

Top Employment Tips For Hiring Employees Abroad



Just as poutine is unlikely to taste the same in Mexico as in Canada, and just as croissants in Almaty may not be quite like croissants in Paris, employment laws differ around the globe. As a result, companies opening up shop in foreign jurisdictions need to be aware that employment laws and HR practices do not necessarily transfer seamlessly from one location to another. Companies looking to succeed in expanding operations to other locations need to keep this in mind and seek employment law advice specific to each location in which they intend to do business. The following list provides some general guidance on employment issues to keep in mind when growing your business across borders.

Employment agreements

While some jurisdictions do not require employment agreements, they are a necessity in others. As an example, most employees in the United States can have their employment terminated “at will” without notice, severance or other compensation being required. Other countries however, such as Canada and the EU countries, require employers to provide terminated employees with reasonable notice of termination, severance or some other form of compensation in order to provide the employee with a period of pay while seeking new employment. Determining what that amount will be is not always straightforward, but having a proper employment agreement signed by the parties at the start of the employment relationship can help to clarify the amount in advance, and save the employer from uncertainty at best and litigation at worst.

Statutory requirements

Many countries have legislation which sets out requirements for things like overtime entitlements, vacation entitlements, leaves of absence and minimum wage. As one might imagine however, there is a great disparity between countries when it comes to the specifics of those entitlements. Just as the July 1st Canada Day is unique to (you guessed it) Canada, the August 20th St. Stephen’s Day is unique to Hungary. In addition, while statutory entitlements can vary from country to country, they can even vary within a country. In Canada, for example, the province of Ontario has a unique Organ Donor Leave and the province of New Brunswick has a Court Leave. In addition, some of the Canadian provinces have a Reservists Leave or a Bereavement Leave while others do not. Further, while most Canadian provinces have some form of Pregnancy or Maternity Leave, Parental Leave, Emergency or Sick Leave, and Compassionate Care Leave, those leaves vary from province to province and some of

them would be an unknown in other jurisdictions around the world. Likewise, the vacation norm in the US for non-government employees is just two-to-three weeks of paid vacation per year (although there is no mandatory requirement), while the statutory requirement in England is a whopping 28 days.

As can be seen, if a company tries to take its statutory employment practices from one country to another without regard to the applicable statutory requirements, it risks running afoul of the law, not to mention angering its foreign workforce.

Company protections

For some companies their value is largely in their workforce, while in others it is in their customer base. For yet other companies, their value is in their trade secrets and intellectual property. As a result, many companies desire restrictive covenants such as non-solicitation or non-competition agreements and most companies try to protect their intellectual property through the use of confidential information and intellectual property agreements. What is enforceable in one jurisdiction however, will not necessarily fly in another. For example, non-competition agreements tend to draw the ire of the courts in California, although not all US states react similarly. Likewise, Canadian intellectual property agreements can contain a "waiver of moral rights" provision (allowing the employer who has been assigned the intellectual property to take over rights to the integrity of the intellectual property), but similar US agreements do not contain such a provision.

Jurisdiction

You are a Moscow-based company hiring a few employees in Canada and it may be tempting to just put them onto your template form of employment agreement for Russian employees. The problem with that from a Canadian law point of view however, is that they will be seen to be Canadian employees if they are working in Canada and are not independent contractors. As Canadian employees, they will be entitled to all of the statutory entitlements and other entitlements (eg. to proper notice and/or severance on termination) which Canadian laws provide and if your Russian form of employment agreement does not address those entitlements, it will be invalid and struck down by the Canadian courts. Likewise, an American with a human rights claim against his or her Russian employer is not going to be precluded from bringing that claim in the US just because he or she is subject to a Russian form of employment agreement. Although jurisdictional issues can be complicated, the general rule is that you are employed in the jurisdiction in which you provide services. As a result, it is important for employers to ensure that their employees are governed by employment agreements and policies which reference applicable local laws.

Translation

English is a world language, right? Those of us who speak English may want to think so but of course it is not the case. It is important for employers to remember that certain jurisdictions (eg. France or Poland), require employment agreements to be in the local language. Again, even within countries, this can be an issue. As an example, the province of Quebec in Canada is French-speaking and contracts must be in French unless the parties specifically state otherwise in writing in the agreement, with the opt-out paragraph being required in both French and English.

Conclusion

In addition to the above, there are a number of other issues to be aware of when hiring employees in foreign jurisdictions. Even if individuals are being hired as independent contractors or consultants rather than employees, there are rules and

laws in each country which set out differing tests as to whether or not an individual is properly classified as a contractor. Just as you wouldn't set up a company abroad without hiring a lawyer to assist, legal advice should always be obtained to assist with understanding and complying with corporate employment obligations abroad.

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