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Employment Beyond Borders: Expat and Inpat Issues

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EMPLOYMENT BEYOND BORDERS: EXPAT AND INPAT ISSUES FOR EMPLOYERS AND EMPLOYEES

Introduction

The pandemic interrupted what had been explosive growth in international commerce, finance and industry. Growth is expected to return, but there have been changes that well might be permanent. Employees no longer might be required to work in a shop or office, or in the city where their company is located, or for that matter, even in the same country. If work for a Houston enterprise can be done in a house in Pasadena, why not in an apartment in the French Quarter in New Orleans, or even in a seaside palapa in Cancún?

Of course, such an arrangement will not work for all positions. As has been increasingly the case for many companies, employees will be hired and sent with long-term assignments to other countries. The United States also will continue to see more workers from other countries seeking opportunities or being assigned to live and accomplish their jobs here.

There are proven benefits of having work accomplished abroad, both for employers and employees. Companies can better serve foreign customers and consider growing internationally. Individuals, whether independent or on a work assignment, improve their opportunities for advancement by acquiring or improving their language abilities, proving their leadership potential, learning to adapt to different conditions, and expanding their network globally.

This is a general overview of the issues that managers, human resources generalists and individuals need to consider for working in a foreign nation. Because laws, labor practices and cultural norms vary significantly from one country to another, detailed information is beyond the scope of this presentation, but its purpose is to point out the most significant issues and how they might be best studied and handled.

How significant are international issues to a solo or small firm practitioner or to human resources departments of small or medium firms? Consider that pre-pandemic, there were about 9 million U.S. citizens living and working abroad in more than 150 different countries, only less than one-third as retirees, about the same number as those being self-employed or working for a company of the foreign country. In 2019, there were about 29 million immigrants working in the U.S., and the percentage of immigrant workers has more than tripled since 1970.

One of my earliest cases was that of an employee complaining of age discrimination in a job in the Middle East. That was in 1968, the year after the Age Discrimination in Employment Act was passed by the Congress. I can look back at many cases that dealt with Americans employed abroad or with foreign workers in the United States. Knowing about labor and employment practices abroad has helped me better understand and address domestic issues.

Working From Abroad

Consider first the tantalizing prospect of limiting work as a lawyer or human relations

professional in the United States to a minimum; then, primarily living and working in an attractive foreign location. That might sound like a fantasy, but consider if there really is a significant difference from working at home during the pandemic. Consider also, that it would not take much adjustment, if any, to make that arrangement work.

Many countries are willing to make it possible with only some reasonable effort. One can choose a Caribbean location, such as the Cayman Islands, Aruba or Jamaica, or some European location, such as Portugal or Germany. Some countries have special requirements, there are some fees for documentation, and there are time limits which vary from three months to two years. For those wishing to stay close to home, Mexico provides a one-year, renewable visa. At this time, some countries are not open to individuals from the United States. On the other hand, some, like Mexico, have proved so popular that some hotels provide special packages with office and Internet facilities.

Even for those who would not consider moving to work outside of the United States, awareness of available programs can provide opportunities for offering counseling and assistance to Americans who might consider working freelancing abroad. Those who are employed domestically in positions that can be fulfilled abroad and whose temporary residence abroad can be beneficial to their American employer, for example, can test the company's potential for establishing a foreign subsidiary or affiliate.

When there is a need to obtain detailed information of the requirements and procedures for working in a particular country, assistance is readily available from embassy or consular officials.

CAVEAT. With respect to this category, and all those that follow, care must be taken with respect to some significant risks that might arise. There might be applicable travel restrictions due to the pandemic, such as testing and quarantine requirements, and even prohibition of entry into some nations.

Customs inspections present often unanticipated risks of potential violations of institutional and client privacy. Laptops, tablets and mobile telephones are subject to inspection, search and seizure by customs officials, and the scope of the intervention varies according to the laws and procedures of each country. In the United States, for example, customs inspections may be conducted at the "border," which is defined as any place for entry or exit of the country, which includes international airports.

The extent of constitutional protection against unreasonable search and seizure is not absolute. Compare *Alasaad v. Mayorkas*, 988 F.3d 8 (1st Cir., 2021)(Finding that policies permitting a routine search in a non-criminal setting without warrant or reasonable suspicion "are within permissible constitutional grounds".) and *United States v. Cano*, 934 F.3D 1002 (9th Cir. 2019)(Manual search of cell phones at the border does not require reasonable suspicion, but there must be reasonable suspicion for a forensic search.)

In view of Rule 1.05(a) of the Texas Disciplinary Rules of Professional Conduct, it might be advisable for any Texas lawyer contemplating international travel for any purpose to avoid

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