603 Managing Employee Mobility in the Global Marketplace

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Prior to joining Jackson Lewis, Mr. Lubbe was a partner at a leading South African law firm. In South Africa, he represented major local and international corporations on a wide range of employment and labor issues and taught labor law at one of the leading universities in Johannesburg.

Mr. Lubbe is an active member of the ABA's International Labor Committee as well as the International Bar Association, is a frequent speaker at international employment law conferences, and has been quoted in newspapers such as the *Wall Street Journal* (Europe Edition) on human resource issues. He is the coauthor of an article "Managing Expatriate Employees: Employment Law Issues and Answers," in *The Journal of Employment Discrimination Law*.

Mr. Lubbe received a BCom and LLB from the University of the Free State, South Africa. As a Fulbright scholar, he received an LLM from Cornell Law School and a masters degree in labor relations from Cornell's New York State School of Industrial and Labor Relations. Mr. Lubbe is currently pursuing an LLM at Leicester University, England, in English and European Employment Law and Relations.

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Prior to joining Compass Group, Mr. Taylor was a commercial litigator in the Miami office of Steel Hector & Davis. Since leaving law firm practice, Mr. Taylor has been associate general counsel for Blockbuster Entertainment Corporation, vice president, legal affairs for Alamo Rent-A-Car, Inc., and general counsel & senior vice president, human resources for Paramount Pictures' theme park and live entertainment division, Paramount Parks Inc.

Mr. Taylor has served as the general counsel for the United Way of Broward County and as board member and legal counsel for the Society for Human Resource Management (SHRM).

Mr. Taylor holds a BSC from the University of Miami, an MA in Mass Communication from Drake University, and a JD from the Drake Law School. Mr. Taylor served as the research editor for the *Drake Law Review* and as a member of the National Moot Court Team.

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I. INTRODUCTION

A recent survey indicates companies that have implemented a global business strategy generate 44% of their revenues outside the headquarters country.[1] Employees are migrating on a global scale. A recent study by the International Labor Organization ("ILO") projects that the number of migrants around the world increased from 75 million in 1965 to 120 million in 2001.[2] To integrate global business opportunities and employees on the move, 88% of companies with foreign-based employees make relocation decisions concerning their global workforce at their corporate headquarters.[3] It, therefore, is no surprise that corporate America is increasingly creating job positions such as Vice President of Global Human Resources or Corporate Counsel: Global Employment Compliance to perform these centralized functions.

The global marketplace is no longer the exclusive playground of large international corporations. Increasingly, smaller and midsized companies are moving outside their domestic borders into the dynamic world of international business. With the advent of the "knowledge-based economy" that ignores political borders, gaining a competitive edge increasingly depends on having "the right people in the right place at the right time."[4] The small company venturing into a new foreign marketplace must find a manager who has experience in that particular market place and appreciates the corporate business goals. Larger corporations increasingly face the challenge of effectively managing a workforce at any particular worksite consisting of a mix of parent-country nationals, host-country nationals, and third-country nationals.

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[1]GMAC Global Relocation Services/National Foreign Trade Council/SHRM Global Forum G*lobal Relocation Trends-2001 Survey Report*, at 31.
[2]Stalker, P. *Workers without Frontiers: The impact of Globalization on International Migration*, ILO 2001.
[3]GMAC/NFTC/SHRM G*lobal Relocation Trends-2001 Survey Report*, at 31.

The challenge corporate counsel faces to advise and manage the globally mobile workforce is legally complex and requires a multi-disciplinary approach with a sound understanding of the emerging legal and practice trends. This presentation outline briefly addresses some of the emerging critical issues in managing a global mobile workforce and reducing cost and potential legal liability. This is not an exhaustive list of the issues.[5] Our intent is to stimulate the discussion at the annual conference.

II. POLICIES FOR THE GLOBALLY MOBILE WORKFORCE

Implementing appropriate policies is frequently the first task of business for the corporate global human resource manager or corporate counsel. To meet the objectives of cost, control, and fairness -- and to limit potential legal liability -- companies that succeed in effectively managing their globally-spread workforce develop and implement written policies. These policies typically include the following:

A. Expatriate Deployment Policies

Expatriate deployment policies outline all the relevant policy provisions which address rules for accepting a foreign assignment. The objective of such policies is to limit negotiation and individual tailoring of features.[6] These policies generally focus on remuneration and relocation. The typical policy addresses pay, cost-of-living adjustments, housing, children's education, and other special allowances. The relocation features typically deal with the number of home-finding trips and the duration of each; class of airline service for employee and family members; the expenses covered during these trips; interim living expenses, shipping and storage limitation; disposing of vehicles in the home country, furnishing and appliance allowances; domestic home sale and property management provision; vacation, family and emergency provision; miscellaneous expense allowances; other company-specific data.[7]

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[4] Dowling, P., Welsch, D. and Schuler, R. *International Human Resource Management: Managing People in a Multinational Context*, 3rd ed., South Western Publishing 1998.
[5] See Rosen, P., Ekelman, F. and Lubbe, E. J., *Managing Expatriate Employees: Employment Law Issues and Answers*, 2000 Journal of Employment Discrimination Law 110-123, for a discussion of some other critical issues.
[6] Schell, M. S. and Marmer Solomon, C., *Capitalizing on the Global Workforce – A Strategic Guide for Expatriate Management*, McGraw-Hill 1997, at 94.
[7] Schell & Marmer Solomon, *supra* note 7 , at 94-95.

B. Global Human Resource Policies

The value of a "global" human resource policy is to clearly articulate core corporate values which will be applied consistently at all subsidiaries. The central message is that regardless of the subsidiary at which an employee works, she will be treated with the same dignity and respect, and receive substantially the same benefits The typical policy contains aspirational statements and frequently lacks specific detail, but is supplemented by country-specific addenda. This is to ensure a realistic common denominator. Regardless of the lack of specificity, the value of such policies can be substantial, particularly to avoid legal liability in regard to discrimination and harassment. Increasingly, the national laws of various countries prohibit discrimination in an ever-expanding range of protected categories. Beside the conventional protected characteristics of sex, gender, race, age and disability, other countries also protect against discrimination based on culture[8], wealth[9], appearance[10], place of birth or school of graduation.[11] Furthermore, under the national laws of some countries, employers are presumed to be vicariously liable for discrimination at the workplace unless the employer has taken "all reasonable practical steps" to prevent and deter discrimination or harassment.[12] Publishing and maintaining effective anti-discrimination and harassment policies are, therefore, an essential element of avoiding legal liability. Additionally, under the extra-territorial application of most U.S. federal employment discrimination laws, American citizens who work for American companies' foreign subsidiaries continue to enjoy the protection of these federal discrimination laws.[13] Consequently, managing the global workforce increasingly requires effective policies stating the company's equal employment opportunity policy and procedures to deal with harassment.

[8] South African Employment Equity Act of 1998.
[9] Ukraine Labor Code.
[10] Taiwain Employment Services Act of 1992.
[11] South Korea Basic Employment Policy Act.
[12] For example, under Section 41(3) of the U.K. Sex Discrimination Act of 1975 and Section 15(3) of the Irish Employment Equality Act of 1998.
[13] See Rosen, Ekelman & Lubbe, *supra* note 6, at 115-119.

C. Corporate Ethics Policy

Corruption is sometimes seen as an unwanted by-product of the global economy. In 1977, Congress adopted the Foreign Corrupt Practices Act ("FCPA").[14] The FCPA imposes a strict code of conduct on the foreign subsidiaries of American companies. The FCPA makes it illegal to bribe foreign government officials for the purpose of obtaining or retaining business or directing business to another person.[15] The Act does, however, provide for two affirmative defenses to violating the anti-bribery provisions. The first defense allows "the payment, gift, offer or promises of anything of value" to a foreign official, a political party, or a candidate's country, provided that such offering is in accordance with the written laws of that country. The second affirmative defense permits payment, gift, offers, or promises of anything of value which constitute a "reasonable and bona fide expenditure." To avoid the pitfalls of the FCPA, companies increasingly implement corporate ethic policies, including gift and entertainment policies. Typically, the gift and entertainment policy should address three fundamental principles: (1) reimbursement expenses connected with an official's visit or giving official samples or presents must be legal under the laws of the country of the recipient; (2) such expenditure must have a business purpose; and (3) expenses incurred under the policy must be fully documented in writing.

D. Personal Data Policy

Managing a U.S. company's global workforce invariably involves the transfer of human resource data across international borders. In complying with the European Directive on Data Protection which became effective in 1998[16], European Union member countries passed national laws to regulate and protect personal data.[17] Furthermore, as required by the EU Directive on Data Protection, EU member countries prohibit the onward transfer of personal data to non-EU countries unless the laws of the receiving country affords individuals "adequate" level

[14]15 U.S.C. § 78 m(b), (d) (1), (g)–(h), 78dd–1 to 78 dd–2, 78 ff (a) (1994).
[15]For a discussion of the FCPA and the elements of the criminal offense, see Baum, L. (1998) *Foreign Corrupt Practices Act*, American Criminal Law Review, Vol. 35, No. 3, pp. 823-840.
[16]Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data.
[17]For example, England passed the Data Protection Act of 1998.

of privacy protection. To assure American business is not unduly affected by the extraterritorial impact of the European data privacy laws, the U.S. Department of Commerce, in consultation with the European Commission, developed a safe harbor scheme. The Commission approved the U.S. Safe Harbor Privacy Principles in July 2000.[18] Following the European example, other countries are increasingly passing similar data protection laws.[19] Complying with the Safe Harbor Principles requires U.S corporations with employees in foreign locales to implement policies regarding data protection and privacy of human resource data, and/or obtain the written consent of employees for the cross-border transfer of their personal data or to third parties.

III. SELECTING APPROPRIATELY QUALIFIED EMPLOYEES FOR INTERNATIONAL ASSIGNMENTS

The conventional approach has been to select employees for international assignments based on their technical expertise. A growing body of human resource commentators, however, point to the essential interpersonal skills required for a successful international assignment.[20] While important, technical expertise should not be the sole selection criteria. Success in the global market requires managers who fully understand and appreciate the cultural nuances of the local market, and are capable of adapting and managing within that cultural context. The cost of a failed international assignment is just too substantial to ignore these qualities in selecting candidates. Typically, the yearly direct cost of an expatriate assignment is three to five times the employee's home-country annual salary.[21] But, the lost opportunity cost of a failed assignment is incalculable. The *faux pas* of a manager lacking the required intercultural and personal skills can ruin a company's customer goodwill and devastate a company's reputation in a new market.

Companies increasingly test candidates for international assignment on skills other than mere technical expertise, and use assessment tools such as Michael Tucker's Overseas Assignment Inventory ("OAI"). OAI is a tool that identifies and measures 14 predictors of success on a foreign assignment. These predictors include the expectations, open-mindedness,

[18]For an overview of the EU data protection laws and its impact on U.S. companies, see Bell, A. *et al. E.U. Data Protection: A Compliance Guide for U.S. Companies* , June 2002 ACCA Docket, at 18-41.
[19]For example, Hong Kong has passed a Personal Data (Privacy Ordinance) and in March 2002 issued a consultation document and draft Code of Practice on Monitoring and Personal Data Privacy at Work.
[20]Schell & Marmer Solomon, *supra* note 7 , at 148.
[21]Id., at 114.

respect for other beliefs, tolerance, flexibility, social adaptability, interpersonal interest and spouse communication of the candidate.[22]

IV. EMPLOYMENT CONTRACTS ISSUES FOR INTERNATIONAL ASSIGNMENTS

Most international assignments are memorialized in writing in documents called either a "letter of foreign assignment" or an "international assignment contract." Some of the legal issues as to which human resource managers frequently seek corporate counsel's guidance are addressed below:

A. Duration: Short-term Or long-term?

Historically, international assignments lasted from 3 to 5 years.[23] A recent trend, however, is to move away from long-term assignments and use a variety of short-term alternatives. Today, only 23% of assignments extend for longer than three years, compared to a historical average of 30%.[24] Another survey found 29% of all total international assignees are on short-term assignments (of between 3 to 12 months).[25] The purpose of flexibility in assignment duration is to convince first-choice candidates to accept international assignments more readily.[26]

If the duration of the assignment is cast as a fixed-term contract and the employee is moved from one EU member country to another, the opportunity to extend or roll-over the fixed-term contract is limited. Under the EU Directive on Fixed-Term Work[27], the maximum duration of a fixed-term contract or any extensions is three years. After three years, the contact becomes an indefinite duration contract.

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[22]For a short discussion of each of the 14 predictors, see Schell & Marmer Solomon, *supra* note 7, at 154-158.

[23]BNA Daily Labor Report, May 31, 2001, at A-4.
[24]GMAC/NFTC/SHRM *Global Relocation Trends-2001 Survey Report*, at 6.
[25]MIWS/SHRM/ORC *2000 Global Survey of Short-Term International Assignment Policies*.
[26]Id.
[27]Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of provision of services.

B. Secondment Or transfer?

Companies frequently have to decide whether to second or transfer an expatriate manager to the foreign destination. A recent Australian decision underscores the implications of this basic choice. The decision of the New South Wales Industrial Relations Commission in *Bastain v. Brent & Ors t/a PricewaterhouseCoopers*[28] concerns the nature of the employment relationship after an employee's overseas transfer. The employer argued that the initial employment relationship was terminated on the transfer and that a new fixed-term contract was formed. The employee argued, and the employment tribunal agreed, that he was on secondment. As a seconded employee, the initial employment relationship continued. As a result, the employee qualified for a redundancy package on terminating his employment after completing his overseas assignment.

C. Which jurisdiction's law apply?

The issue of applicable law is relevant in two respects: First, the law that governs the interpretation of the employment contract (or, for expatriate employees, the "international assignment agreement"). Second, the law that governs the employment relationship. In many instances, the applicable law differs.

The general rule is that parties may elect which law applies to the interpretation and enforcement of their contract.[29] While the election may be verbal, some countries require an express written choice of law provision.[30] Where the parties fail to choose the law governing the employment contract, either common law rules (such as the *lex loci contractus* or the *lex loci laboris*) or codified international conventions may guide the decision maker. One such international convention is the European Community's *Convention Regarding the Law Applicable to Contractual Obligations* of 1980 (known as the "Convention of Rome").[31] The Convention of Rome, in relevant part, states:

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[28][2001] NSWIRComm 316 (Dec. 3, 2001)

[29]Gamillschegg, F. and Franzen, M., *Conflicts of Laws in Employment Contracts and Industrial Relations*, in Blanpain, R. and Engels, C. (eds) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, 6th and Revised Edition, Kluwer Law International 1998, at 161-179.

[30]For example, Swiss law. See, Gamillschegg, *supra* note 29, at 165.

[31]The Rome Convention has been incorporated into the national laws of all EU member countries, such as England (under the Contracts (Applicable Law) Act of 1990).

> [A] contract of employment shall, in the absence of choice in accordance with Article 3, be governed:
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> (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or
>
> (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;
>
> unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which the contract shall be governed by the law of that country.[32]

While the Convention of Rome allows the contracting parties a freedom of choice, the Convention also imposes the principle of the most favorable law. The Convention of Rome states the choice is valid, but "shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice."[33]

American managers do not always realize that American expatiate employees are covered by the employment laws of the host-country. The "choice of law" provision in an employment agreement cannot be used to contract out of the statutory protections afforded employees under the host-country's employment laws. Most foreign jurisdictions have fair termination laws. In fair termination jurisdictions, employees can be terminated only for just cause and after fair procedures are followed. In some counties, like England, the legal protection does not extend immediately. The employee must be continuously employed for a "qualifying period", currently 12 months, to enjoy the statutory protection against unfair dismissal.[34] Further, American expatriate employees will be covered by the discrimination laws of the host-country and, under the extraterritorial application of the U.S. federal employment discrimination laws, by Title VII, the ADEA and the ADA.[35] Accordingly, American expatriate employees whose employment is terminated while on foreign assignment could claim unfair dismissal in the

[32]Article 6, paragraph 2.
[33]Article 6, paragraph 1.
[34]Section 108(1) of the Employment Rights Act of 1996. Previously, the qualifying period was 24 months, but was reduced to 12 months by the incumbent Labour Government.
[35]Rosen, Ekelman & Lubbe, *supra* note 6, at 119-120.

employment tribunals of the host-country and violation of the discrimination laws of the host-country or U.S federal law.

D. Arbitration Of Employment Disputes?

In the past 12 months, the U.S. Supreme Court on two separate occasions decided whether pre-dispute arbitration clauses in employment agreements to arbitrate employment disputes are lawful and enforceable.[36] While U.S. law allows employers and employees to contract out of statutory rights and recourse to the regular courts, other countries either do not allow arbitration of fundamental employment rights, or place substantial limits on arbitration of employment disputes. In Belgium, for example, only executive management employees, a very narrow class of employees, can validly agree pre-dispute arbitration provisions.[37] The vast majority of employees cannot, however, by law agree to arbitrate an employment dispute before it has arisen.[38] These employees must wait until the dispute arise, and may then agree (but, cannot be compelled) to refer the particular dispute to an arbitrator.

E. Pay And Employment Benefits

Pay and benefits issues involve equity and complex tax issues. Discrimination issues may also surface.

[36] *EEOC v.Waffle House*, 534 U.S. 279 (2002) and *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001).
[37] Section 69 of the Belgian Employment Contracts Act of July 13, 1978. Employees who are responsible for the day-to-day management of a company or company unit and are paid at least 48,984 Euros annually are presumed sufficiently independent to negotiate such contractual provisions.
[38] Section 13 of the Belgian Employment Contracts Act. Also, Article 1678, 2 of the Belgian Code of Civil Procedure, which states that any contract providing for arbitration prior to the conflict arises, is null and void.

In deciding the remuneration structure of the expatriate employee, companies generally follow one of three methods: the home-based, host-based, or a hybrid system. The choice of which compensation system to follow will depend on the business purpose and duration of the assignment and the organization's evolvement in the international market. Additionally, expatriate employee may receive various allowances. Further, tax equalization and tax liability issues should be addressed. The purpose of tax equalization is to ensure the expatriate employee pays no more tax than if he had remained at his home country. In some instances, companies might provide tax protection to the expatriate employee; i.e., the employer accepts responsibility for foreign taxes in excess of the home country tax. Finally, a decision should also be made at the outset of the foreign assignment regarding the future "localization" of the expatriate employees compensation package.

Corporate counsel should also be aware that locally recruited employees may view the compensation packages of expatriate employees as not only lavish, but also as evidencing a discriminatory practice. In *Wakeman v. Quick Corp.*[39], locally-recruited English employees of a Japanese company claimed the practice of paying Japanese expatriates temporarily assigned to work in London more than locally-hired employees constituted race discrimination. The English courts disagreed. In rejecting the discrimination claim, the English Court of Appeals principally relied on the fact that a number of locally-hired employees were also Japanese. Therefore, the court compared the salaries of the locally-hired English employees with those of the locally-hired Japanese employees, and not the expatriate Japanese employees. The employer prevailed because no disparities existed between the salaries of the locally-hired employees, regardless of whether they were English or Japanese. In the absence of such locally-hired comparators, a consistent practice of awarding only the selected group of expatriate employees such special compensation packages, including allowances, regardless of the expatriate employee's gender, race or national origin, might sufficiently insulate an employer against liability for discrimination.[40]

[39] [1999] IRLR 424 CA.

F. Post-repatriation Career Path

Upon repatriation, the corporate office is frequently uncertain where to place the returning expatriate employee; "special projects" is the popular assignment. This could, however, contribute to the reported high attrition rate among returning expatriate employees. (See, discussion under "Retention of talent"). Assuring the expatriate employee a position or any specific position could, however, lead to a breach of contract claim if the company cannot fulfill the promise due to changed business conditions during the international assignment.

V. ESTABLISHING A LOCAL OFFICE

In most foreign counties, companies can hire and deploy employees without excessive bureaucratic red tape (other than the require tax filings and withholdings). In some countries, however, foreign companies must first establish an official presence in the country before it may hire any employees. The People's Republic of China ("PRC") is a prime example. In the PRC, a foreign company must first set up a "representative office." The rules for establishing a representative office vary somewhat between the economic free zones created by the PRC government. Hence, the rules of Shenzhen differ from the rules in Shanghai. Moreover, in most instances, neither a foreign company nor its representative office may directly hire Chinese nationals. (In Shanghai, foreign employers can under limited circumstances directly hire certain Chinese nationals.) Typically, a foreign company can only hire Chinese employees through a government-designated service agency, usually called a Foreign Enterprise Services Corporation ("FESCO"). The FESCO will be the direct employer of the Chinese employees (like a personnel agency in the U.S.) and assign them to the foreign company. As the foreign company has no direct employment relationship with the Chinese employee, the legitimate interests of the foreign company (such as job description, confidentiality and non-competition issues) are not always adequately protected. Foreign companies, therefore, frequently enter into separate employment contracts with the Chinese employees acquire through the FESCO, to the extent permitted under the local regulations.

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[40] See *Fortino v. Quasar Co.*, 950 F.2d 389, 393 (7th Cir. 1991); and *Goyette v. DCA Advertsing Inc.*, 828 F.Supp.

VI. WORK PERMITS

The requirements for expatriate work permits vary dramatically from country to country. If not properly planned, obtaining the necessary work permits for an employee on foreign assignment can cause delays.

Company recruitment efforts are no longer limited to the local pool of available skilled employees, but increasingly extend to employees from foreign shores. A global labor market has emerged. The demand for specific skills has increased exponentially. For the past few years, countries have feverishly competed for the limited number of employees with high tech skills. Currently, the construction industry in Europe, and England in particular, is experiencing major skill shortages. Governments have responded with different non-immigration pilot programs to expedite and simplify the issuing of work permits for employees with the needed skills. In the U.S., under the American Competitiveness in the Twenty-First Century Act of 2000, the H-1B cap has been raised to 195,000 visas per year through September 30, 2003. Canada implemented The Software Development Worker Pilot Program in 1997. Under this program, Canadian employers who recruit foreign highly skilled software developers are relieved from the time consuming process of first showing no local candidates are available who possess the required skills In 2000, the U.K. government introduced a new immigration category to attract entrepreneurs with "innovative ideas." In the same year, Germany promulgated an ordinance[41] which granted new time-limited (a maximum of 5 years) work permits to highly qualified foreign skilled workers in the information technology industry.

Most countries provide for intra-company transfer visas similar to the L-visa in the U.S. Typically, these visas require 12 months prior employment with the company, are for senior managers, and are for a longer stay. The validity period varies: U.S. L-1 for intra-company transfer visas are valid for 6 years, but in the U.K. such visas are issued for a maximum of 36 months.[42]

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227 (S.D.N.Y. 1993).

[41] *Verordnung über die Arbeitsgenehmigung für hoch-qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie* which became effective on August 1, 2000.

[42] BCL Immigration Services, http://www.visa-free.com/bclukwp.htm

Some countries also have special visa categories to allow foreign supplier companies to render service to their customers in that country. France, for example, issues a temporary secondment visa (*detache*) to foreign (and non-EU) companies which need to place their employees at their French client's site. The visa is valid for a maximum of 18 months, but may be extended for a further 9 months.[43]

Some countries, such as South Africa, also require the employer to give a written undertaking to repatriate the expatriate employee upon expiration of his assignment contract.[44]

Planning the assignment of an employee to a foreign subsidiary requires a careful consideration of the destination country's regulations regarding work authorization.

VII. THE DUAL CAREER CHALLENGE

In most foreign assignments, families relocate with the expatriate employee. During assignments, spouses accompany 87% of married expatriates.[45] Significantly, before accepting the foreign assignment, 43% of spouses are employed; during assignment, only 14% of the accompanying spouses are employed.[46] The low employment rate of accompanying spouses is due to visa regulations, professional licensure, language and cultural facility, the loss of or need to build clientele or business contacts, demands from their expatriate spouse's employers and/or job availability.[47] With the growth in dual-career families, it is not surprising that the accompanying spouse's satisfaction increasingly is one of the challenges to convince candidates to accept foreign assignments.[48]

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[43] http://www.workpermit.com/france/france.htm
[44] http://southafrica-newyork.net/consulate/work.htm
[45] GMAC/NFTC/SHRM *Global Relocation Trends-2001 Survey Report*, at 21.
[46] Id.
[47] The Cultural Exchange Institute and Prudential Financial, *Many Women Many Voices: A Study of Accompanying Spouses Around the World – Final Report 2002*, at 54.
[48] The GMAC/NFTC/SHRM *Global Relocation Trends-2001 Survey Report*, at 38 (cited by 77% of respondents as of importance).

Companies have responded by providing spousal assistance including career planning, finding employment and even paying for lost spouse income.[49] Some countries appreciate the extent to which the accompanying spouse's inability to work pose an obstacle to attracting qualified individuals, and have changed their immigration rules to grant accompanying spouses work permits. Under the Canadian Spousal Employment Authorization Pilot Project, accompanying spouses can obtain work permits if their expatriate spouse is due to work in Canada for longer than six months. Similarly, the U.S. introduced a spousal work permit in early 2002. The spouses of aliens in the U.S. on L-1 intra-company transfer visas or E-1 Treaty Trader and E-2 Treaty Investor visas can now obtain work authorization permitting their employment during their spouse's posting in the U.S. The processing time for these spousal work permits is about 90 days.

X. TALENT RETENTION

While the vast majority of companies value the international experience of their expatriate employees, the attrition rate is exceptionally high. About 26% of expatriate employees leave their employment within two years of their return to their home-country.[50] The three most effective methods of reducing expatriate turnover are providing them greater opportunity to use their international experience after their repatriation, offering them a greater choice of position upon return, and giving them greater recognition during and after their assignment.[51]

XI. POST 9/11 EMERGING ISSUES

After September 11, 2001, new immigration and security rules have restricted the mobility of some individuals. Further, some companies have responded with improved employee tracking systems and evacuation plans.

In the U.S., under the Enhanced Border Security and Visa Entry Reform Act 2002, citizens from seven countries which have been designated as "state sponsors of terrorism,"

[49] Id, at 46.
[50] GMAC/NFTC/SHRM *Global Relocation Trends-2001 Survey Report*, at 52.
[51] Id, at 53.

such as Iran and Iraq, cannot obtain entry visas, unless given specific clearance by the State Department and U.S. Attorney General. Further, the INS visa application procedures has been changed to require citizens of 26 Muslim countries to obtain security clearance first, a procedure which takes an additional 30 days. And, new limits have been imposed on business visits. Historically, business visas (B-1 or B-2 visas) were issued for up to six months. The validity period is now in the discretion of immigration officer with a maximum of 30 days per visit.

Some companies have extended their U.S. Employee Assistance Programs ("EAP") to employees at all their foreign subsidiaries or joint venture partners. Other companies have improved their international tracking of employees: improved technology allow them to pin-point exactly where each employee is to respond adequately to local or regional crises. Further, companies have revised their emergency and evacuation plans. Many of these services are provided by outsourcing service providers.

XII. CONCLUSION

Managing the globally mobile workforce requires a sound understanding of the myriad employment, labor, immigration and tax laws, a refined appreciation of the local culture, customs and practices, and the selection of employees for foreign assignment who possess the additional personal attributes to successfully operate in the diverse and fast changing environment.

