



## Why Global Business Compliance is Now the Only Option

At one point, loose adherence to in-country labor laws may have been worth the risk. That's no longer the case due to a raft of new laws, rules, and—of most importance—substantial penalties.

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Organizations planning to expand their international business activities have much to consider. While the global market presents exciting opportunities for growth, it also requires close attention to a multitude of compliance issues.

Global compliance is a must for multinational corporations, but a variety of factors — some in your control, but others not — make it increasingly difficult to reach compliance. That's why we've built Globalization Partners, which enables companies to plug into our global legal platform around the world, and engage new global team members under our compliant infrastructure within days of recruitment. In building our global infrastructure, we've come across it all, and we manage an ever-changing international legal landscape. We've compiled some of the hottest global compliance issues in international expansion this year.

### Global Data Protection Rules

The rising global tide of data protection regulations will first crash on American shores this year in the form of the European Union's (EU) General Data Protection Regulation, or GDPR, which will implement on May 25, 2018. The GDPR affects any entity doing business in the EU, with similar provisions in place in Switzerland and the European Economic Area (EEA) countries of Norway, Iceland, and Liechtenstein. The United Kingdom has expressed its intention to adhere to a similar scheme following its eventual departure from the EU, but there may be revisions in that transition as well.

GDPR requires entities who come into contact with personal data belonging to natural persons (which some countries have expanded to include corporate entities) to implement specific technological and procedural safeguards with respect to that data. In line with GDPR's emphasis on transparency, covered entities must create mechanisms to allow data subjects to correct, revise, delete, or transfer their data held in their systems. Since the GDPR applies to data flows rather than to international lines, it has a truly extraterritorial reach: if your company encounters personal data belonging to EU citizens, compliance is required.

U.S. multinationals must consider the impact of GDPR on their international activities with respect to customers and vendors, but also as it applies to their global workforces. GDPR places increased obligations on employers and service providers while enhancing employees' privacy rights. In some cases, individual Member States are permitted to refine the GDPR framework at the local level, requiring not just EU-wide compliance but nation-by-nation vigilance. Further, GDPR defines several types of information routinely collected for human resources purposes as "special categories of data" and requires extra protections for those data.

Whether your organization has been operating within the EU for some time, or is new to the market, GDPR compliance will likely require revisions to internal processes and procedures, technological improvements, and review of contractual relationships with vendors who come into contact with personal data.

To top it off, GDPR carries potentially devastating penalties. Non-compliance related to a technical error such as improper risk assessment or certifications can cost a company up to the greater of €10 million or 2% of global annual revenue. Failure to comply with fundamental principles of the regulation relating to data subject rights or processing personal data can reach the greater of €20 million or 4% of global annual revenue. With consequences so steep, non-compliance is not an option. Globalization Partners' has a full-time, in-house legal team addressing GDPR compliance head on as part of our Global Professional Employer Organization (PEO) Platform. If clients use our system and operate within it, they are secure.

## Compliant Employment Documents

As they do in the U.S., other countries have guidelines about what constitutes a true contractor and what is really an employee in disguise. Though the guidelines may be similar, the penalties may be much more severe if an overseas tax authority decides a contractor should be reclassified as an employee.

An area where compliance may be less evident but no less important is in human resources related documentation. Employers in the United States are likely acquainted with the American legal system as it pertains to employee disputes. Whether your company has resolved past disputes informally or has been party to employment-related litigation in the past, you recognize the importance of properly maintaining employment records, personnel files and other performance related information. An expanding global workforce means these delicate situations could arise in jurisdictions governed by vastly different legal systems.

Ground zero of any compliant global workforce expansion is an appropriate employment agreement. Internationally, employment laws tend to favor workers more than in the United States. Benefits such as paid notice prior to termination of employment, mandatory vacation and sick pay, expanded parental and other leave policies, and severance based on length of service and set by statute are common.

Depending on the jurisdiction, employment agreements must contain these or other requirements, and some have specific requirements that would surprise American employers. Mexico, for example, requires the employee's fingerprint on the employment agreement, and before the agreement is valid the employee must sign the agreement in person in front of representatives of the employer. Similarly, prohibitions exist in some countries on including language about at-will employment or restrictive covenants that many consider standard in the United States.

Rules related to compensation in employment agreements vary as well. Canada's overtime rules vary from providence to providence, and employment agreements must reflect those differences where the employee lives and works. In Brazil, including commissions plans in an employment agreement risks making commissions part of an employee's regular pay to be included when calculating severance and notice period pay.

Using a standard agreement based on U.S. law will create more problems than it solves. Drafting a locally compliant employment agreement that not only satisfies statutory and regulatory obligations but also complies with local customs and meets the employee's expectations is not only a best practice, it is a must for any global employer. And should a company find itself in a dispute with an international worker, problems with the underlying employment agreement could strengthen the employee's position and result in greater exposure for the employer. Globalization Partners only engages its clients' global workforces via our fully compliant contracts. In fact, the client is disallowed from adding non-compliant terms to our employment contracts. Because Globalization Partners takes on the responsibility to ensure that all our clients' employees are legally employed in the country in which they work, this practice ensures all parties avoid exposure if there is a dispute with an employee.

## Local Law Compliance

Another constantly changing aspect of compliance involves adhering to the laws of the countries in which U.S. companies operate overseas. Nations worldwide have cracked down on foreign companies doing business on their shores. European countries have fined American tech companies totaling billions of Euros for antitrust and privacy law violations. China has also scrutinized American companies' conduct there, and the African nations of Chad and Tanzania levied huge fines against foreign companies for tax and other reporting violations.

Local law compliance becomes all the more challenging when a country implements changes to its laws. In 2017 alone, for example, governments in Belgium, Canada, China, France and others enacted significant changes to their employment and labor laws. Companies who employ workers in those jurisdictions need to be savvy enough to identify the changes as they happen, and nimble enough to implement them in a timely fashion.

Failing to ensure compliance with applicable laws throughout the world risks squandering the benefits of participating in the global marketplace. For that reason, compliance is a critical component of any global expansion strategy, which is why we indemnify our clients to ensure that we'll follow all labor requirements in-country: because their employees are literally our employees, and our clients' risk thus becomes our risk.

# Thank You

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