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We will begin shortly.



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Global Employer's Guide to Cross Border Work

The experts you need in
employment, immigration, tax,
and governance





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PETER WALTS

Chief Operating Officer

ELA

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

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The ELA Presents



Global Employer's Guide to Cross Border Work: The experts you need in employment, immigration, tax, and governance

Date: September 15, 2021

Time: 10:00 a.m. Eastern Daylight Time

Duration: 1 hour, 30 minutes



Event Resources

Presentation Slides & Certificate of Attendance

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M O D E R A T O R

DALE STACKHOUSE

Partner

Indiana

dale.stackhouse@icemiller.com

IceMiller
LEGAL COUNSEL

Panelists



Walter Keiniger
Partner
Marval O'Farrell Mairal
Argentina



Christopher Hall, CTA
Managing Director
Global Tax Network
Connecticut



Nicole Forbes
Deputy General Counsel
Globalization Partners
Massachusetts



Mary P. Snyder
Head of Business Immigration Group
Crowe & Dunlevy
Oklahoma

Overview

Global Employer's Guide to Cross Border Work

- The right & wrong way to conduct cross border work
- Global examples outside the US
- Immigration: getting the appropriate visa & documentation
- Tax Issues
- Open Discussions | Questions

Scenario 1: Hiring Someone in a Country in Which the Employer Has No Legal Entity

An Indian housewares manufacturer wants to set up a sales office in Toronto to explore the Canadian market. The Indian company met a woman at a French trade show who is a Canadian citizen and knows the market well because she used to be a buyer for a Canadian department store chain. Her parents were raised in India, and the Indian company thinks she would be a perfect fit for their needs.

What options does the Indian employer have for hiring her in Canada?

Options

1

Set up a subsidiary to employ her

2

Engage her as an independent contractor

3

Have her set up her own company and enter a contract with her company

4

Make her an independent distributor or agent

5

Engage a third-party service provider in Canada to act as her employer

Scenario 2: Intracompany Transfers for Independent Contractors

A Chinese auto parts company has set up a manufacturing subsidiary in the US so that it can make auto parts in the US and avoid paying the 25% import duty that the Trump administration imposed on Chinese goods. The Chinese parent company (which also has a distributor in Germany) is currently working with an independent contractor from Germany who is an expert in setting up large production line equipment. The Chinese parent company wants to bring that independent contractor to the US to help set up, calibrate, and troubleshoot the US subsidiary's new production line.

The US has visas available (L-1A and L-1B visas) for intercompany (parent-sub) transferees if they meet certain criteria. Can the German consultant be brought into the US under one of these programs?

If he has to be an employee (not an independent contractor) in order to be eligible, can he be a part time employee?

Does he have to work in China, or could he work in Germany?

How long does he have to be employed by the parent company?

What options would be available for employing him in Germany if the Chinese company didn't have a subsidiary in Germany?

If he becomes eligible for a US visa and comes to the US, does he pay tax in China, German or the US?

Which entity should be his employer?

FOCUS ON TAX:

If someone is working abroad but is paid from their home country, does this lower or remove the requirement to report in the host country?

Can tax treaties be used to avoid a tax bill and reporting requirements for the company in a remote work situation?

Does it matter where someone is paid?

Does someone's visa status determine how/if they are taxed?

Which entity should provide benefits (such as healthcare) if he comes from a country that provides national healthcare?

Will he be eligible for social security?
Will he be required to pay into the
social security system?

If he is only in the US for a year or two,
will he be eligible to collect social
security benefits when he retires?

Is he eligible to participate in a US company retirement fund? What does the law say? What do the employee benefit plans say?

Scenario 3: Changed Circumstances After an Employee Enters a Country Legally

An Israeli citizen who works in Israel for an Israeli computer security company is sent to the U.S. by her Israeli employer to meet with the Israeli company's client about its cybersecurity needs. The original intent is to just understand the needs and then return to Israel to do the security work that needs to be done. Once the foreign employee arrives, however, she finds that there are a number of problems with the client's network set-up that need to be fixed before the next-step work can be done. She gets permission from her employer to work on these fixes before she returns to Israel.

Is it okay for this employee to come to the US to meet with the client and understand its needs using a short term business visitor visa (like ESTA or a B-1 visa)?

Was it permissible for the employee to help fix the network set-up while in the US on ESTA/B-1?

How do we decide what she is allowed to do in the US?

- i. the duration of the visit?
- ii. the type of work being done?
- iii. the visa category under which she entered?
- iv. whether the work she is doing is consistent with what she told the immigration officer at the airport?
- v. the tax treaty between the US and Israel?

Scenario 4: Lack of Full Disclosure by Employee

A skilled job applicant applies for a job with an employer that is located in New York City (which has high state and local taxes). She says she lives in New Hampshire (which has no state income tax), and that she wants to work remotely and get paid as a New Hampshire employee. Her job can be done remotely. She also says that her husband is from Argentina and that she occasionally visits family (at her own expense) in Argentina, but that she will be available to work a regular schedule while visiting family. A job offer is made, and she accepts it. She signs up for the US company's healthcare plan for her and her family.

Shortly after accepting it, she announces that she is pregnant and is planning to take paid parental leave. She did not mention the pregnancy during the interview process, and she was not asked about it.

The company also finds out that she and her husband have a small summer cottage in New Hampshire, that she lived with her parents in New York City while working for her former employer, and that she plans to spend most of her time in Argentina. She wants the company to continue to pay her in US dollars as if she were a New Hampshire resident working in New Hampshire.

What issues does this raise?

Can the company revoke the offer?

If she is, in fact, in Argentina while working, will Argentina tax her?
Will it tax the employer?

Will Argentina's labor and employment laws apply?

Do those laws impact the company's ability to revoke the offer? Is revoking the offer different from firing her?

Audience Questions



Wrap Up & Takeaways

MODERATOR



Dale Stackhouse
Partner
Ice Miller
Indiana



Walter Keiniger
Partner
Marval O'Farrell Mairal
Argentina



Christopher Hall, CTA
Managing Director
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Region*

Organization*

Job Title*

Speakers

Moderator



Dale Stackhouse

Presenter



Walter Keiniger

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