



# Global Mobility and the New Employment Frontier





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Q&A

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RALPH: What is the current legal position on marijuana in the workplace?

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The ELA Presents



## Global Mobility and the New Employment Frontier

Date: July 29, 2021  
Time: 10:00 a.m. Eastern Daylight Time  
Duration: 1 hour, 15 minutes



### Event Resources

|   |   |
|---|---|
| Presentation Slides & Certificate of Attendance     | + |
| Resources provided by the speakers and their firms: | + |
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M O D E R A T O R

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# Panelists



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**Atul Gupta**  
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Equity Partner  
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**Brian Wasyliv**  
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**Emma Higham**  
Partner  
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# Overview

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## Global Mobility and the New Employment Frontier

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- VISAs/Immigration/Global Mobility/Vaccine restrictions
- Pay, benefits, leave, social security
- Tax complications & increased costs to employers
- Discipline/Termination
- Jurisdictional liability



S P E A K E R

## RENATO CANIZARES

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DEMAREST

# Global Mobility - Brazil



**Renato Canizares**  
Senior Partner  
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Brazil

- Applicable laws
  - Brazilian workers abroad
  - Foreign companies hiring in Brazil
- Remote Work
- Tax, Social security impacts
- Colombian Case



S P E A K E R

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**TRILEGAL**

# Case Study in India



**Atul Gupta**  
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A US based employee of a US entity involved in customer facing operations wishes to work from India for personal reasons during the pandemic. Anticipated stay in India could be in the range of 6 – 12 months or longer. He is a US passport holder. The US entity does not have any Indian office or subsidiary.

## *Concerns from an Indian law standpoint*

- Immigration: Visa requirements and limitations
- Tax: Permanent Establishment
- Employment law: Access to local rights and benefits
- Foreign exchange: FEMA exposure for the US entity



S P E A K E R

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**Nctm**

# The free movement of persons in EU



**Avv. Dario Clementi**  
Equity Partner  
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- The first provisions on the subject date back to the Treaty establishing the European Economic Community of 1957, which provided for the free movement of workers (therefore of natural persons as employees or service providers) and their freedom of establishment.
- The Treaty of Maastricht introduced the notion of EU citizenship to be enjoyed automatically by every national of a Member State. It is this EU citizenship that underpins the right of persons to move and reside freely within the territory of the Member States.
- The Lisbon Treaty confirmed this right, which is also included in the general provisions on the Area of Freedom, Security and Justice of EU.
- To date, free movement of persons and workers is a fundamental principle of the Treaty enshrined in Article 45 of the Treaty on the Functioning of the European Union and developed by EU secondary legislation and the Case law of the Court of Justice.



# Limitations of free movement due to Covid-19 pandemic emergency



**Avv. Dario Clementi**  
Equity Partner  
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- The free movement of workers is subject to limitations based on considerations of public security, public policy, public health grounds (e.g. limitations based on Covid-19 pandemic emergency) and employment in the public sector.
- The Council adopted a recommendation for a coordinated approach to restricting freedom of movement in response to the COVID-19 pandemic.
- Following, the EU Parliament has approved the EU Covid-19 pass, the single European pass that allows to travel more easily between the countries of the European Union. The digital certificate is issued by local authorities (test centers, health authorities or via an eHealth portal) in both paper and digital format, in the national language and in English.
  - In any case, Member States are not always regulating entry requirements in a uniform way (e.g. with reference to the digital tracking module, the period of time required after vaccination, etc.).

# Case Study in Italy- The hiring of non-European workers in the EU



**Avv. Dario Clementi**  
Equity Partner  
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Italy

- With reference to Non-EU citizens moving within Europe, there are certain common immigration rules valid across the EU, while other aspects are determined by each EU country. This means that immigration rules are not identical in different EU countries.
- Each EU country alone decides:
  - the total number of migrants that can be admitted to the country to look for work;
  - all final decisions on migrant applications;
  - conditions to obtain residence and work permits when no EU-wide rules have been adopted.
- Nctm Studio Legale is providing assistance to a multinational company in hiring in its Italian office an Indian citizen, residing in India:
  - the preliminary assessment of a series of data is necessary, such as the level of qualification of the worker, the role he should cover in the company that hires him, the level of remuneration offered;
  - in any case, it is necessary to request assistance in applying for the work permit, VISA and residence permit.



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# Case Study in North America



**Brian Wasyliw**  
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Canada

- United States employer – Canadian employment
  - Establishing a presence (taxation and payroll)
  - Choice of laws
- Case Study – Canadian employer, assignment in U.S.
  - Recognition of service – termination obligations
  - Restrictive covenants – jurisdictional choice
  - Specialized professional services – TN Visa
  - Other considerations:
    - Tax equalization
    - Health coverage
    - Relocation expenses



S P E A K E R

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كلايد اند كو  
**CLYDE & CO**

# GCC - Case Study in Qatar



**Emma Higham**  
Partner  
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- US employer (no GCC presence)
- Employee with employment contract governed by US law
- Employee increasingly based in GCC given COVID 19 travel restrictions
- Decision taken to issue a UAE “hub” residence visa
- Possibility of long term UAE visas also considered
- MOL standard contract (same for any GCC country); possibility of dual employment rights?
- Waiver executed; enforceable?
  - Claim in USA?
  - Claim in UAE?
- Options to mitigate:
  - Restructure current employment terms
  - Rely on waiver

# Questions?



# Thank You!

## MODERATOR



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State/Province

Country\*

**Speakers**

*Moderator*



*Presenter*



# Next in the *Global Mobility Series!*

Wednesday, August 18, 2021  
10:00 a.m. Eastern

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10:00 a.m. Eastern

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Legal Implications  
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Managing Remote  
Workers in Asia  
Pacific



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Guide to Cross  
Border Work

The experts you need in  
immigration, tax, and governance

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## Free Movement of People:

The African  
Continental  
Free Trade Area

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