allow an EOR to obtain a work pass so that a foreign worker can reside in Singapore while effectively serving an overseas client; work passes are for foreigners employed by Singapore-based companies to do work for those companies.[214] Other systems take similar approaches in practice: sponsorship requires a local entity that controls and benefits from the work, not an intermediary that fronts payroll for a foreign beneficiary.[215] The consulting turn cannot square this circle; it may strengthen the EOR's labor-law optics while worsening the immigration fit.

The managerial EOR can soften some functional findings in close cases, but it does not cure the cross-border enforcement gap. It blurs legal categories, heightens tax risk, and runs into visa-sponsorship limits, all while diluting the EOR's comparative

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213. OECD, *supra* note 12, art. 5 & comment. on art. 5.

214. *Key Facts on Employment Pass*, Singapore Ministry of Manpower, https://www.mom.gov.sg/passes-and-permits/employment-pass/key-facts (last visted Oct. 2, 2025) (stating that EP/Work Pass policy stating that passes are issued to foreigners employed by Singapore-based entities to perform work for those entities (and not to serve overseas clients via a local proxy)).

215. *See, e.g.*, Christopher V. Anderson, *Singapore Employers of Record Can No Longer Sponsor Employment Passes for Foreign Entities/Workers*, Jackson Lewis (Aug. 5, 2024), https://www.jacksonlewis.com/insights/singapore-employers-record-can-no-longer-sponsor-employment-passes-foreign-entities-workers; *see also* Paul Weingarten & Nikolaus Letsche-Fried, *Singapore Bans Employer of Record Visa Sponsorship*, Rödl & Partner: Newsflash ASEAN, https://www.roedl.com/insights/newsflash-asean/2024_04/singapore-employer-of-record-visa-sponsorship-banned (last visited Apr. 2024); Jemima Owen-Jones, *Employer of Record Singapore: Retain Foreign Talent Under MOM Regulation*, Deel (Mar. 20, 2025), https://www.deel.com/blog/employer-of-record-singapore-retain-foreign-talent-under-mom-regulation.

advantage as a compliance and accountability channel. We argue that the durable fix is not more "control" by EORs but an explicit rule designating an accountable employer—the entity with local legal reach and financial capacity to meet the statutory stack—paired with targeted joint liability for harms tied to the end user's own direction and premises. For clarity, this paper uses the term *accountable employer* to mean the entity that possesses both legal presence and financial capacity in the worker's jurisdiction to discharge employment, tax, and social security obligations.

To give effect to the *accountable employer* principle in statutory form, the following short-form clause could be introduced at the legislative level.

Box 2: Model Clause 1: Accountable Employer (short form)
Accountable Employer.

For purposes of wage payment, hours, leave, social insurance, tax withholding, notice, and recordkeeping, "employer" means a domestic intermediary that: (1) is party to a contract of employment with the worker; (2) processes payroll and remits all statutory contributions; and (3) maintains financial security as required by regulation [through a callable bond or minimum capital]. The end user is jointly liable for violations arising from its instructions or work premises, and secondarily liable if the intermediary is insolvent, unlicensed, or a sham. Any term purporting to waive or limit this allocation is void.

C. *The Accountability Employer: Beyond Control and Dependency*

The functional approach to employer classification, which emphasizes managerial control and economic dependence, addresses significant issues in traditional employment law. However, it struggles to adapt to the complexities inherent in global work arrangements, particularly those involving cross-border labor relationships. As discussed above, the consulting model within the EOR framework aligns with the "true employer" test but proves suboptimal for international employment. Similarly, co-employment models, such as PEOs, offer a balanced and secure approach to managing employer responsibilities in domestic environments. By sharing obligations such as payroll, benefits, and compliance, PEOs distribute employer liabilities

between the client company and the PEO.[216] This alignment with the "true employer" test strengthens worker protections and mitigates risks associated with non-compliance. However, implementing PEOs in international contexts presents significant challenges that undermine their practicality and effectiveness.

Box 3: RAF: the accountability test.

Designate as the employer for statutory purposes the entity that satisfies **R-A-F**:

- **R: Reach.** Has a local legal presence and is amenable to service and agency or court orders.
- **A: Assets.** Maintains minimum financial capacity (or a callable bond) sufficient to satisfy wages, social insurance and tax remittances, penalties, and awards.
- **F: Functions (Compliance-Facing).** Runs payroll, remits contributions, keeps statutory records, and issues required notices.

Note that the client or end-user remains jointly liable for harms tied to its own control (e.g., safety, anti-discrimination, retaliation) and serves as a backstop in cases of willful evasion or sham intermediaries. RAF preserves protection where control matters while ensuring a single, local pay-channel for routine enforcement.

It can be argued that while control and dependence tests are foundational to determining employer status, their application becomes less straightforward in complex frameworks involving multiple entities. Along these lines, Fudge notes that reliance on a singular employer model can obscure responsibility,

216. Brian Michaud, *PEO (Professional Employer Organization): What is it and how can it help your business?*, ADP, https://www.adp.com/resources/articles-and-insights/articles/p/peo-what-is-a-peo-professional-employer-organization.aspx (last visited Oct. 2025) (explaining that in co-employment, "both the PEO and the client share employer responsibilities and liabilities"); *see also* Michael Timmes, *PEO Benefits: 7 Advantages of Using a PEO for Your Business*, INSPERITY, https://www.insperity.com/blog/peo-benefits/ (last visited Dec. 26, 2023) (stating that the primary goal of the PEO relationship is to provide access to benefits while "mitigating risks" and "keeping employer liabilities in check").

particularly in triangular or multi-agency arrangements, where legal and practical accountability may not align.[217] Fudge calls for regulatory approaches that prioritize protecting workers in these fragmented structures, warning against formalistic adherence to traditional employer definitions that fail to address transnational realities.[218] We argue that an excessive focus on control and dependency overlooks the fragmented nature of accountability in cross-border settings, which can undermine worker protections.

Instead, we advocate a more pragmatic approach centered on accountability. To operationalize this shift, we propose a straightforward black-letter standard for statutory employer designation in cross-border triangular hiring, as outlined in Box 3.

By prioritizing who is accountable for compliance and worker rights rather than who exerts control, regulators can ensure clearer responsibility without burdening client companies with intricate and often unenforceable cross-border legal obligations. This shift would not merely enhance regulatory compliance but would also better safeguard workers' rights by providing clear channels of accountability. Additionally, rigid adherence to control-based models can lead to inefficiencies and heightened litigation risks when workers seek remedies across jurisdictions. Blackett's insights into international labor standards further reinforce the need for pragmatism in global work contexts. Her analysis suggests that international frameworks must accommodate the territoriality principle while enabling cross-border compliance mechanisms that focus on worker protection rather than rigid employer categorizations.[219]

Building on this perspective, in many cases, client companies do not have a legal entity in the worker's jurisdiction and are not accountable for local legal obligations. In contrast, EORs are meant to act as the accountable parties, providing clear channels for addressing employment law and regulatory compliance. By transferring full employer responsibilities to a third party such as an EOR, companies can mitigate the risk of non-compliance, avoid potential legal liabilities, and ensure that workers receive essential protections such as minimum wage, social security, and other employment rights—even when operating across borders.

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217. Fudge, *supra* note 166, at 375.

218. Fudge, *supra* note 180, at 609, 626-627, 633.

219. Adelle Blackett, *Introduction: Transnational Futures of International Labour Law*, 159 Int'l Lab. Rev. 455, 461 (2020).

This setup could create a safe buffer between the worker and potential bad actors, ensuring that workers are shielded from exploitation and have a reliable point of contact for employment-related disputes. Furthermore, it is more efficient for tax administrations to pursue unpaid taxes and wages from an EOR, rather than attempting to collect from a foreign entity with no legal presence in the worker's jurisdiction.

D. *Ensuring EOR Integrity*

Comprehensive data on EOR performance remains scarce, but as the market expands rapidly, significant disparities in service quality and provider integrity are to be expected. In particular, some EORs may outsource core functions—like payroll processing or even legal entity administration—to third parties, fracturing accountability. Undercapitalized firms may then struggle to meet payroll, tax, and benefits obligations, recreating the compliance failures once seen in the professional employer organization (PEO) sector. In the early 2000s, several U.S. PEOs collapsed after misappropriating payroll taxes or underfunding benefit plans, prompting state-level licensing and bonding requirements.[220] Similar risks have surfaced in the United Kingdom's umbrella-company market,[221] where regulators have investigated fraud and unpaid taxes tied to thinly capitalized intermediaries. These historical precedents underscore the need for stronger oversight and clear guardrails. Those guardrails should be keyed to the Reach–Assets–Functions test outlined in Box 3.

At the same time, the EOR model's adaptability and rapid expansion have opened new avenues for formal employment across borders. To preserve this positive momentum while guarding against abuse, any legal refinements should be modest and precisely targeted—pairing industry-led standards with light statutory recognition that imposes baseline conditions. This balanced approach would maintain the sector's growth and innovation, while ensuring only financially sound and accountable providers participate in the global EOR market.

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220. Shnitser, *supra* note 35, at 110; Press Release, U.S. Att'y's Off.: W. Dist. of Tex., San Antonio Businessmen Sentenced to Federal Prison for a Fraud and Tax Scheme Involving More than $130 Million in Real Dollar Losses (Apr. 15, 2014).

221. *See* U.K. Dep't for Bus. & Trade, Call for Evidence: Umbrella Company Market – Summary of Responses 7 (2023).

As a first line of defense, industry-led compliance mechanisms—rather than heavy-handed regulation—can help address undercapitalization and fraud. Establishing minimum capitalization thresholds, financial bonding requirements, and voluntary certification programs is crucial. For example, the IRS Certified Professional Employer Organization program relies on financial, bonding, and reporting standards to boost transparency and accountability; a tailored version of this framework could be adopted by EOR associations.[222] Such a system would ensure that providers maintain the financial capacity to meet payroll, tax, and benefits obligations, safeguarding workers and bolstering market integrity. Building on this model, Sylvia Borelli has proposed a licensing and registration regime for third-party employment intermediaries, which would further filter out bad actors.[223] In practice, a global organization—such as the Global Employment Innovation Organization—could set baseline standards and best practices, while national authorities adapt these into proportionate, market-sensitive rules.[224] Alternatively, an EU-level directive could harmonize these soft-law safeguards across member states without imposing a rigid new legal category.

Building on these industry-led initiatives, statutory recognition is also warranted to ensure EORs can operate legitimately and that vulnerable workers are protected. As noted in Section III, many continental European jurisdictions still treat triangular employment as impermissible unless the intermediary holds specific licenses and meets rigid criteria. or example, Germany's Arbeitnehmerüberlassungsgesetz (AÜG) requires staff-leasing licenses from the Federal Employment Agency and caps assignments at 18 months; France regulates *portage salarial* and temporary work under the *Code du travail* (arts. L1251-1 et seq.), mandating authorization, financial guarantees, and parity of treatment; Italy's Legislative Decree 81/2015 similarly licenses agencies and ties assignments to limited durations; and Spain's Law 14/1994 on temporary work agencies imposes registration and capitalization requirements.[225]

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222. *Certified Professional Employer Organizations – What You Need to Know*, Internal Revenue Serv. (Aug. 23, 2025), https://www.irs.gov/tax-professionals/certified-professional-employer-organizations-what-you-need-to-know.

223. Borelli, *supra* note 186, at 1.

224. *Id.* at 4.

225. *See, e.g.*, Thorsten Beduhn, *Employer of Record – A Country Overview of Opportunities and Limits*, Rödl & Partner: Insights (May 13, 2024), https://www.roedl.com/insights/employer-of-record/ (noting that in Germany,

One pragmatic approach would be to adapt these existing staffing-agency frameworks so that they explicitly recognize EORs as a distinct form of triangular employment, prescribing baseline conditions such as licensing, minimum capital thresholds, and enforceable reporting duties. In jurisdictions where staffing-agency law[226] is already complex, modest amendments could extend its scope to EOR operations—reinforcing safeguards while simultaneously legitimizing compliant providers. These adjustments would (i) open access to markets currently deterred by legal uncertainty, (ii) reduce compliance risk for multinational clients, and (iii) enhance oversight and trust by filtering out under-capitalized or opaque intermediaries.

For instance, modest legal amendments can carve out a tailored exemption for bona fide EORs that satisfy RAF—with proportional licensing, financial security, and enforceable reporting duties. The guardrails could read as according to Box 4.[227]

France, Italy, and Spain, EOR arrangements fall under temporary-agency rules requiring licensing and capitalization); James Kelly, *How Long Can You Use an EOR? Country-by-Country Limits Explained*, BOUNDLESS: GLOB. EMP. BLOG (Aug. 7, 2025) https://boundlesshq.com/blog/how-long-can-you-use-an-eor-country-by-country-limits-explained/ (listing Germany, France, Norway, and Poland as jurisdictions restricting EOR use through staff-leasing legislation); *see also Temporary Agency Workers*, EUR. COMM'N https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/labour-law/working-conditions/temporary-agency-workers_en (last visited Dec. 28, 2025) (describing Directive 2008/104/EC framework on worker protection).

226. *Temporary Agency Workers*, *supra* note 225.

227. RAF is a statutory designation test. Private certification and association standards may count as evidence or a pathway to compliance, but only public authorities confer status, enforce duties, trigger the anti-sham rule, and grant safe harbors.

Box 4 – RAF Guardrails Reach (Licensing/Registration).

Require in-country registration, a locally domiciled representative amenable to service and orders, and up-to-date beneficial-ownership disclosures in a public register. Non-registration triggers civil penalties and suspension of new onboardings until cured.

Assets (Capital or Bond).

Set a calibrated financial floor—minimum paid-in capital or a callable bond—indexed to headcount and aggregate payroll remittances. The bond is payable on administrative demand to cover wages, social insurance, tax withholdings, interest, and awards, with priority for workers and the treasury. Voluntary certifications (e.g., audited statements, bonding programs) may be recognized as satisfying this element.

Functions (Audit of Compliance Tasks).

Require periodic proof that the intermediary actually performs payroll and statutory remittances: confirmations of payment, anonymized payslips, reconciliations, and record retention. Provide inspectors secure portal or API access for document pulls and use risk-based audit frequency to limit burden.

Anti-Sham Rule.

If the intermediary fails R, A, or F (e.g., no local reach, inadequate financial capacity, or non-performance of core functions), deem the end user the employer ab initio for all purposes, with joint and several liability for accrued wages, contributions, and penalties.

Safe Harbor for Compliant End Users.

Firms that engage licensed (R), capitalized or bonded (A) intermediaries that pass Function audits (F) enjoy a rebuttable presumption of compliance for pay and tax remittances—without immunity for their own misconduct (e.g., discrimination, retaliation, OSH).

This approach does not create a new legal category; it channels routine enforcement through a single, solvent, locally reachable payment channel, discourages empty-shell intermediaries, and preserves direct liability where the end user's own control causes harm. The risk is not merely theoretical. Experience with platform and outsourced work shows that

undercapitalized intermediaries complicate enforcement and delay remedies.[228] RAF guardrails reduce that risk by ensuring a reachable, solvent counterparty while preserving end-user liability for harms within its control.

Conclusion

This Article does three things. First, it clarifies what the EOR is—and is not. The EOR is not a staffing agency for short-term labor, nor a domestic PEO that shares co-employment functions; it is a cross-border intermediary that holds the formal employment relationship and performs compliance-facing tasks so that a foreign client can lawfully engage a worker without a local entity. Naming that role, and distinguishing it from familiar but distinct models, matters for doctrine. The label cues which body of law applies and which liabilities follow.

Second, it offers a comparative account of how positive law presently captures EOR arrangements. Across jurisdictions, EORs are slotted into preexisting boxes—employee leasing, intermediation, co-employment, or temp-agency regimes—none designed for remote, cross-border work. That "constructive ambiguity" has value: it lets hiring proceed while rules lag. However, it also creates an enforcement gap: control may sit abroad while the nominal employer lacks the capacity to pay wages, remit contributions, or satisfy awards. The survey shows both the promise and the limits of adapting legacy frameworks to global hiring.

Third, the Article makes a modest doctrinal proposal: keep the functional account as a descriptive map of "who does what," but anchor legal designation in accountability—who can answer and pay. The RAF test—Reach, Assets, Functions—implements that move, designating as the statutory employer the entity with local legal reach, sufficient financial capacity, and actual performance of payroll and remittance functions, preserving end-user liability for harms under its control (safety, discrimination, retaliation), and acting as a backstop against sham intermediaries.

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228. Shnitser, *supra* note 35, at 99; Press Release, San Antonio Businessmen Sentenced to Federal Prison for a Fraud and Tax Scheme Involving More than $130 Million in Real Dollar Losses, *supra* note 220; U.K. Dep't for Bus. & Trade, Call for Evidence, *supra* note 221.

This proposal targets statutory employer designation for wage payment, hours, leave, social insurance, tax withholding, notice, and record-keeping. It does not purport to resolve corporate tax permanent establishment rules or immigration admission constraints. Those remain distinct regimes that interact with, but are not displaced by, the RAF allocation.

The policy payoffs are concrete. For workers, the accountability approach secures a domestic obligor capable of paying wages, benefits, and judgments. For regulators, it consolidates routine enforcement in a single, locally reachable counterparty and reduces collection frictions across borders. For firms, especially SMBs, it clarifies ex ante who must discharge statutory duties, avoiding the pressure to convert EORs into de facto subcontractors, raising tax and immigration risks and blurring the model's purpose.

Finally, this account points to two empirical agendas. First, do EOR arrangements—especially where accountability guardrails are in place—reduce wage arrears, raise on-time remittances, and shorten the time to recover awards compared with contractor models or thin local entities? Second, do EORs lower the time to a firm's first foreign hire and measurably increase SMB headcount, export intensity, or output per worker in new markets? Credible future designs could include event studies and difference-in-differences that exploit staggered adoption of licensing, bonding, or audit rules, paired with matched comparisons of entry modes (EOR versus contractor versus local entity). Results from these studies would guide calibration of capital, bond, and function-audit thresholds.

If we mean to protect workers and enable lawful global hiring, the employer we recognize should be the one that can be reached, can pay, and actually pays—an *accountable employer* in both law and fact. Properly regulated, EORs can fulfill that role by combining local legal presence, financial capacity, and transparent responsibility for statutory obligations.

Appendix A: Sample EOR Questionnaire

This appendix presents the type of questions and information we gathered through semi-structured interviews with EOR industry professionals (e.g., legal specialists at EOR vendors). Through these interviews, we sought to understand how the EOR model operates under specific national frameworks. Below is a sample questionnaire focusing on Germany. This sample can be adapted for other jurisdictions.

1. Basic Legal Framework

1.1 **Legal Source or Basis**

- **Question:** What is the main statutory or regulatory provision underpinning EOR in this jurisdiction?
- **Answer:** Under German law, the EOR model is generally qualified as *employee leasing* (*Arbeitnehmerüberlassung*) according to the Arbeitnehmerüberlassungsgesetz (AÜG). The EOR formally employs the individual, but the end user company determines work content (integrating the worker into its organization and issuing day-to-day instructions).

1.2 **Official Name (If Any)**

- **Question:** If the local system provides a specific term for EOR-like arrangements, what is it?
- **Answer:** The official term is *Arbeitnehmerüberlassung*.

2. Deeming Clauses & Co-Employment Risks

2.1 **Regulations Governing Duration or Conditions**

- **Question:** Are there statutory limits on how long a worker can be employed under an EOR (or leasing) model before additional legal consequences arise?
- **Answer:** Employee leasing is capped at **18 months** to the same end user. After that, a mandatory break of **three months and one day** is required before leasing can resume with the same company.

2.2 **Risk of Co-Employment or Direct Employment**

- **Question:** Does the law or case law indicate that the end user might be deemed the "true" employer if certain conditions are violated (e.g., instructions, operational integration)?
- **Answer:** If leasing is deemed **ineffective** under Section 9 AÜG (e.g., no valid license or violation of mandatory break periods), the leased worker is considered **directly employed** by the end user. This can expose the end user to back-pay liabil-

ities, equal treatment claims, and social security obligations.

3. Obligations and Rights

3.1 **Comparisons to Regular (Domestic) Employees**

- **Question:** Do EOR (leased) workers receive the same rights and benefits as local full-time employees under labor law?
- **Answer:** Leased workers must generally be granted the same basic **working conditions** and **remuneration** as permanent employees (the principle of equal treatment).

3.2 **Termination and Transition**

- **Question:** How are contract terminations handled, and can leased employees transition into permanent roles with the end user?
- **Answer:** The leasing agency can end the leasing contract, resulting in the worker's reassignment or temporary unemployment. There are also pathways for transferring a leased worker to a permanent position with the end user, subject to the equal treatment principle.

4. Distinctive Features of the EOR Model in This Jurisdiction

4.1 **Licensing and Time Limits**

- **Question:** Are there specialized licenses or maximum tenure limitations specifically relevant to EOR providers?
- **Answer:** A valid employee leasing license (*Arbeitnehmerüberlassungserlaubnis*) is mandatory. The 18-month limit with mandatory break underscores the time-bound nature of employee leasing.

4.2 **Alternative Structures**

- **Question:** Are there "enhanced" or "alternative" models used by EOR providers to sidestep certain restrictions (e.g., time limits)?

- **Answer:** Some providers employ a consulting model ("Enhanced EOR"), which relies on strict avoidance of "arbeitsvertragliche Weisungen" (employment-related instructions) by the end user, so that the worker is not legally considered to be integrated into the end user's organization.

4.3 **Operational Guidance**

- **Question:** Do local laws or best practices dictate how the EOR and end user must coordinate instructions, equipment, and client branding?
- **Answer:** To prevent a finding of actual "employee leasing," some EORs enforce policies such as giving employees a separate email address, restricting direct instructions from the client, and not allowing the worker to fully integrate into the client's organizational hierarchy.

5. Further References and Notes

- **German Resources:**
  - Arbeitnehmerüberlassungsgesetz (AÜG): https://www.gesetze-im-internet.de/a_g/
  - Federal Employment Agency audits and guidelines on employee leasing
  - Key sections: Section 9 (ineffective leasing), Section 10 (legal consequences), Section 8 (equal treatment), etc.

Instructions for Use

- While this questionnaire reflects the German context, the same structure can be adapted to investigate how EOR arrangements function in other jurisdictions.
- In interviews, open-ended follow-up questions often yield additional insights into practical challenges, compliance strategies, and case-law interpretations that supplement statutory text.