



Global Business Services

GLOBAL DIFFERENCES IN EMPLOYMENT: Key Issues and Important Cultural Considerations

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■ **US vs. non-US Employment**

- Cultural outlook
- Legal underpinnings of employment relationship
 - Statutory vs. individually-negotiated
 - At-will vs. contractual
 - Employee representative bodies
 - Data privacy
- Practical considerations
- Context for comparison: M&A and outsourcing

- **Cultural impact on employment relationships**
 - Historical and political heritage
 - Individual vs. societal focus
 - Shift toward global economy

■ Legal basis for employment relationships

– US:

- Individually-negotiated terms and conditions
- Limited statutory framework
 - Anti-discrimination
 - Health and safety
 - Collective bargaining
 - Data privacy
- Case-law precedent
- at-will employment: hire and fire freedom except for protected categories

– Non-US:

- Statutory basis for employment relationship
- Limited individual flexibility to alter employment terms and conditions
- Employee representative bodies generally in place
 - Unions
 - Works councils
- Government-provided benefits
- Mandatory severance

- Contracts of employment
 - Required for all employment relationships
 - Employee consent required for changes
- Data Privacy
 - Restrictive treatment
 - Global impact

- **Practical considerations arising out of differences in treatment of employment relationship**
 - Awareness of existence of differences and need to take into account
 - Local expertise
 - Client education
 - Timing of business activities
 - Financial impact

- **Deal considerations reflecting global differences in employment**
 - Pre-deal:
 - Create global team
 - Local counsel: experience, coverage, accessibility
 - Identify existence of legal differences
 - Language requirements
 - Establish internal/external communications procedure
 - Awareness of local requirements
 - Time differences
 - Project chronology and target timeline
 - Identify delivery method (outsourcing)

■ HR Legal Issues

- At-will vs. contractual framework
- Method of personnel transfer by country
 - Non-statutory transfer
 - Individual employment offers/negotiation
 - No required transfer of employment or t&c's
 - Ability to choose employees to hire/divest
 - Negotiation by parties of HR terms and conditions
 - Limited notice requirements (WARN)
 - No statutory severance

- Mandatory transfer: EU Acquired Rights Directive (ARD); Transfer of Undertakings (Protection of Employment) (TUPE); Japan: Company Split Law; South Africa; Korea
 - Applicability – transfer of undertaking, business or part of business (economic entity); transfer of assets
 - Effect –
 - > Divestiture/assumption of all in-scope employees
 - > Assumption of employment contract and prior obligations/claims; replication of benefits
 - > Inheritance of unions/works councils
 - > limitation on separations/alteration of terms and conditions going forward
 - > Necessity for harmonization of terms and conditions

- Integration of employee transition methods
 - Effect on: contract drafting, HR processes (integration/culture), cost, delivery method in outsourcing deals
- Unions, works councils
 - Existence
 - Notice and consultation
 - Adoption/maintenance obligations
 - Effect on timing/confidentiality/contract terms

– Transfer of benefits

- Statutory requirements vs. negotiation
- All benefits vs. specific programs
- Substitution of benefits
 - Industry-focused benefits (cars, bank programs insurance)
 - Stock options
 - Pensions
 - Vacation
 - Service credit
 - Severance

- Pre-employment requirements
 - Immigration
 - Medical exams
 - Criminal background checks
 - Drug testing
- Data Privacy
 - Applicability of EU Directive
 - “safe harbor”/contractual obligations
 - Transfer of employee information (aggregate vs. individualized)
 - Audit rights

- Indemnification/ reps and warranties
 - Pre-and post transfer liabilities
 - Data, claims, union activity, WARN
 - Non-in scope resources
- Delivery and post-contract issues
 - Integration:
 - harmonization of t&c's
 - Internal integration
 - Resource planning

– Contract termination

- Application of ARD and similar laws
- Restrictive covenants
- HR termination costs
- Indemnification provisions