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Keys to an Effective Global Employment Strategy

BY BRIAN ARBETTER

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It too often happens that U.S.-based multinational companies develop their global employment strategy by happenstance. Typically, they grow over time through acquisition, and rarely focus sufficient attention at the time of purchase on true and proper integration of their differing global workforces, policies and practices.

Needless to say, this leads to frequent mistakes over time, and in some cases, significantly adverse (yet avoidable) legal liabilities and payouts. This article highlights a few of the key issues for multinational employers to focus on when growing their global workforces so as to develop and implement a good global employment strategy. Issues discussed include: (1) Consolidation of global employment policies and documents; (2) independent contractors versus employees under varying global standards; and (3) proper global and local employer entity structuring.

Global Policies

Even the most sophisticated of global companies often find their employment policies and documents to vary around the world. This usually is the result of non-integrated growth over time, either due to mergers and acquisitions or due to tolerance of locally autonomous cultures within the corporate organization.

From a global employment law standpoint, it is generally better practice to coordinate and consolidate policies across the world in order to achieve better organizational efficiencies. The less variation, the less likely that an employer will have to confront employee morale issues arising from one jurisdiction getting better terms or benefits than another, and the less likely that the employer will make mistakes administering its human resources practices by possibly missing a local difference. Because there are in reality certain legally required practices that may be unique in a particular jurisdiction, recommended best practice is to create a common global set of policies and documents, and then implement local addendum to accommodate only those locally required variations. The goal again is to maintain as

BRIAN ARBETTER *is a partner at Norton Rose Fulbright.*

much consistency around the world as legally allowed.

Independent Contractor Versus Employee

It has become way too common for multinational companies to start up operations in a new jurisdiction by attempting to engage individuals as independent contractors, rather than employees. This is often a legal mistake.

Most U.S. employers know that it is difficult legally to engage a worker to perform services in a way other than having them be an employee. To have a relationship where instead the individual is an independent contractor requires proving a set of 20 factors. Key among these is that the person not be directed or restricted in judgment by the employer and that the manner and means performed be completely up to the individual—including not using the employer's equipment or space or tools.

Outside of the United States, most countries follow a similar legal analysis on this issue. For this reason, employers who assume that because they are engaging someone in another county they can easily label them as an independent contractor and avoid local employment law obligations make a significant legal mistake. The costs for this can include obligations to pay back pay, back contributions to various local public social funds, and back taxes—plus penalties and interest. Liability for this mistake can also include owed corporate tax liability on profits earned by the company locally, and in some instances worldwide. This is because where a non-local employer directly employs someone, that employer is typically subject to the local laws, including the local tax laws, since the entity is acting de facto as a local employer although not properly registered as one.

In today's world of governments aggressively looking for tax revenue wherever available, it is common that a local taxing authority will attempt to tax the foreign entity under local corporate tax rates. In a worst case situation, this can result in the foreign company being taxed at a local rate on its worldwide profits because the company does not have a proper local entity to be taxed on only local profits. For these reasons, it is crucially important that U.S. companies giving overseas avoid improperly engaging local workers as independent contractors.

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Employer Entity Structuring

Key to employment outside of the United States is choosing the correct employment entity. A mistake on this choice can be difficult to correct after the fact. Common structuring choices include a representative or branch office, a subsidiary, using a third-party employment company, or a joint venture.

A representative or branch office is best for the situation where a company is exploring whether or not to establish an operating business in a local country. Typically, a representative office can have a few employees engaged to conduct exploratory activities such as looking at office space or engaging in preliminary market research; however, this type of structure cannot engage in profit making activities. This type of entity generally does not require capitalization. In contrast, a subsidiary structure is generally similar to the same in the United States; it can engage in sales and profit making activities and can employ local employees without restriction. As at home, this type of entity generally requires registration, capitalization, and compliance with all local laws and tax obligations. Where a non-local employer plans to employ people but does not want to commit to a direct local operation, it can engage a local third-party employment company to act as the local employer and payroll provider. This is a good solution for companies that wish to avoid the risks of non-compliance with local employment and tax laws yet want to engage in broad based activities locally. Finally, the joint venture works similarly overseas as it does in the United States. This type of entity is good generally in markets where a locally knowledgeable partner is necessary for effective sales and marketing or where a country's laws require local entity ownership or participation.

Because of all of the above, it is important that a company engaging workers overseas pays close attention to the manner and method of its operations in this regard. Choices that may seem obvious from a U.S. standpoint can end up costing the company significant dollars and administrative losses if implemented the same overseas.

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