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Going Global with Full Force & Effect!

*Presented for the 2015 PIHRA/CAHR
Conference by:*

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Program Objective

- To provide general advice to HR and other professionals responsible for managing employees who are working outside of the U.S. or international employees who are working within the U.S. are in compliance with U.S. and international employment laws

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Agenda

- Global Employment Law Climate
- Taxes, Benefits, and Compensation
- Collective Bargaining
- Recruiting and Employment Contracts
- Employment Terms and Conditions
- Discrimination, Harassment and Leave Laws
- Performance Management and Employee Separations
- Privacy, Data Privacy and Computer Issues
- International Assignments
- Safety and Emergency Issues
- Litigation
- Practical Advice

Legal Climate for International Employment law

- U.S. Concept of Employment-at-Will in Countries outside of the United States:
 - Protectionism
 - Highly regulated
 - Works Councils and unions
 - Criminalization of employment actions
 - Taxes and benefits
 - Long arm of international employment laws



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Tax Matters

- Common misconceptions
- Employer's tax reporting obligations
- Employee's tax responsibilities
- U. S. tax laws
- Tax laws of other countries (ex: threshold of duration, scope of job, location of supervisor)
- Hypothetical taxes
- Disputes over taxation by employees
- Civil and criminal enforcement and penalties



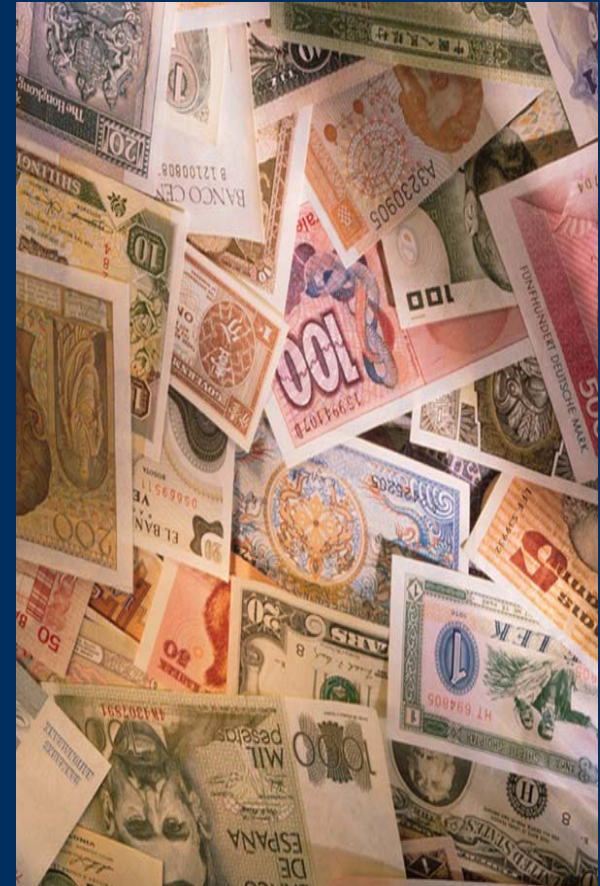
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International Compensation Issues

- Who is the employer?
- Currency issues
- Assessing correct compensation for employees outside of the United States
- Challenge of employees on international assignments
- Payroll issues



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Hiring: Employment Contracts & Terms

- Recruiting rules
- Positive Affirmative Action
- Contract Requirements
- Employee handbooks
- Visas and work permits
- Penalties for non-compliance
- Non-competition laws

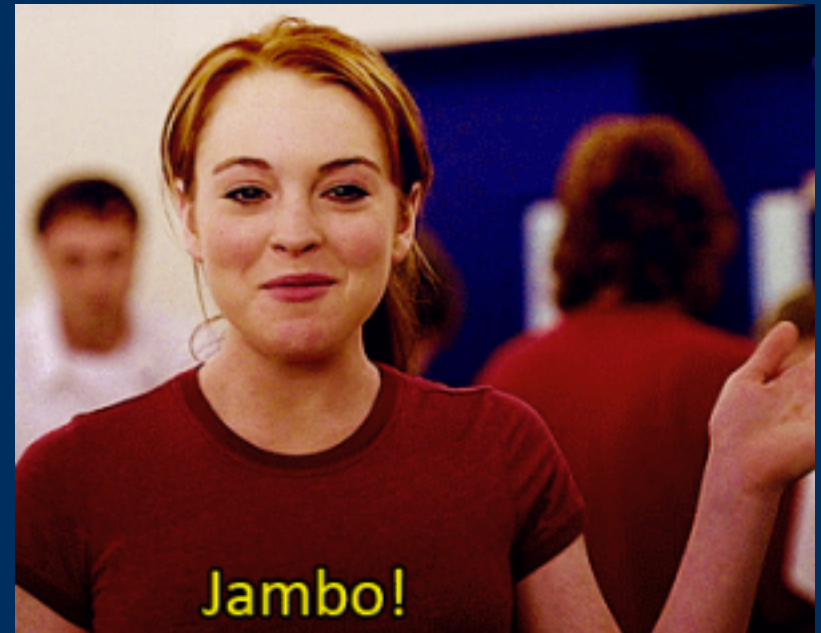


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Language Issues: Employment Policies, Handbooks, and Contracts

- Many countries require documents such as policies, handbooks or contracts to be in official language of country
- Application to expatriates
- Ex: China, Saudi Arabia, Canada (Quebec)
- By practice (Puerto Rico)



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Collective Bargaining & Works Councils

- European Union Countries
- Wider scope of unions in Latin America & Asia-Pacific
- Union representation for greater category of workers
- Bargaining Responsibilities
- Internal Union & Works Councils rules to consider
- Need time to consult with collective entities for actions and communications

Recruiting & Hiring



- Background checks
- Recently laid-off employees
- Medical Issues
- Written/oral contracts
- Foreign workers
- Part-time employees
- Probationary periods
- Independent contractors

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Non-Competition Clauses

- » Unenforceable or limited enforcement in many countries, including the United States
- » Some countries require either clauses at outset of employment and/or payment after termination equal to period of non-competition



Performance Management for Employees Outside of the U.S.

- Proof of performance issues
- Specific country statutes and common law governing performance management
- Increasing practice of extra-territorial supervision:
 - ✓ Risk for manager and employers conducting performance management
- Criminal and civil penalties

Long-Arm Statutes

- Be aware of application of laws of other countries to their citizens working in international locations.
- U.S. examples: Title VII, ADA, and ADEA all have a “long arm”
- FMLA does not
- Training for managers/employees
- Long-arms of laws outside the U.S.

Employees from Outside of the U.S. Working in the U.S.

- OSHA training on safety matters
- NLRA and other posting requirements
- Severance and other agreements for employees with limited English language skills

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Separation of Employment: Common Themes

- Individual discharge
- Reasons for discharge
- Performance
- For cause
- Restructures and redundancies
- Notice
- Severance pay entitlements
- Garden leave
- Procedures
- Penalties and lawsuits

Discrimination & Harassment

- Harassment and Discrimination Laws outside of the U.S.
- Different criteria for protected classes and individuals (Colombia: political or philosophical views)
- Moral Harassment (Sweden, France, Belgium)
- Workplace Investigation Panels (the Philippines)
- Criminal Statutes (France)
- Social Frameworks: Harassment and Violence Prevention



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Medical & Family Leave Issues

- Leave issues when expatriate employees are injured or become ill
- FMLA is not required for U.S. employees working outside of U.S.
- Leave laws of host country also may not apply to employee

Privacy, Data Privacy, and Technology Issues

- Privacy statutes and common law outside of the U.S. (ex: France)
- Computer Data Privacy Laws outside of the U.S.:
 - European Union
 - Mexico
- Social media
- Criminal and unusually high monetary penalties

Employee Benefits for Expatriates

- U.S. or local country benefits
- Health Savings Plan
- Pension
- Cross-country Social Security Agreements
- Cars/transportation
- Housing
- Home leave
- Tuition for children
- Repatriation/shipment of home goods

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Litigation

- Litigation can occur in multiple countries, depending upon facts and specific laws
- Weaker attorney-client privilege doctrine
- Strong bias in favor of employee
- Different causes of action
- Language issues
- Different court rules and burdens of proof

International Assignments

- Secondment
- Employer of Record
- Supervision
- Assignment Letters
- Tax Implications
- Benefits Matters
- Pension
- Social Security Agreements
- Contractual Provisions
- End of Assignment

Safety & Emergency Issues

- Injuries and illness
- Natural catastrophes
- Political upheaval
- Kidnapping
- Safety statutes
- Lawsuits
- Workers' Compensation
- Contingency plans

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Chart Your Course

- **Checklist:**
 - ✓ Business license
 - ✓ Tax Issues
 - ✓ Work permits
 - ✓ Visa
 - ✓ Employment contracts
 - ✓ Employee handbooks
 - ✓ Termination and severance pay
 - ✓ U.S. and local laws

General Advice: Avoiding Employment Law Pitfalls while in a Global Landscape

- Conduct proper planning with appropriate advisors when:
 - Hiring employees in other countries
 - Placing employees on expatriate assignments
 - Placing employees from outside the country into U.S. positions; and
 - taking performance or separation actions

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Final Questions?

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A T T O R N E Y S A T L A W

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Thank You

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