How remote-first businesses and freelancers can minimize their compliance risk
with Andrea Carlon

Andrea Carlon 0:00
One of the questions towards the end is, where would you work from home like wherever there's a good internet connection, meaning not Germany.

Maddie Duke 0:10
You're listening to *The State Of Work*, the podcast by Lano. *The State Of Work* is about finding your place in a changing world of work, as an individual or an organization. Each episode, we'll dive into some of the benefits and limitations we face when it comes to remote and flexible work. And take a look at how we work, how we hire and manage people, and how we live in this increasingly global workplace. I'm your host, Maddie Duke, and today we're going to talk about compliance.

More and more companies are starting to implement remote work policies and looking to build remote and distributed teams. While working with remote talent brings a number of benefits. It can also present challenges, not least of which is the issue of compliance with laws and regulations that govern employment in different cities and countries around the world.

My guest today is Lano's own head of partnerships, Andrea Carlon. Andrea is going to shed some light on the topic of compliance and give us some tips and solutions to consider when navigating the process of hiring someone who lives on the other side of the world.

Hello Andrea, and thanks so much for joining us.

Andrea Carlon 1:31
Thanks for having me. I'm really excited to chat with you about today's topic.

Maddie Duke 1:37
Awesome. I'm looking forward to hearing what you have to say. Could you tell us a little bit about your role at Lano and your work as a lawyer beforehand?

Andrea Carlon 1:47
Yeah absolutely. So at Lano, I do all things partnerships, which usually involves identifying potential businesses and organizations that can help Lano grow our product offering and are aligned with our mission and vision. Once the match is made with the company, I work

cross-functionally to implement and execute that partnership, which means working along with the folks in product, marketing, Ops, sales, etc. I also regularly try to have a very open communication with our partners, in case we run into any issues and to really measure the performance of the partnership.

Maddie Duke 2:29
Great. Sounds like a busy role you've got. And before you joined Lano, you were working as a lawyer, is that right?

Andrea Carlon 2:37
That's correct. I have a background in law. I studied for a Masters at NYU. And I worked at doing data privacy and IP law.

Maddie Duke 2:48
Wow. I'm sure there's a lot of things we could pick your brain about. But today we're going to be talking about all things compliance. Now compliance is a huge topic when it comes to engaging workers from all around the world. What is compliance? And why is it so important?

Andrea Carlon 3:09
Compliance is crucial and definitely is challenging, as you said, for companies to navigate. When talking compliance can mean many things and it's like really a universe. But when talking about businesses engaging with the workforce, compliance really refers to being subject to employment laws, regulations, and rules, and all the different ramifications that that can have in other areas of law, such as contractual law, taxation, Social Security, administrative, civil, etc. Additionally, I think from a business perspective, compliance also means being aware, and understanding who are the competent authorities and their investigative powers, and what fines you could be subject to when there is a lack of compliance. The challenging part, I think, really comes when companies and businesses are actually engaging with talent from all around the world. So most likely you have the expertise in a certain country, in the country where you operate, where your entities established and if you have an understanding of employment rules, regulations and authorities in that country, but when it comes to other countries, you don't necessarily have that knowledge or hiring know-how. So that's where solutions like Lano can help you.

Maddie Duke 4:33
Right? Okay. So if I understood that correctly, if I don't hire someone in a compliant way, I could be at risk of fines in all kinds of areas. So not just an employment contract, but taxation law and Social Security.

Andrea Carlon 4:56
Exactly.

Maddie Duke 4:57

So it's very important as we have so many businesses at the moment who are looking to hire globally and to work with remote or distributed teams. But they need to make sure that they can get around these tricky issues. So when a company is looking to hire talent from abroad, they have an option of, of hiring someone as a contractor or a freelancer or as an employee. What would you say are some compliance issues that companies face when hiring or working with remote contractors or freelancers?

Andrea Carlon 5:32

I'd say that when hiring a freelancer or contractor, usually the thing that most people will hear come up is the risk of employment misclassification or false self-employment. There's a general consensus globally around the world about what a legitimate contractor classification is. So if the person has set work hours, or receives certain employee benefits, or does things like the performance of late evaluations, or even makes critical decisions for the business, then he or she is considered an employee. Authorities globally are in the lookout for companies that try to hide these types of employee relationships through setups like contractor relationships wrongly classified. That's where Lano comes into play. Things like onboarding your freelancer with a well-drafted contractor agreement can help companies prove that they have indeed, hired independent workers within the confines of the law. We also have within Lano other compliance tools. So that's really the main I would say compliance issue that people refer to when talking about contractor/freelancer hiring.

Maddie Duke 6:58

Right. So this misclassification of whether the person is indeed an employee or a contractor. So I know that in German that's called *scheinselbständigkeit* or false self-employment. Could you explain for our listeners a little bit more about what false self-employment is?

Andrea Carlon 7:19

That was beautifully pronounced! So self-employment, broadly speaking, is where somebody is registered as self-employed or as a freelancer and the authorities or courts have found that they are in fact an employee carrying out professional activities under the authority and subordination of a company. So what would typically classically look like an employee-employer relationship, such false self-employment is often a way to circumvent or avoid paying social welfare, unemployment, and is also a way avoiding employment legislation, for example, by avoiding employer social security and income tax contributions. The reality is often times legislation adapts at a slower pace than that of business practices, and things like the rise of the gig economy and the pandemic where we are in the middle of right now (COVID) has made company seek more flexible contractual agreements. So it's kind of a tricky, tricky one. For the German case, I will say that I'm not as a disclaimer, I'm not entitled to practice law here in Germany or provide legal advice, however, broadly speaking, this refers to the concept just described with the consequences defined by employment authorities. So if tax authorities or social security agencies qualify a contractual arrangement as employment, both the freelancer and their contractual partner can face severe negative consequences. For instance, the

company could be fined to pay Social Security contributions retrospectively up to four years. And there are also tax implications, which could include repaying the VAT deducted previously from the invoices of the falsely self-employed person.

Maddie Duke 9:21
Right. So it sounds like there are implications for both parties for a freelancer and for the person hiring that freelancer. So both sides have to obviously watch out for and be aware of what's required in their home area or the area they live or are hiring. So it is a complex issue. And just to clarify, for anyone listening, this classification of false self-employment is not just a thing that happens in Germany. This is something that's quite common around the world, right?

Andrea Carlon 9:56
Correct.

Maddie Duke 9:57
It's a global concept. So as I mentioned earlier, there's a consensus around what globally is considered as contractor classification. And there's a series of tests, then locally, these tests might look a bit different, but essentially, they all have the ultimate goal of understanding whether the nature of the relationship is employer-employee, or employer and independent contractor.

Maddie Duke 10:23
Okay, so if I'm a company, say I'm based somewhere else in the world, and I'm considering hiring a freelancer, who's based in Germany, to outsource my e.g. design work, how can I be sure that the worker is really an independent contractor, and not sort of, that I'm not engaging in false self-employment?

Andrea Carlon 10:47
Classically, I would say there's a number of things that a company a business can do to win control considering hiring a freelancer, and really make sure that that person is an independent contractor. Things like preparing a checklist or using a checklist that has already been pre-prepared for you that the contractor has to fill out. It's similar to what I call the KYF (Know Your Freelancer) process, which is knowing your freelancer does understand whether they do work with more than one client and really making this part of your onboarding process. On top of that, you can make it also part of your regular basis where you do a quarterly or an annual checklist and you send this out, these can help mitigate that risk for misclassification. And additionally, in the case of Germany (but this again, is relatively similar in other countries) there's a formulated test, where asking questions like: (and I'm actually going to kind of read these out) can help businesses identify whether really they're a freelancer? Is the freelancer free of the directive by their contractual partner? Has the freelancer control over their working hours? Is the job activity of the freelancer different from the one of the employers of the contractual partner? Is their freelancer free of giving periodic working reports? Is a freelancer able to choose their working place? Does a freelancer acquire new clients and are they doing

marketing for themselves? Does the freelancer have their own business website? Does a contractual partner pay only for the services performed by the freelancer? And is the freelancer not paid by the contractual partner when being on holidays? These are some of the things that help authorities distinguish. So making sure that those are clear upfront and during the onboarding process is extremely helpful.

Maddie Duke 12:55
Alright, thanks so much for sharing that list with us. Obviously, you know, it's quite comprehensive, and I'm thinking as well, like as a freelancer myself, you know, we've also got to consider the side of the freelancers and have to consider their side of this as well. So, you know, if you're in a situation where you've got one, let's say one core client and they're asking you should be available on full-time hours,What are some things on those lists

Andrea Carlon 13:27
Set working hours? For example?

Maddie Duke 13:31
Yeah, exactly that dictating when, when and where you can work? Or are they offering you holiday pay? And this is something you've got to be aware of as a freelancer and to look into your own side of making sure that you've got several clients and that you are indeed operating as an independent, self-employed individual.

Andrea Carlon 13:55
Absolutely. Some red flags to consider?

Maddie Duke 14:01
Yeah, absolutely. And so are there any other steps? So this is a lot of this checklist you mentioned would be part of an onboarding process with a contractor or a freelancer? Would there be any other steps that you would recommend being taken? Or things to be considered when onboarding an independent contractor?

Andrea Carlon 14:19
Absolutely, I mean, not strictly compliance speaking, but other things to recommend is having in place a framework to govern the relationship. So actually, let me backtrack for a second, I would say not compliance, strictly speaking, would be things like making your contractor aware if the company has policies in place or certain cultural considerations so that the work is more smooth. And then I guess, more compliance, speaking, is having a framework to govern that relationship in a secure way. So having your freelancer or contractor signed documents such as a contractual agreement, which I mentioned earlier, this agreement should typically include things like intellectual property rights, ownership clauses, data protection clauses, non-disclosure clauses, you can also have NDA in place. Those are all very, very recommendable.

Maddie Duke 15:24
Right, thanks so much for sharing that with us. Yeah, there is so much to consider when onboarding. What are some of the risks involved in not adhering to local compliance policies and regulations for the business and then also for the worker?

Andrea Carlon 15:45
As I mentioned earlier, we went through some of the possible fines for businesses and contractors. And I think that's pretty much self-explanatory. However, it's very case by case. And it really depends whether it goes to one authority or it goes to court. I'll cite the famous case, most recently in some countries, like Spain, or France, where it reached all the way up to the Supreme Court, with the case of the riders, for delivery companies. But again, it's really case by case and they really depend on to what level what is the magnitude, what's the volume? And how long have you been doing this? And, of course, there are ways to prove otherwise to mitigate that risk and to prevent it from getting all the way up to the Supreme Court, of course.

Maddie Duke 16:38
Yes. For anyone that might not be across the delivery rider case, would you be able to give us a little overview of what happened there was that a case of mass so you know, mass false self-employment, or

Andrea Carlon 16:55
It's something that has come up in the press, and I'm sure anyone hearing the podcast should Google and take a look at those cases. Because at the moment, I'm not even sure where they stand right now. But I do know that it goes back again, to the point of legislation, sometimes not being as adapted as to what business practices need. And as we are right now in the middle of the pandemic, which has really accelerated this trend for a more flexible and remote workforce. And in addition to that, the gig economy, companies face these types of situations where employment laws are, are a bit anachronistic, and they're a bit behind. And so the case of the riders is just an example of companies being using those contractor types of arrangements in order to be able to work with a big number of people. Yeah, but I would recommend everyone taking a look at it.

Maddie Duke 18:06
Yeah, great thing, we can maybe add some something on that into the show notes as well. So take a look if you're curious to know more about that case. So how would you suggest setting up a proper onboarding process for hiring remote talent that's compliant? So when considering compliance? What would you recommend for onboarding?

Andrea Carlon 18:33
So, a bit of a recap from previous questions? Again, using that check checklist to make sure that the individual is really an independent contractor? I would add that you also do some due diligence, so understanding what is the level of risk in the country where you're engaging it with the contractor, getting also for cases that are not so obvious, or maybe more "black swans"

getting expert advice from local counsel attorneys or taxation experts. And then I would say, All this can be complemented and should be complemented with a third-party solution such as Lano, where we help you put all these processes in place and see it all within one platform.

Maddie Duke 19:24
That's fantastic. Thank you.

The State Of Work is brought to you by Lano. Lano provides all the tools necessary to build and manage a global team in one place. And on the flip side, it gives freelancers an easy way to manage invoices and tasks. Lano also takes care of compliance for businesses looking to onboard remote talent. Find out more at lano.io

Maddie Duke 19:54

I'm here with Andrea Carlon. We've just been discussing hiring independent contractors. But businesses can also have full-time remote talent as employees from anywhere in the world. The hiring of employees abroad can also be complicated, especially if you don't have a business entity established in the country that you want to hire someone. So what options do businesses have, Andrea?

Andrea Carlon 20:19
if you don't have the expertise, so if the business doesn't have the expertise, the resources or the time to set up a legal entity in the country where they wish to hire, or they don't want to deal with any sort of risk of misclassification that we were talking about before, or false self-employment, working with independent contractors, companies can utilize something called employee or record solutions. In Germany, it's known (and I'm actually going to say this word in German, so please excuse my German pronunciation) by its name *Arbeitnehmerüberlassung*.

Maddie Duke 20:55
Very good!

Andrea Carlon 21:03
So it's a global employment solution, an Employer of Record.

Maddie Duke 21:10
So the Employer Of Record. And so this, if I understood correctly, is like a business that is set up in another country, that kind of acts as an employer - is that right?

Andrea Carlon 21:18
Exactly. So it's a global employment solution that allows any company to employ talent in another country where they don't have a legal entity. So the Employer Of Record becomes a legal employer on behalf of the client company and takes all the liability when it comes to

everything facing the employee. So the Employer Of Record takes all the compliance matters. They do the contracts, they do the local payroll, and they make sure that all the employment statutory requirements are met. And the client company still gets to keep the day to day activities of the employee. If you want additional information about it, you can go to our website lano.io and in our solutions, you have one called "Global Employment" and then you'll be able to find a lot more information about it.

Maddie Duke 22:14
Great, thank you. Is it so this Employer Of Record is not just a European thing? It's a global concept. Is that right?

Andrea Carlon 22:23
Yes. So global employment, we're calling Global Employment Solutions or Employer Of Record it's also referred to, is really something very global, as the name indicates. It's a market that is estimated to be about 1.1 billion, and it's expected to grow a lot in the coming years, you know, given COVID, and things like Brexit, and really the trend of working from anywhere. It's been around for some time, the employer record solutions. But from an adoption perspective, so meaning companies that buy employer record services or use these types of services, in the past, it was primarily US-based companies. But that's changing a lot. And we're seeing a lot of European companies using this option to become more flexible in their international hiring strategies and practices. In terms of where the employees that are hired via Employer Of Record about 80% are located in APAC and EMEA. So it's a very global solution indeed.

Maddie Duke 23:35
And so before, it has become so widely read, like much more widely adopted, within if a company wanted to branch out and hire people in a new market, would they kind of, you know, ship off somebody from the company to, to go and live somewhere else and go through all the regular processes of kind of establishing a business in a different country.

Andrea Carlon 24:02
That's one of the use cases. So we're seeing a lot of use cases because of COVID. where employees, especially in the US, UK, across Europe, they decide to relocate. So since no one is going to the office in the foreseeable future, or at least in the next year, they decide to go back to their home countries. And these might be they might be, you know, key employees for the businesses. So one way for companies to remain compliant and retain their key employees is to use Employer Of Record solutions. The other one that you mentioned is testing out new markets where you want to be flexible enough to be you know, you're testing out Spain, you want to be close to your customers, or there are other business reasons that want to make you be flexible enough to have someone in the country but without having to go through the process of setting up a legal entity which in many cases can take up to a year and in COVID times that's particularly worsened because a lot of the institutions have backlogs or are delayed or are even closed, as we're seeing with many public offices around the world.

Maddie Duke 25:16
And a lot of I think, as far as I understand a lot of countries are kind of holding or at least putting caps on immigration as well. Right now, or at least travel.

Andrea Carlon 25:22
Exactly.

Maddie Duke 25:26
And so when it comes to termination of contracts, of employee contracts, is that something an Employer Of Record can handle as well?

Andrea Carlon 25:37
Absolutely. So that's why it's quite attractive for businesses because termination is something tricky to handle. Each country has its own regulations. And sometimes you don't know how much time in advance, you have to let the employee know if you don't want to continue the relationship with them. So from a liability perspective and risk, the employer record takes care of all of that. And essentially, the business partner or the client signs a master services agreement that usually outlines how far in advance the company has to let the employer record know when they want to terminate an employee. So it's really a flexible solution. And the client can also know that they can remain compliant within the framework of local laws.

Maddie Duke 26:27
And what about when it comes to paying my workers? Is, is that something an Employer Of Record would take care of as well? Or how do I go about paying international employees?

Andrea Carlon 26:40
Absolutely. So in terms of payments, whether you're working with a contractor or freelancer, as we chatted about in the first part of this podcast, or full-time employee payments, you can do so through Lano, we actually have a payments solution that lets you pay your remote workforce in over 40 currencies. So we deal with all the cross-border payments, and it's a very competitive solution, where clients really have to pay very, very low fees. And really you have the ability of paying in many currencies, which I think is phenomenal. The other pieces, yes. When it comes to local payroll, when you're talking about full-time employees, the Employer Of Record also handles that piece. So that's something that it's definitely covered.

Maddie Duke 27:39
Okay. So, overall compliance is, you know, it's such a broad topic, and when it comes to hiring remotely, you know, there's a number of risks that are involved. Do you think that compliance risk is a reason to avoid hiring remotely? Or do you think that there are enough safe solutions in place and ways that businesses can navigate this trend?

Andrea Carlon 28:08
I would say absolutely not. I mean it shouldn't hinder companies from hiring remotely, just because there would be they would be missing out on so much untapped and unlocked talent. So I would really recommend companies to look for talent abroad and to really hire from anywhere. Of course, compliance is a matter that is important. As I mentioned at the beginning, it's challenging to navigate, and it's tricky. But there are solutions out there to help companies do it. And Lano is an example of that, where we really focus on the compliance of onboarding and payments and invoicing for your remote workforce and really focusing and let the company focus on their remote hiring strategy.

Maddie Duke 29:05
Yeah. So Lano, kind of takes the risk out of the way for the business, so the business can focus on choosing the best people and focusing on their own business. Exactly. This activity. Great. So Andrea, thank you so much for sharing your knowledge with us today. Before we say goodbye, I'd like to ask you a few questions about your own experience of remote work. Are you ready?

Andrea Carlon 29:32
Absolutely.

Maddie Duke 29:35
So this might be an obvious question, but do you work remotely currently?

Andrea Carlon 29:42
Yes.

Maddie Duke 29:45
We are in lockdown right now.

Andrea Carlon 29:46
Exactly. I was gonna say I think at the moment because of the pandemic most of the office type of jobs. We are working remotely, our company is based in Germany and there's recently new restrictions have been put in place for and as a result of COVID. So I still have the option of coming into the office if I want to, which I think is really important. But our company also has a remote policy in place, which allows me to, to really make it that hybrid solution that I think is the best for me.

Maddie Duke 30:26
Great, and what do you like most about remote work? Or what do you find most challenging about remote work?

Andrea Carlon 30:34
The thing I love the most I would say is the lack of commute. No one likes taking, you know, the commute in the morning with everyone. And really, I think the ability of being able to set up your own timetable, and your own schedule. So if I want to go out to the supermarket at lunchtime to do my groceries or put on the washing machine, I can do so. And that's something I appreciate. In terms of what I find challenging, I would say is sometimes the lack of human interaction. So I love to hang out with my colleagues and I think that virtual tools help a lot (virtual meeting tools). however, it's just not the same.

Maddie Duke 31:19
I mean, yeah, for sure. I think you're definitely not alone in that I think a lot of people are finding that aspect of working from home or working remotely challenging, especially at the moment, because so many people have been kind of thrown into it. Whereas some of us have chosen remote work prior to COVID and maybe made it with a little bit more awareness of what some of the challenges might be. What's something people at your office do to socialize? Do you have, like a weekly, like a social zoom call?

Andrea Carlon 31:54
We have like checkpoints during the week to kind of replicate or simulate what would be like the water cooler situation. Because I think that's probably the thing that is most missed in the virtual workplace, and working remotely. And so we have every three days I would say a little 30-minute meeting where anyone can join. And we just have, you know, like a "water cooler" type of conversation e.g. how was your day, how's your weekend, kind of to catch up because Slack or other types of tools don't really serve that purpose. So that's the way that we create them.

Maddie Duke 32:43
Great. And I think, you know, people like to communicate and socialize in different ways and written communication is not everybody's favourite.

Andrea Carlon 32:52
Absolutely! We all bring a glass of wine or, or if it's towards the end of the day, a glass of wine or beer. And it's during the day, a coffee. So we also try to make it like, you know, like a coffee break.

Maddie Duke 33:04
Yeah, that's great. It's always really interesting to say what different organizations are doing and how they're managing the people and the social side of working remotely. And another one I wanted to ask is, what was your first experience of working remotely? Before COVID? Or has this been your first experience of working remotely?

Andrea Carlon 33:30
I have worked remotely before COVID. So pre-COVID, I lived in the US for about six years. I moved to Berlin in March this year (2020), just when the COVID hit. It was an interesting time! Back in New York, I worked for a FinTech company that had offices pretty much across the US and South Africa. And in the US in New York. Most of the office was in the business development team, so people were travelling quite a lot. And we really made it very flexible for people to have the option of coming into the office when they needed to and otherwise work from home or work from Spain (I'm originally from Spain). So when I was visiting my family, I had the option to work from there. My experience has been that I think countries like in the US working remotely was very common pre-COVID. And then I think, as a result of COVID lots of other companies and in other countries have just been really put into this position where they need to have their entire companies remote. And I think it surprised a lot of people in terms of what can be accomplished remotely. Companies are still growing, driving business, innovating, selling. So really it has proved to some people that didn't believe in remote work, I think that has been proven wrong that this actually does work pretty well.

Maddie Duke 35:09
Yeah, that's great. You've actually touched on a couple of topics that we're hoping to cover in some future episodes as well. So yeah, it's been a very interesting year, and particularly for you, if you've just moved cities during the pandemic, I really, what a whirlwind year for you. If you could work from anywhere in the world, where would that be?

Andrea Carlon 35:33
That's a tricky question. I think that it's a lovely question. It's a tricky one. Because in COVID times, it's not like we can just jump on a plane and go anywhere. So

Maddie Duke 35:43
Yeah, it's become more of a dream again, that that digital nomad lifestyle,

Andrea Carlon 35:47
Exactly. But I think that if, if I had the ability of coming back to Berlin, or going really anywhere, and borders, not being shut down, etc, I would probably pick somewhere south in Spain, like Tarifa in Cádiz, because the weather is extremely good, there's a beach, the food is excellent, too. And there's a really good internet connection. So I don't think you need anything else. I mean, those are the key elements to have a happy remote life.

Maddie Duke 36:23
That sounds amazing. I'd love to come and join you there. To be honest, it sounds like a dream.

Andrea Carlon 36:27
Let's do it. Yeah!

Maddie Duke 36:31
Well, thank you so much again for your time, Andrea, and thanks for shedding some light on this tricky topic that people maybe are a little bit afraid of, you know, compliance risk and kind of hesitate to consider employing in different countries. So thanks so much for showing us that it's possible and it doesn't have to be a scary or not too risky thing to do.

Andrea Carlon 36:59
Exactly. Thanks, Maddie. It was a pleasure talking with you about this topic. And exactly. It shouldn't be a daunting thing. Whether it's early-stage startups or larger enterprises, everyone faces these issues. And I think that having solutions, like Lano really makes life easier, and lets companies concentrate and focus on their remote hiring strategies, and just hand over compliance to others to third party solutions like ours.

Maddie Duke 37:31
Absolutely. Thanks so much, Andrea, for joining us on *The State Of Work*.

Andrea Carlon 37:37
Thank you, Maddie.

Maddie Duke 37:41
If you'd like to know more about anything we discussed today, whether you're a freelancer looking to make sure you don't end up in a false self-employment situation, or you're a business decision-maker looking to start hiring internationally, head to podcast.lano.io to check out our shownotes. There you'll find a copy of Andrea's KYF or Know Your Freelancer checklist, and other helpful resources.

Thanks for listening and see you next time on *The State Of Work*.

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