Structuring Expatriate Arrangements

An Overview of Key Expatriate Contract and Tax Issues for U.S. HR Managers

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Structuring Expatriate Arrangements – An Overview of Key Expatriate Contract and Tax Issues for U.S. HR Managers

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Introduction

When multinational companies send employees abroad to work in one of their subsidiaries or group companies, planning ahead is critical so that the appropriate documentation can be put in place at the outset. Expatriates are too often sent without adequate documentation recording the intentions and terms of their assignment. Inevitably, this makes the assignment difficult to manage, as the expectations of both parties may not be aligned. Further, if the assignment ends early or does not work out as planned, the company may incur unexpected liabilities.

Even if there is a contract in place, we often find that the terms of the expatriate contract are often inconsistent with underlying employment terms leading to confusion and lack of certainty. In addition, local termination requirements are often in conflict with the contractual terms, which will cause legal problems should the assignment terminate abruptly.

A written contract is essential. In particular, key issues to cover include:

- The governing law and jurisdiction;
- The length of the assignment;
- Any benefits during the duration of the assignment; and
- The options for terminating the assignment.

The purpose of this paper is to provide some general pointers about drafting expatriate agreements. Any country-specific examples relating to the application of mandatory laws and enforceability of restrictive covenants will normally relate to U.K. law.

Who is an Expatriate?

Traditionally, an expatriate is an employee originally hired by and working for a multinational in one country and sent to work temporarily abroad. This could be at a different company (so the employee can obtain new skills) or could be an assignment to one of the multinational's group companies or affiliates. At the time of the posting, the intention is usually that this employee will return home at the end of the assignment. If an employee wishes to move abroad permanently (for example, if they have personal reasons for moving), then the employee most likely should be localized from the outset.

Who Is the Employing Entity?

Before determining the type of contract that the employee will be given, a company needs to decide who will employ the individual. If a multinational already has an established entity in the target country, then the process may be quicker, even though various approvals (especially in relation to immigration and work permits) will still have to be obtained.

However, if a multinational is setting up in the new country for the first time and has no existing corporate entity in place, then specialist advice must be sought well in advance to set up the appropriate entity, and comply with tax, immigration and employment laws. There should be no expectation that the employee can move abroad right away.

Complying with local rules is important to ensure that tax withholding for the employee begins from day one. If the employing entity is not the local entity then taxes might be paid in the wrong location creating cash flow problems for all parties, penalties and missing tax planning opportunities.

What Type of Contract?

There are various options available for structuring expatriate contracts including:

- Secondments;
- Local employment contracts;
- International standardized contracts tailored to local laws; and
- Dual/multiple contracts (potentially applicable only to certain non-US citizens).

The ultimate choice of contract, however, is often driven by tax, social security or immigration concerns and requirements.

Secondment

Typically in secondments, employees are sent from their home country company to work at a foreign location – a subsidiary, foreign office, or completely different organization to work for a temporary period of time. Secondees remain employees of their home company during the length of the assignment, but with certain rights and benefits suspended and replaced by relevant secondment arrangements.

In general, a secondment is a good option when a multinational company wishes to send employees temporarily (either short or longer term) to another country, but the employees will remain employed by the home company while working in the overseas office. Secondments may also be necessary when an employee needs to remain an employee in the home country, for example, for pension/retirement scheme or other benefit purposes.

A multinational company may also decide to send an employee to work in an outside organization so the secondee can gain experience of a different organizational structure, obtain technical skills from a different industry or bolster their knowledge of a specialized area.

In addition to an agreement with the seconded employee, it is also normally advisable to have an agreement between the "host" company and the secondee's "home" company about payment of salary and benefits, other costs associated with the secondment, the proposed length of the secondment and issues such as who has the right to discipline the individual.

Some important issues to consider when planning a secondment include:

- How does the underlying employment contract, typically with the "home" company, interplay with the separate secondment/assignment agreement with the "host" company (i.e. are there any inconsistencies that need to be resolved).

- Who will bear the financial burden of the seconded employee; the “home” or “host” company?

- Who will be responsible for handling any disciplinary issues which arise during the secondment? Will the individual be subject to the “host” company’s rules?

- Does the individual have the necessary visas and permits to enter the country to work?

- How long is the secondment anticipated to last?

- What is the intention at the end of the secondment in terms of relocation and related costs? Will this differ if the assignment is terminated for cause or poor performance?

- Do you need to include new restrictive covenants in the secondment agreement to take account of the new country’s market and also its laws?

- Will the secondee receive a tax equalization or protection agreement?

- What additional benefits are will be provided -- e.g., car, travel, home visits, housing, children’s education, medical expenses insurance for the host country, professional costs of tax preparation?

- Will the secondee be on the host country payroll, home country payroll, an international assignee payroll, or multiple payrolls?

Local Employment Contract

Under a local employment contract, the employee’s home country contract (if there is one) is suspended or terminated, and a new host country contract is executed. There are a number of reasons why employers may consider placing expatriates on a local contract. Foremost, certain countries require that, for immigration purposes, expatriates must be employed by a local company on a local law contract. If an employee is likely to be based in the country for several years, rather than for a finite period, it may be best to consider employing them on a local contract from the outset. This may help reduce expensive expatriate pay and benefits arrangements although, of course this will be a matter of negotiation between the company and the employee. Finally, some employers simply find it a cleaner arrangement to offer local contracts to expatriates when they move from one country to another, rather than trying to achieve some level of global consistency with a standard type of international contract.

Before an employer decides to place an employee on a local contract, there are important considerations which need to be addressed:

- Does the company have an established entity or subsidiary in the host country? The company will need to have an established entity or subsidiary within the host country before the employee moves abroad.

- What visas and work permits does the employee need? Immigration advice should be sought to ensure that the individual has the appropriate visa if the intention is for them to stay for a longer period of time.

- How will local taxes affect the employee?

Before the employer executes a new contract in the host country, the employee's existing home country employment arrangements must be expressly brought to an end. If there is a risk of potential claims or liabilities from that period of employment, the employer should consider seeking a waiver of those claims from the employee if possible. Finally, a new contract will need to be issued, following typical local arrangements, which comply with the relevant local law. Many countries, unlike the U.S., require that the employee receive a written contract.

International Standardized Contract Tailored to Local Laws

The familiarity and preference of the parent company for a particular country's laws and style of contract often drives the decision to have a standardized international employment contract which aims at a level of harmonization of contractual terms across its expatriate group.

However, those standard international contracts need to be tailored to the local law of the host country to ensure they do not infringe local mandatory requirements. This tailoring often results in a new contract that is quite different from the original standard contract, and the objective of harmonization/standardization is not achieved. Harmonization to the extent possible is probably better achieved by way of high-level global expatriate policies and codes of conduct that are then incorporated by reference into the expatriate's individual arrangements contained in a local contract or secondment agreement.

Dual Contracts

With dual employment contracts, separate contracts are created with two different companies: one in the host country and one in the home country. Normally, the two employers are part of the same wider group company structure. Dual contracts record separate roles under the two respective employment contracts: one contract for the home country duties/role and one contract for host country duties/role. In general, the benefit of a dual contract is that the employee may be entitled to tax relief in one country for work performed in the other. For U.S. citizens and residents, this relief is less advantageous since they are taxed by the U.S. on their

worldwide income. However, they may be able to get relief on their host country tax obligation on the work that is attributable to the U.S.

In the U.K. dual contract arrangements have historically been used where an employee carries out separate roles both in and outside the U.K. but is not domiciled in the U.K. These contract structures are always tax driven and require highly specialized tax advice both in their design and operation. In our experience, dual contracts are not normally advantageous to U.S. citizens who are taxed on their global income.

Recently in the U.K., dual contracts have been under fire from the government, particularly where they are considered to be an artificial means of avoiding tax. The Finance Act 2014 brought in new measures applicable to dual contracts from April 6, 2014. In light of those changes in the law, it will likely be difficult to achieve the advantageous tax planning previously obtained and only in exceptional cases where there are two distinct employments and the tax planning can be achieved would this make sense. Multinationals who rely on dual contracts in the U.K. should review their contracts and determine whether they fall foul of the new legislation. Going forward, it may be even harder to justify such arrangements.

Choice of Law and Jurisdiction

Choice of Law

It is good practice for expatriate contracts to include an express choice of law clause. This enables the employer to specify which law they wish to govern the contract (to the extent permitted by the laws of the country or countries where the expatriate is, for example, employed or normally working). However, choosing the most appropriate law, taking into account all the circumstances, can be difficult. Multinational companies typically choose the law where the company is headquartered and which may be more "employer friendly." This choice also has the added advantage of being the law with which the employer is most comfortable and familiar.

It is important for multinationals to remember that even if the contract contains an express choice of law clause, this does not mean that local laws can be circumvented when sending the employee to work in countries such as the U.K. (or to Europe in general). Certain mandatory laws will still apply as result of European legislation. For example, contractual provisions which are less favorable to the employee than mandatory local laws, will normally be void.

> EXAMPLE:
> A*n expatriate agreement states that New York law governs the contract and that the expatriate's employment remains at will. The employee is sent to London for a three-year assignment where he will work for one of the multinational's subsidiaries. After two years*

of working in London, his performance falters and the company decides that it will terminate the assignment (and his employment with the company). Under mandatory U.K. laws, he now has protections against unfair dismissal in the U.K. that apply after two years of employment except in certain limited circumstances where there is no minimum service threshold. Therefore, the multinational will have to establish a potentially fair reason for dismissal and follow a proper fair process and procedure to avoid a finding of unfair dismissal against them as far as possible. The employee is also likely to be entitled to a statutory minimum notice period under U.K. law.

Employers should seek local advice to determine which local mandatory employment laws apply in specific circumstances, especially in the case of termination of an expatriate's employment.

Jurisdiction

As well as a governing law clause companies should also consider jurisdiction clauses in their expatriate contracts (i.e. which country's court will be able to resolve any dispute which arises under the contract).

European Union legislation greatly limits exclusive jurisdiction clauses in E.U. employment contracts. Contractually agreed exclusive jurisdiction clauses in employment contracts will only be valid if:

1. They are entered into **after** an employment dispute has arisen, or
2. The employee chooses to rely on that jurisdiction clause.

Within the EU, an employee may choose to sue their employer:

1. In the courts of the Member State where the employer is domiciled (i.e. has its statutory seat/registered office, central administration or principal place of business) or in the Member State where there is a branch, agency or establishment (if the dispute arises out of those operations); or

2. In another Member State where the employee habitually works; or

3. In the Member State where the business in which the employee is engaged is or was situated (if they do not habitually work in any one country).

Additionally, a "posted worker" (a worker of an EU employer, who is temporarily posted to another EU Member State) can enforce rights guaranteed by the EU Posted Workers Directive in the Member State in whose territory the worker is or was posted.

Employers do not have the same choice as their employees. Employers can only sue an employee in the courts of the Member State in which the employee is domiciled (although the employer can bring a counter-claim in the court where the employee's original claim is made).

Recent amendments to EU legislation (in force since January 10, 2015) now mean that an employee can also litigate against non-EU employers in the court of a Member State (so long as the Member State is where the employee habitually carries out his work or where the employee was engaged or situated).

> EXAMPLE:
> A *U.S. business has no E.U. presence (i.e., no place of business, branch or agency in the E.U.) but it has a number of U.S. nationals on the ground in the E.U. who carry out an essential part of their duties there, so the E.U. is regarded as the place where they habitually carry out their work. Those employees have contracts with the U.S. business which contain exclusive U.S. jurisdiction provisions. Should an employment dispute arise, those E.U.-based employees, since January 10, 2015, will be able to litigate their dispute in the E.U. against their U.S. employer, regardless of the U.S. jurisdiction clause and despite the fact that their employer has no formal E.U. presence.*

Additionally, from January 10, 2015, if an employment dispute relates to different group companies based in different Member States, the claims – provided they are closely connected – can be heard in the court of one Member State (rather than differing courts across the E.U.). The aim of this is to avoid the risk of irreconcilable judgments resulting from separate proceedings and is administratively helpful to international employers in terms of consolidating similar claims.

Restrictive Covenants

Of key importance when drafting the expatriate contract is whether or not a multinational company can rely on any restrictive covenants (including noncompete agreements contained in the contract (or related employment documents)) if the employee is working and living in a different jurisdiction. Employers will be particularly keen to protect trade secrets and connections especially if the employee remains in the new country when the secondment ends or is terminated.

There are two leading U.K. cross-border cases on this area, both of which are potentially relevant to U.S. multinationals. The detail of the cases is beyond the scope of this publication, but certain principles emerge as a result. Namely, that widely drafted restrictions are unlikely to be enforceable in many jurisdictions. Employers should consider fully what legitimate business interests the company is seeking to protect for itself and any relevant group company for which the employee may work during the contract. Is it client connections, confidential information, a stable workforce, supplier relations, or other legitimate business interests? Once

that is determined, a noncompete agreement (and related post-termination provisions) can be drafted that is no wider than reasonably necessary to protect those business interests both at home and in the foreign jurisdiction. It is better to have a much narrower, shorter noncompete clause which is potentially enforceable, than a wide, lengthy provision which will not withstand close scrutiny by foreign courts or legal advisers to the employee.

Additionally, some countries will not uphold noncompete and related post-termination restriction provisions at all, while others may require that the employee be paid an agreed amount of money by the former employer during the period of restriction for the provision to be enforceable. Therefore, when drafting the noncompete and related post-termination provisions, multinational companies should always take local legal advice on the likely enforceability of those restrictions in each of the countries in which the employee is likely to work during and following the end of the secondment and employment.

When it comes to seeking to enforce those post-termination restrictions companies should be aware that employees may be able to ask for a declaration from the foreign jurisdiction's courts that the restrictions are unenforceable under their laws. The employee may also be able in certain countries to seek an anti-suit injunction. For example, an anti-suit injunction may be granted by an English court to restrain foreign court or arbitration proceedings where these have been commenced in breach of E.U. rules on jurisdiction in employment matters. In the U.K. case of *Samengo-Turner and others v J & H Marsh & McLennan (Services) Ltd and others [2007]*, a worldwide anti-suit injunction was sought (and granted) by the employees in the English courts to restrain proceedings being brought against them in New York.

Key Provisions for Expatriate Contracts

This section provides a best practice checklist of the key provisions needed for cross border or expatriate contracts, and in particular in secondment/assignment arrangements. This list is not intended to be exhaustive but to provide a representative sample of the most important provisions.

Immigration

The assignment and the continued employment of the expatriate abroad should be conditional upon their obtaining and retaining the appropriate immigration permissions.

It is critical to start the immigration process early. There are often complicated rules governing employees entering and working in another country, and it can take time to obtain the necessary visas. Do not assume that this process will fit within a given timeline. In fact, multinational companies may have to delay the expatriate start dates to comply with the rules of the country to which the employee is seconded.

SAMPLE LANGUAGE
Your assignment will be subject to you obtaining any relevant immigration work authorization for the assignment. The Company will, at its expense, where appropriate apply for or assist you to obtain any necessary immigration permissions.

Pay and Benefits

Most expatriate contracts should contain a clause which suspends all or most pay and benefits in the employee's "home" contract/existing employment arrangement and specify that such pay and benefits will be temporarily replaced with expatriate pay and benefits.

The expatriate agreement should include the new rate of pay and any additional benefits such as health care or car allowance that the expatriate will receive. If the employee will continue to receive a bonus, the terms of receiving such a bonus and whether it will be group-wide or company-based should be clearly set out.

The agreement should also specify the currency or currencies the employee will be paid in, as well as if there will be split between paying part of the expatriate's pay in the home country and part in the host country.

Health Care

Given the high cost of healthcare in the United States, many U.S. expatriates will be concerned about health plans in the overseas country. Will they remain under an international health care program (if the multinational has one in place) or will they be responsible for finding health care in the host country and be given a fixed amount under the assignment to cover these costs? This will need to be negotiated between the company and the expatriate and included in the contract.

SAMPLE LANGUAGE
You remain eligible to participate in the Company's private medical insurance scheme, subject to the terms of the policy in force from time to time. The Company's private medical insurance scheme covers treatment in [insert name of host country], subject to any terms and conditions. You are advised to read the terms of this policy before the start of your assignment.

Preserving Pension Issues

When employees shift on to expatriate contracts, they may be concerned about their existing pension rights. The expatriate agreement should contain provisions for preserving those pension rights to the extent home country laws allow. Continuing to participate in home country pension plans can often be done tax efficiently with employer contributions remaining untaxed and employee contributions tax

deductible. Sometimes local laws or international tax treaties allow for foreign country pension contributions and investment returns on pension funds to be non-taxable where the home country scheme is similar to the local country plan but often they do not. Take note as these can lead to additional tax and compliance burdens.

If pension rights cannot continue while abroad, many companies choose to pay pension allowances that expatriates can use towards their own retirement investments.

Taxes

Tax equalization or protection arrangements are often put in place where employers want to neutralize the impact of local taxation. This helps mobility and ensures that employees are moving for the purpose of the business and not lining up to go to tax havens or avoiding going to higher tax jurisdictions. Tax equalization ensures the expatriate pays no more or less tax or social security than they would in their home location. Tax protection ensures no more tax is paid, and if there is a tax windfall, the employee benefits from it. Whichever policy is chosen it is important that the policy and its intention is clearly communicated.

The expatriate contract should specify how the employee will be taxed when working abroad, whether a tax equalization or protection scheme will be put in place, and who will be responsible for any additional taxes owing as a result of the assignment (for example if the country in which the employee has been assigned has a higher tax regime). Thought should also be given to any taxation issues, which may arise at the end of the assignment. For example, who will get the benefit of any unforeseen tax credits – the company or the employee? If the company will provide assistance with tax preparation, that should also be included in the expatriate agreement.

Social Security

A key consideration is social security. Employer and employee contributions are payable in most locations and rates can be high. Planning is possible by- using treaties, the timing of making payments and looking at the employment relationship. Pitfalls occur when payments are made in home and host country and payroll operated only in only the host country. If you are paying social security in the host or location ensure you know all payments that are being made home and away.

Length of Assignment

The contract should include a clause which clearly defines the anticipated length of the assignment while retaining the express right to terminate the assignment and employment at any time before the period expires. It is very important not to unwittingly create a fixed-term contract which may give rise to potentially significant liabilities – including paying out the balance of the employee's salary and benefits for

the fixed term -- for the employer who decides it needs to terminate the assignment early. Therefore, it is imperative that the contract include a clause which allows the company to terminate the assignment earlier than anticipated.

Some individuals may wish to be localized at the end of their assignment. If the company is willing to consider this option, the contract should include any procedures for applying for localization and specifically set out that expatriate benefits will cease and that the employee will move on to local terms and benefits. Allowing an expatriate to overstay the end of their contract on expatriate benefits may create a contractual right to continue employment on favorable expatriate terms and also might affect the value of any rights of the employee on a future dismissal. The contract should make it clear at what point the individual will shift on to a local contract.

Alternatively, if the individual wishes to return to his home country at the end of the assignment, provision may be made within the agreement for paying for the costs of their returning home (air fares, shipping of goods etc.). As indicated above, in committing itself to pay repatriation costs the company may wish to distinguish between payments to be made to someone leaving for another assignment or because their employment is terminated due to redundancy or retrenchment, as opposed to on grounds of misconduct or voluntary resignation.

> SAMPLE LANGUAGE
> *The effective date of your assignment will be [insert date] and is expected to last for a period of up to [insert number] years. However this does not mean that there is any guaranteed period of employment and it should be understood that the length of the assignment is based upon present requirements and is therefore subject to change at the discretion of the Company.*
>
> *The Company may terminate your assignment at any time for any reason [with immediate effect and without prior notice or payment in lieu of notice or other compensation] OR [upon giving you [insert appropriate period] written notice or, at the Company's absolute discretion, a payment in lieu of such notice based on salary [and benefits] which would otherwise be payable to you during that notice period. Your employment may be terminated for cause (or gross misconduct) without any prior notice or payment in lieu of notice or of any other compensation to you.*

Company's Handbook

It is important for the contract to identify the rules by which the individual will be governed when working abroad. For example, if a disciplinary issue arises or the individual wishes to make a complaint then they will know which procedures apply. The contract should specifically state which countries' policy handbook will prevail.

Relocation Costs

Moving abroad is a costly affair and in addition to airfares, provision should be made for the shipping of the employee's belongings to the new country and the storage of existing belongings in the home country if not all the belongings can be shipped. It may be sensible to include a cap in the agreement as to the amount of money that the company is willing to pay towards shipping costs given some individuals will have a large number of items they wish to ship. Wherever possible, receipts should be requested and retained to support tax claims in the host location.

> SAMPLE LANGUAGE
> *The Company will pay for the reasonable costs up to [$ insert amount] incurred during the first [insert number] days/months of the assignment for shipping your essential household goods (excluding particularly large or cumbersome items such as appliances, vehicles, or items of unusual value, such as works of art, jewelry or antiques) to [city]. The Company will make arrangements with a household shipment company and pay the costs directly to it as long as they are reasonable and in accordance with the terms set out in this clause.*

Reporting Line

To whom will the seconded employee report? Will they still report to their former manager in Headquarters? Or will they have a line manager in the host country, with a dotted line to Headquarters? Who will conduct appraisals? Who will performance manage an employee? What if there is a disciplinary issue? All of these things need to be considered and documented in advance of the employee being sent abroad.

Accommodation

Finding suitable accommodation for the expatriate and their family members will need to be done in advance. The agreement should specify the amount (in addition to salary and other benefits) which will be paid towards rent. The agreement may also specify whether the company is willing to pay for the services of a rent agency to find suitable accommodation.

The reimbursement of accommodation expenses will be typically be taxable to the employee although there may be tax relief in certain jurisdictions.

The agreement should also indicate whether the company is willing to make a contribution to temporary accommodation costs prior to the expatriate finding permanent accommodation.

> SAMPLE LANGUAGE
> *The Company shall pay or reimburse you for the reasonable costs incurred by your living in temporary housing located in the Host*

Country [insert name of country where appropriate] up to the amount of [insert amount] for a period up to an aggregate [insert amount of days/months] following your arrival in the Host Country on (insert date if known). The Company will have the right to choose the temporary housing where appropriate and make all necessary arrangements as needed.

School fees

If the expatriate has school-age children, it will be important for them to secure good schooling in the new country. The agreement should specify the level of contribution which the company is willing to make, and whether any assistance will be provided in finding an appropriate school.

Key Considerations and Common Pitfalls

This section provides general practical guidance in relation to international employment arrangements. Where reference is made to specific laws, U.K. law applies.

Business Travelers

In an increasingly global world, many employees travel frequently (often to the same country) on a monthly basis. At what point, would these employees be classified as working in the overseas country and needing a visa and work permit and owing that country tax? This is a developing area of law. Global HR managers need to keep a check on such travelers and ensure that the company is not perceived to be circumventing tax, social security and immigration laws. If the employee is effectively working in a particular country due to the number of travel days a month, it is important to take local advice on this issue.

Permanent Establishment Issue

For companies that do not have a presence or entity abroad, it is very important to plan an expatriate assignment properly. Sending an employee to work in a country without having a legal presence, even as a business traveler, can potentially trigger significant corporate income tax exposure for the home country company. Always seek tax advice in these circumstances and plan accordingly.

Payroll

When an employee is seconded to a host country sometimes they remain on their home country payroll, move to the local payroll, remain on both payrolls or move to a specific payroll for international employees of that company. Whichever payroll an employee is put on, addressing this matter at the beginning of the assignment is

important. Increasingly governments seek to collect tax from employees through payroll withholding because it is easier to collect from one employer employing a workforce of 1,000 employees than pursuing 1,000 individuals. It is important to check on the host country rules with respect to payroll taxes and withholding.

Equity-based Incentive Plans

Shares of company stock, stock options and other forms of equity are often used as a means to provide incentive pay to employees. In some countries, the government encourages employee shareholdings through tax incentives. But what happens when the employee moves abroad to a jurisdiction that does not have the same favorable attitude? Things can become even more complicated when an employee's career encompasses several short moves.

Local tax laws will tax the employee based upon where he or she was resident when the incentives were awarded, where they are resident when they exercise the options or the restrictions lift on the shares. Consequently two or more countries may have tax claims on the same amounts. International tax treaties can resolve some of the differences. In other cases agreement with the local tax authority may be required. It is important that appropriate tax advice is taken in respect of the relevant countries.

Train your overseas line managers

In multinational businesses, individuals are frequently line managed by managers who are based overseas.

Given their hectic schedules, line managers rarely have the time to understand overseas rules, procedures or employee rights. They often assume that the law of the company's headquarters applies universally. Given the sophisticated nature of cross border employment laws, this is a mistake.

It is very important to train line managers properly in the basic principles and procedures which need to be followed in the host country. If for example an overseas employee needs to be performance managed, if they are to be disciplined, or if their employment is to be terminated for any other reason, such as a reduction in force. Sufficient time needs to be allowed for any performance or disciplinary process. Creating a relevant document trail to support the business reasons for termination is critical in establishing a fair reason for dismissal.

It is always important to involve local counsel so that they can provide expert advice on local laws and procedures – do not assume that the laws and requirements will be similar to those that apply in the U.S.

Conclusion

Given the complexities of drafting cross border expatriate agreements which operate in different jurisdictions and which are subject to the application of a variety of laws, advance planning is critical when sending employees abroad.

Putting in place a well-drafted agreement, sensitive to all the cross border issues and obligations can assist in making an expatriate assignment successful and rewarding for all parties. Providing clarity in relation to the terms of the contract and what is expected from both parties can create a favorable environment in which the expatriate can flourish and achieve the best result for the multinational's international business.

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