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GLOBAL EMPLOYMENT LAWS: HOW TO AVOID PENALTIES (AND HEADACHES)

Hiring internationally comes with a variety of legal, compliance, and benefit-based hurdles that drastically differ from what in-house counsel see in the U.S.

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INTRODUCTION

If you are an in-house lawyer for a company that has employees across various states, you are familiar (in some instances, painfully familiar) with the challenges of staying informed of and complying with the various employment laws at the federal, state, and, with increasing regularity, city level that regulate your workforce. Just when you think you have mastered the relevant legal provisions, your company hires in a new state, or Massachusetts passes the Equal Pay Law, or Washington, D.C. enacts paid parental leave, or yet another state or city adopts new paid sick leave or minimum wage standards. Depending on the size of your workforce and geographic distribution, these compliance efforts can take a considerable amount of time and resources.

Once your company starts to expand globally, your employment compliance challenges expand exponentially. Not only must you learn a new country's employment laws, but you also need to fully grasp the local laws of the town or county in which your new employee(s) will potentially work.

The model agreements that you use across your U.S. workforce will not fit for your global team. In fact, depending on the country, the benefit expectations of your global employees will be very different from your U.S. team. Can you provide health care benefits? Are health care benefits even an expectation? What is the mandatory parental leave in the country of hire? And what will you do if an international hire doesn't work out? Global employment comes with infinite questions and, if done incorrectly, with expensive penalties.

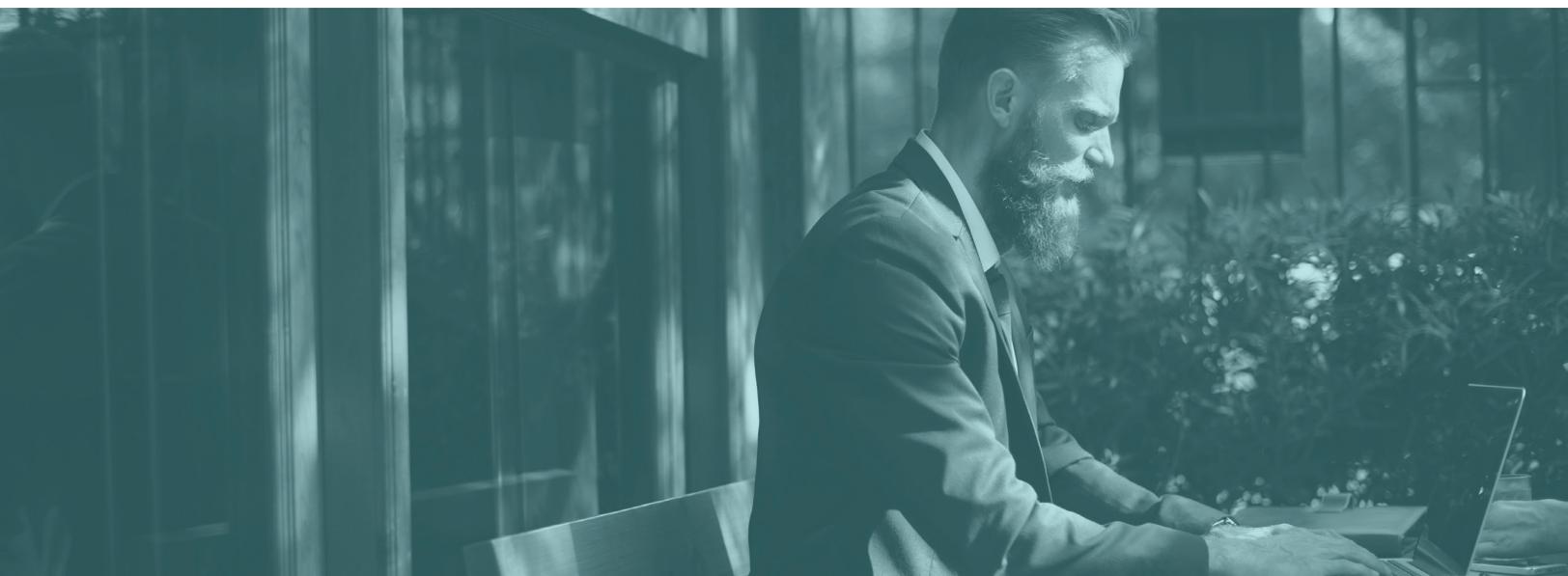
To mitigate these challenges and avoid legal penalties, an organization's general counsel/in-house legal team should keep the following suggestions in mind so that managing the process becomes as simple and efficient as possible.

1. Work side-by-side with HR: When hiring internationally, the legal team must work in lockstep with HR. For example, legal needs to know if HR is looking to make an international hire so the legal team can start issue spotting and obtain a local expert before an offer has been extended. Now, depending on the size of a company and the company's structure, the HR team's practice may be to not involve legal in the hiring process. The HR team needs to be informed and reminded that if your company is considering an international hire there must be open and consistent communication with the legal team.

To maximize effectiveness and mitigate errors, a clear process should be in place so that HR recognizes when the legal team's counsel is necessary. Establishing a process in advance will ensure that the relevant stakeholders are on the same page and it will decrease confusion throughout the process. Companies have been forced to pay significant sums in severance pay because HR agreed to grant more seniority to a new hire in an employment contract without the knowledge that such seniority automatically increased the severance pay entitlement. If the legal team was consulted in the contract/negotiations phase, such expenses could have been mitigated or avoided all together.

2. Do your research: Once you are aware that your company intends to hire in a new country, your next step is to do the proper research to get baseline information about the employment laws in your anticipated country of hire. Both lawyers and HR executives have access to resource materials that will provide guidance as you think about where and how you retain global talent. For example, many HR professionals and some employment lawyers belong to the Society for Human Resource Management, which has a section of its site dedicated to global HR. Also, for those in-house lawyers who are members of the Association of Corporate Counsel, the ACC offers a robust resource for international legal affairs. Practical Law, Bloomberg Law, Mondaq and other online resources and newsletters will also provide some guidance on your legal requirements when hiring internationally. Other online resources are also available, including [Globalization Partners' CountryPedia](#) and numerous law firm blogs, which provide an overview of relevant issues to consider when hiring in a specific country. Of course, once your company is an employer in a given country, you are obligated to keep up with changes in local employment laws. Make sure you sign up to receive alerts from these online resources (and from your local counsel) so you are contemporaneously informed of any relevant changes.

3. Go local to go global: Once your company is seriously considering expanding into a new country, you must determine how you can legally employ prospective new hires in that country. That means you will need to find local, in-country accountants and lawyers who can guide you in setting up your international subsidiary, determine your local banking requirements, inform you about the relevant employment laws that apply, and ensure that you understand your tax and accounting obligations as a local employer.



Before you decide to set up in a given country, make sure you understand the complexities so you are able to carry out your obligations. Here are a few examples of things that are often overlooked:

- In Sweden, the rate of unionization is more than 70 percent, and is distributed pretty evenly in both the public and private sectors. Collective labor agreements are common so you should work with your local team to determine whether your company would fall under a collective labor agreement. Also, note that you may not screen out job candidates based on their union membership. In fact, you shouldn't even ask about it.
- In Poland, employees require a medical screening before they can start employment. Make sure that you know how you would effectuate such a medical screening before making the hire.
- In Brazil, if you intend to hire an employee who will receive a commission, annual or semi-annual payouts are the norm. Monthly commissions would be assessed social charges (i.e. statutory governmental benefits) of 80 percent, the same assessed on standard salary payments. If you limit commissions to one or two times a year, those commissions are assessed social charges of 40 percent (so long as such commission or bonus amounts don't exceed 50 percent of base salary).
- In general, parental leave varies widely across countries. Estonia tops the list with 87 weeks of paid leave. Though Bulgaria, Hungary, Japan, Lithuania, Austria, the Czech Republic, Latvia, Norway, and Slovakia offer over a year's worth of paid leave. Given the U.S. does not mandate any paid parental leave, many U.S. companies are surprised by this factor.

4. Decide if outsourcing is right for your company: After doing some research and speaking with local service providers, you may decide that the best use of your time and budget is to outsource your global hiring to experts. Outsourcing to a professional services business, such as an international professional employer organization (PEO), removes the substantial burden from in-house legal and HR teams who would otherwise have to use significant bandwidth to learn and comply with employment laws outside of the U.S. In addition, outsourcing may provide a faster and more streamlined path to entry into a new country, as such firms already have a global infrastructure to bring on new talent in country. Your outsourcing partner can also help you navigate critical employment details such as severance, commission, contingencies, employment licenses, etc., which will decrease your risk for non-compliance.

If you are considering employment outsourcing, make sure that you do your homework. In a number of countries, such as in Germany, Switzerland, and Ireland to name a few, licenses are required for employee secondment or labor leasing.

In one instance, a company who used employment outsourcing saved hundreds of thousands of dollars in severance payments by working with its international PEO team who guided them through a complex termination process in Mexico.

CONCLUSION

Employment laws, both in the U.S. and globally, are constantly changing. In-house lawyers must be continuously learning to keep up with the shifting landscape and keep their companies in compliance. Although international employment can appear daunting, companies miss out on huge opportunities for growth and new customers if they fail to go global. With sufficient preparation, open communications between HR and legal, and trusted partners who understand the complexities of your business and local requirements, you can guide your company through its international expansion to achieve optimal success and growth.