

The 5th Annual Hospitality Law Conference

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International Human Resources

**Presented By:
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Pamela Moore

Ms. Moore specializes in preventive employment relations, EEO agency proceedings and employment litigation. She has significant experience in the full range of employment law issues, including employment discrimination, sexual harassment, affirmative action, employment at will, wage and hour, family and medical leave and workplace violence.

Ms. Moore has handled numerous cases before federal and state administrative agencies and courts on a wide variety of issues, and has tried cases to a jury on such issues as age discrimination, employment contract/handbook claims, defamation and whistle-blowing. She also has handled arbitration and other alternative dispute resolution proceedings and has successfully argued appeals to both federal and state appellate courts.

Ms. Moore dedicates an extensive part of her practice to preventive counseling, employee/supervisory training, and the drafting and enforcement of various types of employment agreements including non-compete agreements, executive compensation agreements, confidentiality agreements and severance agreements. Her clients range from small to large companies in fields such as banking, retail, medical, manufacturing, and shipping and transportation.

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Beyond Borders

Pamela J. Moore
McCarter & English, LLP

WHY EMPLOYMENT?

During their 2006 Conference, The International Society of Hospitality Consultants identified the Top Ten Global Issues and Challenges in the Hospitality Industry for 2006. The number one issue was:

“CHANGING LABOR CONDITIONS”

Overview

When do International Employment Issues Arise?

- ✓ Multinational operations
- ✓ U.S. workers working in non-U.S. offices
- ✓ U.S. based parent opens or closes non-U.S. office
- ✓ Cross border M&A or acquisitions
- ✓ Non-U.S. subsidiaries

Overview

What are the International Employment Issues?

- ✓ Recruitment and Retention
- ✓ Hiring and Termination
- ✓ Compensation and Benefits
- ✓ Employment Agreements
- ✓ HR Policies: Sexual Harassment
- ✓ Ex-Pat Agreements
- ✓ Emergency Response
- ✓ Data Protection and Privacy Issues

OVERWHELMED?

Start with some basic considerations

Before you Cross the Border

Initial Consideration

- ✓ Who should employ the employee?
- ✓ Should you hire locally or export?
- ✓ Foreign entity may shield certain liabilities
- ✓ Document the employment relationship correctly from the start

Before you Cross the Border

Study Local Statutes Regarding:

- ✓ Existence of at will-employment
- ✓ Mandatory/customary vacations
- ✓ Statutory notice periods
- ✓ Statutory insurance/sick pay
- ✓ Required year end bonus
- ✓ Protection of company data
- ✓ Union issues
- ✓ Statutory minimum hours and vacation time
- ✓ Structuring a competitive compensation/benefits package
- ✓ Residency/work visa issues

Before you Cross the Border

At-will Employment

- ✓ Constitutions/statutes of virtually every nation protect right to employment which is deemed to be of the highest social interest
- ✓ Workers cannot lawfully waive/contract out of minimum standards in labor codes
- ✓ Employment relationships are contractual in nature and presumed to be of indefinite duration
- ✓ Laws seeks to protect and promote the stability and continuity of employment contracts
- ✓ Must prove just cause to terminate an individual employment contract
- ✓ **YOU NEED A CONTRACT!!**

Before you Cross the Border

Contractual Employment Issues

- ✓ Difficult to get fixed term or short term employment
- ✓ No or limited probationary period
- ✓ Termination must be for cause
- ✓ Statutory notice period required for termination
- ✓ Severance pay required after probation period

Before you Cross the Border

Contractual Employment Issues

FRANCE

- ✓ In general there must be a signed employment contract that specifically sets out the parties' obligations
- ✓ Indefinite term contracts are the norm
- ✓ Fixed term employment: highly regulated, can only be used temporarily
- ✓ Can only terminate contract (i.e. employment) for just cause (not fulfilling the requirements set out in the contract) or for economic reasons
- ✓ Difficult to terminate for cause (termination must be justifiable and fulfill required notice period)

Before you Cross the Border Contractual Employment Issues

UNITED KINGDOM

- ✓ Written statement required within 2 months of employment
- ✓ Can only terminate for cause
- ✓ Disciplinary hearing needed prior to dismissal
- ✓ Minimum notice period of one week per year of service with a maximum of 12 weeks
- ✓ Need contractual provision to pay in lieu of notice

Before you Cross the Border Contractual Employment Issues

MEXICO

- ✓ Statutory requirements for employment contracts
- ✓ Seasonal employment may be acceptable
- ✓ Allows for particular work (temporary employment), limited time period and indefinite time period employment.

Before you Cross the Border Contractual Employment Issues

ARGENTINA

- ✓ Employment law sets forth presumption of employment.
- ✓ Can terminate at will but must pay severance.
- ✓ Statutory probation period of three months during which can terminate with 15 days notice and no severance.
- ✓ 13th salary required – one month's pay as a bonus.

Before you Cross the Border Recruitment/Retention Issues

- ✓ Spain: Employees must be at least 18. Need parental consent for employees between 16-18.
- ✓ Poland: Similar age restrictions as Spain and also prohibition against hiring women to do burdensome work.
- ✓ Austria and Slovakia: Require that a certain percentage of the work force be handicapped or pay compensation to the state.
- ✓ Offer letters often not enforceable
- ✓ Benefits package may not be competitive abroad
- ✓ Immigration compliance

Before you Cross the Border HR Policies

- ✓ Sexual Harassment
- ✓ Anti-discrimination
- ✓ Severance plans
- ✓ Emergency response policies
- ✓ Data Destruction
- ✓ Privacy/Monitoring
- ✓ Email/internet use
- ✓ Data transfer

Before you Cross the Border European Union Data Protection Directive

- ✓ Applies to any size entity
- ✓ Applies to processing of personal data which includes name, address, date of birth and tax identification number.
- ✓ Definition of processing is extensive and would include displaying a name on a website, printing paychecks, employment applications, etc.
- ✓ Requires registration with each local Data Protection Authority
- ✓ Violation can be costly: National authorities have power to stop flow of data at any time and potentially prosecute violations.

Before you Cross the Border Structuring Ex-Pat Compensation

- ✓ Offer letters often not enforceable abroad
- ✓ Domestic packages may not be competitive abroad
- ✓ One size benefits do not fit all
- ✓ Determining salary rate: home based, host country, net-to net, higher of host or home, etc.
- ✓ Double taxation issues
- ✓ Home leave
- ✓ Local or U.S. benefits
- ✓ Housing allowance

Before you Cross the Border Non-Competition Agreements- Worth it?

- ✓ Virtually every jurisdiction which permits them has a judicial presumption against their enforcement.
- ✓ Intensely reluctant to modify and interpreted against the drafter (employer), no blue pencil.
- ✓ Narrowly construed.

Before you Cross the Border Non-Competition Agreements

Improve the chances you will have an enforceable agreement by:

- ✓ Using a familiar national format
- ✓ Respecting national language
- ✓ Offering consideration
- ✓ Stating your interest as employer
- ✓ Applying contracts consistently
- ✓ Executing effectively
- ✓ Remedies – injunctive relief/liquidated damages

Before you Cross the Border Sexual Harassment

- ✓ No longer unique to the United States
- ✓ E.U. Sexual Harassment Directive
- ✓ By October of 2005 member states must have enacted legislation.
- ✓ Chile implements sexual harassment statute
- ✓ In Israel sexual harassment both a tort and a crime

Before you Cross the Border Sexual Harassment

Be aware – as a U.S. entity doing business abroad, U.S. sexual harassment law applies to you.

CONCLUSION

Crossing the border is never easy:

GET COUNSEL EARLY!