



503:International HR Hot Topics

Barbara A. Gustafson
Corporate Counsel
GKN North America Services, Inc.

Clare H. Stebbing
Corporate Counsel
THAMS, Inc.

Darryl A. Weiss
General Counsel
TVA Fire and Life Safety

Faculty Biographies

Barbara A. Gustafson

Barbara A. Gustafson is corporate counsel for GKN North America (GKN) in Lisle, Illinois. Her responsibilities include providing legal counsel to the organization in labor and employment, ERISA, corporate compliance, corporate secretarial, and commercial matters.

Prior to joining GKN, Ms. Gustafson was senior counsel for the animal health subsidiary of Mallinckrodt, Inc. where she was responsible for providing legal services to the North American and Asia/Pacific regions of Mallinckrodt.

She currently works with the Commission on Global Ministry of the Episcopal Diocese, in facilitating as well as participating in companion relationships with Southeast, Mexico. She also is counsel to GKN Foundation, an Illinois not-for-profit foundation, which oversees grants to entities providing services in education, health, and science, as well as care to the people at the margins.

Ms. Gustafson received a BMus from Southern Illinois University, an MR Ed from Vandercook College, and is a graduate of the University of Chicago Law School.

Clare H. Stebbing

Clare H. Stebbing is corporate counsel with Team Health Anesthesia Management Services, Inc. (THAMS), in San Diego. Her responsibilities include providing legal counsel to the organization in the areas of employment, healthcare, and general commercial law.

Prior to joining THAMS, Ms. Stebbing served as in-house counsel for two other companies in the San Diego area, including a staffing company and a start up video surveillance company.

Ms. Stebbing currently serves on the board of ACC's San Diego Chapter and does pro bono work for the San Diego Performing Arts League and its member organizations.


Ms. Stebbing received a BA from the University of California at Santa Barbara, and is a graduate of the University of San Diego School of Law.

Darryl A. Weiss

Darryl A. Weiss is currently the general counsel and director of human resources for TVA Fire and Life Safety, located in San Diego. TVA Fire and Life Safety offers comprehensive fire protection, life safety, security, engineering, risk management, and loss control services to Fortune 500 companies. His responsibilities include providing legal counsel to the organization and board of directors, merger and acquisition, international law, executive compensation, and oversight of the general human resources function.

Prior to joining TVA Fire and Life Safety, Mr. Weiss was the vice president of human resources and legal affairs for ORINCON Corporation International. His responsibilities included providing legal counsel to the organization and board of directors, managing the corporate compliance activities, international law, executive compensation, benefits, and oversight of the general human resources function. Mr. Weiss previously worked in the aerospace, computer, telecommunications, and biotechnology industries in a variety of legal and human resources roles. Mr. Weiss has worked on site in Canada, England, France, Germany, Hong Kong, Ireland, Japan, Malaysia, Netherlands, Singapore, Sweden, and Switzerland.

Mr. Weiss is currently active on the board of directors for ACC's San Diego Chapter, ACC's International Legal Affairs Committee, and Labor and Employment Law Committee.




*Hot Topics
in
International Human Resources
Session 503*

*Barbara Gustafson
Clare H. Stebbing
Darryl A. Weiss*

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<p>Ms. Barbara Gustafson Corporate Counsel GKN 550 Warrenville Road Lisle, Illinois 60464 630-719-7212 630-719-7242 (fax) bgustafson@gknna.com</p>	<p>Ms. Clare H. Stebbing Corporate Counsel THAMS, Inc. 3626 Ruffin Road San Diego, CA 92123 858-277-4767 x2077 858- 244-2285 (fax) clare_stebbing@teamhealth.com</p>
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Mr. Darryl A. Weiss
TVA Fire and Life Safety
General Counsel
2820 Camino del Rio South, Ste. 200
San Diego, CA 92108
619-296-5666
619-296-5656 (fax)
dweiss@tvafiresafety.com

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Topics

- Data Privacy
- International Benefits
- Offshoring and Its Affects on Morale and Other Issues
- Offshoring and Trade and Tariff Issues

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Privacy Issues: HIPAA *(Health Insurance Portability and Accountability Act)*

- **The Seven Commandments**
 - Appropriate and Reasonable Safeguards
 - Mapping PHI Dataflow
 - Protecting Appropriate Data
 - Access Control
 - Third-party Agreements
 - Accountability
 - Training and Awareness



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Privacy Issues: European Data Protection

- **Notice**
- **Choice**
- **Onward Transfer (Transfers to Third Parties)**
- **Access**
- **Security**
- **Data Integrity**
- **Enforcement**

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International Benefits: Stock Plans

- **Universal**
 - One Basic Plan World Wide (Except Where Prohibited by Law)
- **US Modified**
 - US Plans Modified for Local Implementation
 - Lower Grant Guidelines
 - More Restricted Eligibility

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International Benefits: Stock Plans

- Regional or Economic Banding
 - Different Guidelines Established for 3-5 Broad Groupings of Countries or Geographic Regions
- Local Customization
 - Plan Design by Country According to Local Practices, Prevalence, and Tax/regulatory Environment

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International Benefits: Stock Plans

- Which to Use?
 - Universal Is Great for Unifying Culture
 - US Modified Should Be Used As a Short Term Measure
 - Easily Adapted for Local Rules
 - Very Difficult to Administer

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International Benefits: Stock Plans

- **Phantom Stock Plans**
 - Similar to an SAR in That the Recipient Receives a Sum Based on the Appreciated Value of the Company's Shares
 - An Effective Means of Delivering World Wide Compensation

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The Monkey Wrench

- **American Jobs Creation Act Of 2004**
 - International Trade Regulations
 - Affects NSO's SERP's, SAR's
 - Failure To Comply Results In Accelerated Income Tax, 20% Penalty, Interest From The Date The Tax Would Have Applied In The Absence Of A Deferral
 - Awaiting The President's Signature
 - <http://waysandmeans.house.gov/Links.asp?section=691>

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Cost of Benefits

- Individual Plans Are Costly
- Premiums Based on Insured Lives
- Each Country Has Their Own Rules
- Some Countries Want to Get Out of Socialized Plans and Make the Employer Maintain Coverage

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One Potential Solution

- Global (Multinational) Pooling
 - Umbrella Contract Signed With the Parent Company
 - Local Contracts Are Treated As One Combined Contract for the Purposes of Spreading the Risk
 - Risk Charge Is Reduced
 - All Pooled Contracts Are Experience Rated
 - Positive Pooled Experience Results in a Refund of Part of the Premium, Known As the International Dividend

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What Can Be Pooled?

- Life
- Pension
- Disability
- Medical
- Accidental Death

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Who Can Pool?

- AETNA/Generali
- Insuurope
- AIG
- MIA
- All Net
- Swiss Life
- IGP
- Winterthur

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Statutory Benefits

- Medical
- Pension
- Maternity/Paternity/Adoption Leave
- Holiday (Vacation)
- Bank Holidays
- Months of Pay

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Pension Schemes

- Statutory
- Contract in or Out?
- Defined Benefit -vs- Defined Contribution
- Employer Contribution
- Employee Contribution
- Out of the Country?
- Offshore Retirement Plans

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Merger and Acquisition

- Acquired Rights
- Employment Contracts
- Bonus Pools
- Data Transfer
- Redundancies
- Compensation Philosophy

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Offshoring

(HR's Role in Implementing a Decision to Offshore)

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“To Compete Around the World, You Have to
Get Talent From Around the World.”

“To Keep Your Company Strong, You Can’t
Protect Your US Jobs.”

John Sullivan, Professor of Management at SFSU, California.

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HR's Role

What Factors Should HR Consider When
Contributing to the Decision Making Process of
Where to Offshore?

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Factors to Consider

- Skill and Education Level (and Therefore Cost of Labor Pool)
- Favorable Business Climate
- Flexible Labor Laws and Little Union Activity
- Costs That Offset a Wage Differential Benefit (Training, Employee Benefits, Rule Compliance, Telecom, Etc.)
- English-fluency/communication Skills

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More Factors...

- Political and Economic Stability
- Legal Framework of Destination Country
- Sensitive and Confidential Data Protection
- Time Zones, Travel Costs
- Overcoming Perception of Decrease in Quality
- Control the Risk
- Coordination With All Departments to Consider Financial, Strategic, Ethical, Social, and Legal Issues

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Information Gathering

- Wage Rates and Trends
- Costs of Employee Benefits and Perks
- Productivity Levels and Expectations
- Working Conditions
- Local Leadership in the Workplace
- Training Opportunities and Costs
- Union Activity
- Licensing Requirements

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Where?

- **India** - Still Rates the Highest With a Highly Skilled Labor Pool and Low Labor Costs
- **China** – Increasingly Attractive As Communication Skills Increase
- **Eastern Europe** – Highly Skilled Labor Pool, Part of EU, but Lesser Labor Costs Savings
- **Singapore** – Huge Developments in IP Protections
- **Philippines** – Culturally Similar, Small Labor Pool
- **Brazil and Chile** – Education and Language Still a Downfall
- **Canada** – Customer Service As a Career, It Is Not All About Costs

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So, Your Company Has Made the Decision to Offshore...

- What Is HR's Role in Implementing This Strategy and Addressing the After-math of Such a Business Decision?
- Is This Role Intensified Because the More Highly Skilled, White Collar Jobs Are Being Sent Offshore?

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Where?

- At Home
- Abroad

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At Home

- Layoff/terminations of Existing Employees
- WARN
- Union Issues
- Retraining/Outplacement
- Adjustment Internally Company-wide
- Avoiding Litigation
- Loss of Corporate Knowledge/history
- Publicity
- Morale

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At Home

Layoff or Termination of Existing Employees:

- Final Paychecks
- Termination of Benefits
- Return of Company Property
- Restrict Building and Computer Access
- Release/severance
- Confirm Confidential Information/non-compete Provisions
- Other General Termination Issues

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At Home

WARN (Worker Adjustment and Retraining Notification Act):

- Company With 100+ FTE
- Plant Closing or Layoff
- For More Than 30 Days
- Of 50 or More FTE If at Least 1/3 of Workforce
- Must Give 60 Day Notice to Employees and Others
- May Also Be State Law Requirements

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At Home

Retraining of Terminated Employees:

- Provide Educational Assistance to Employee to Retrain for a New Industry/Career Path
- Outplacement Assistance
- Offer Position in Offshore Country
- Other Opportunities Within Company

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At Home

Morale Boosting:

- Need to Assure and Ensure of Company/ Industry Stability
- Inform Regarding Future Outsourcing or Layoffs
- Retention With Professional Development
- Non Financial Incentives
- Avoid High Turnover Rates and Lower Productivity Levels Due to Lack of Job Security.

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At Home

Publicity:

- Press Coverage
- Negative Corporate Image/reputation
- Negative Brand Image/reputation
- Communication to Employees

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At Home

Adjustment Internally Company-wide:

- Designate Point Person Locally to Interface With Local Country Operations
- Revise Internal Operations Regarding That Department
- Train/educate US Employees Regarding New Processes Without the Department
- Company Intranet
- Encourage Global Focus
- Internalize the Change

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At Home

Litigation Avoidance:

- Releases
- Severance
- Outplacement Assistance
- Relocation Assistance
- Advise Regarding IP Rights
- Avoid Increased Unionization.

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Abroad

- Relocation of US Employees
- Geographical Unrest
- Cultural Issues
- Data Security and Privacy
- Communication
- Training Local Employees
- Set up
- Integration
- Managing Benefits Globally
- Other Employee Issues
- Legal Issues
- Financial Issues

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Survey of More Than 5000 US and European IT Outsourcing Clients:

Biggest Concern Regarding Offshoring?

- Country Instability or Military Tensions and Geopolitical Risks (27.3%)
- Infrastructure (18.2%)
- Variable Labor Costs (14.6%)
- Legal Framework (10.9%)
- Cultural Compatibility (9.1%)

Neoit, San Ramon, CA.

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Who will be in charge

- US v. Local Leader
- Selection Process
- Skills Set
- Family Concerns
- Succession Planning
- Clear Expectations on Both Sides

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Abroad

Relocation of US Employees:

- Financial Relocation Assistance
- Return Visits to US
- Language Immersion Classes
- Immigration (Residency, Time, \$\$ Requirements for Visa)
- Tax Assistance
- Security
- Family Concerns

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Abroad

Geographical Concerns:

- Physical Safety of Employees and Facility
- Financial Safety of Economy
- Political/military Stability
- Local Industry Associations
- Local Government Support
- Infrastructure

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Abroad

Cultural Issues:

- Work Product (Colors, Themes)
- Popular Culture
- Time Off/holidays
- Productivity Expectations
- Dress Code
- Seating/work Station Assignments
- Personal "Space"
- Religion

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Abroad

- Data Security and Privacy
- Medical Records Privacy (HIPAA)
- Financial Records Privacy
- General IT Security
- SOX Management Attestations
- Employee Theft
- Discipline of Employee

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Abroad

Communication:

- Language Barriers
- Time Zone Differences
- 24 Hours Shifts
- Cultural Misunderstandings

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Abroad

Set Up:

- Recruiting Local Employees
- Background Checks
- Union Issues
- Local Employment Regulations
- Retention of Local Employees in Competitive Industries

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Abroad

Training for Local Employees:

- Training in the US
- Integration Into Company Processes
- Employment Contracts and IP Rights

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Abroad

Additional Employee Issues:

- Union Issues
- Integration Into Company Culture
- Review Corporate Processes to Accommodate Local Environment
- Review Job Descriptions
- Train Managers Regarding Performance Appraisal Processes

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Abroad

Managing Benefits:

- Benefits on a Global Basis
- Perks More Prevalent
- Wage Trends
- Union Concerns

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Abroad

More Employee Issues:

- BOSS (Burn Out Stress Syndrome)
- Substance Addiction
- Relationship Breakdowns
- Sleep Disorders
- Digestive Problems
- High Employee Turnover

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Abroad

Legal Concerns:

- Employment Contracts
- Employment/Unions
- Vendor Contracts – Specify Services
- Identity and Data Safety/confidentiality
- IP Protections
- Role of General Counsel or CLO
- Outside Counsel

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Abroad

Financial Concerns:

- Upward Pressure on Wages
- High Start up Costs
- Travel Expenses
- Exchange Rate

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I am in HR

It Is Not My Job To Monitor Export Compliance!!!!!!!!!!

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I Have The Perfect Candidate For The Job Opening

- Brilliant
- Personable
- Global Experience and Mentality
- Offer Extended
- Offer Accepted

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ENTER THE COMPLIANCE POLICE

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BAD NEWS

- Under US Law, Mr. Wonderful Newhire Cannot Perform Certain Of The Essential Job Functions

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WHAT TO DO???????

- Undo
- Redo
- You Are In Deep Doo-doo

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*Maybe We Should Try to
Anticipate the Pitfalls*

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*The United States Maintains The Most
Aggressive And Complex Export Control
Laws In The World*

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So?

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***Most of the Exports That Will Affect
You Fall Under One of Three Regimes***

- Export Administration Regulations (EAR)
- International Traffic in Arms Regulations (ITAR)
- Office of Foreign Assets Control (OFAC)

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Three Regimes

- Virtually Everything Falls Under The EAR Unless It Is On The Munitions List. The Good News Is That Most Things Also Come Under General Exceptions To The License Requirements
- Things On The Munitions List Come Under ITAR. Unusual Things Turn Up On The Munitions List.

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What Would Be An Export Under EAR That Could Have Implications For HR?

Any Release Of Technical Data Created In The US In A Foreign Country (Perhaps Through A US Employee That You Sent Abroad Or A US Employee Has A Telephone Conference With Someone Oversees.)

Plant Visits By Employees Of Your Foreign Affiliates, Even If They Are There Interviewing For A Job

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HR Implications

- The Transfer Of Data To A Person Working For You In The United States Who Is Neither A US Citizen Nor The Holder Of US Permanent Resident Alien Status

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Under ITAR – Same Issues-Bigger Exposure

- There Is Stuff On The US Munitions List That You Would Not Expect – Certain Cattle Vaccines Are An Example
(Ask Me How I Know!)

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Some Type of Transfers Are Problematic

- The Transfer Of Technical Data To Foreign Nationals
 - It Does Not Matter If The Foreign National Is In The US Or Abroad
 - It Does Not Matter If The Person Disclosing It Is In The US Or Abroad

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Problematic Transfers

- The Furnishing Of Technical Assistance (Including Training) To A Foreign Person Whether In The US Or Abroad In The Design, Development, Engineering, Manufacture, Production, Assembly, Testing, Repair, Maintenance Or Use Of A Item On The Munitions List, Even If The Foreign Person Is Your Employee Or The Employee Of An Affiliate

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What Do You Need To Do?

- If You Are Hiring A Person Who Is Neither A US Citizen Nor In Permanent Resident Alien Status Or If You Are Transferring An Employee From The US To Some Foreign Location –
- REVIEW THE JOB DESCRIPTION
- Do They Have To Have Access To Or Disclose Or Use Data That Is Controlled In Order To Do Their Job?
- If So, Is It Possible To Obtain A License For Them?

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THE PROBLEM OF TRADE AND ECONOMIC SANCTIONS

- These Are Country Specific Regulations Administered By The Treasury Department's Office Of Foreign Assets Control (OFAC)

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They Take a Variety of Forms

- Some Expressly Extend Prohibitions To Foreign Subsidiaries Of US Companies (Whether Or Not These Are Enforceable, Is Another Question But Perhaps You Do Not Want To Be The Test Case)
- Most Apply To US Citizens And Permanent Residents Working Abroad

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Forms

- Many Prohibit US Companies And US Nationals From Facilitating A Transaction For A Foreign Affiliate Even If The Transaction Is Permissible For The Foreign Affiliate
- US Nationals Working For Foreign Companies Are Usually Prohibited From Being Involved In Transactions With A Sanctioned Country Even If It Is Permissible For The Foreign Affiliate

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The WhipSaw

- You Transfer A High Potential US Manager To Run A Foreign Operation. He Gets A Call From A Company In A Sanctioned Country Seeking A Quotation On A Product.
- Making It Worse, The Country Where He Is Working Specifically Prohibits People In That Country From Complying With Us Trade Sanctions (Frequently A Problem With Transfers Of People To The UK)

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A Clue – There is No Neat Solution

- He Cannot Facilitate The Transaction. – Guess What “Facilitate” Is Undefined.
- There Is Support To Mean That “Facilitate” Means Aid The Transaction In Any Manner – Could Even Be Just Handing It Off To Some One Else
- If They Guess Wrong On What “Facilitate” Means, Someone Could Go To Jail

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Some Solutions

- Do Not Send A US Manager To Run An Operation Or Have Significant Input In A Operation Where An Exposure Such As This Is Likely
- Have A Plan In Place And Make Sure The Manager Is Trained In What To Do, Should The Situation Come Up.
- Keep Your Fingers Crossed.

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Solutions

- Think About Giving Yourself An Out In Your Offer Letter If The Person Is Not Able To Perform The Essential Functions Of The Position Because Of Regulations Of Governmental Agencies Or Changes In Those Regulations.
- Talk To Your Compliance Department And Check The Job Descriptions Of Any Non-us Citizens Or Non-permanent Residents Prior To Getting Too Far Down The Hiring Path
- Watch Where You Place US Persons Outside The United States

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