FINAL TRANSCRIPT

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**ACC - International Employment Contracts. From Marriage to Divorce! The role of the contract in the relationship between Employer and Employee

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PRESENTATION

Phil Strauss - *Actuate - General Counsel and President of the San Francisco Bay Area Chapter*

Good morning, afternoon, evening, night, depending on where you are accessing this web cast from. My name is Phil Strauss and I am the moderator of this program. I'm the General Counsel of Actuate Corporation in south San Francisco and President of the San Francisco Bay Area Chapter.

I want to welcome everybody to our presentation this morning and I'd like to introduce our speakers for the day. First, we have Jeanette Wheeler. Jeanette is a partner and employment loss specialist at Eversheds in the UK Eversheds is one of the world's largest law firms. Has over 2,000 legal advisors based across the globe and clients in the U.S. include Cisco, Dupoint, General Electric, and IBM.

Our other presenter today is Darrel Wice (ph). Darrel is U.S. General Counsel and V.P. of Human Resources at TVA Fire and Life Safety. TVA is a company that offers fire protection, life safety, security, engineering, risk management, and loss control services to Fortune 500 companies. Darrel has worked as an ex-patriot in 13 countries and has opened global offices and developed the employee and employee benefits plans across the globe. S

So, without further ado, I will turn it over to Darrel and Jeanette.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Thank you very much, Phil. I just wanted to add to that very kind introduction that the perspective that we are, or I am presenting from, is as an employment and labor laws specialist in the law of England and Whales, however, I am experienced at (inaudible - accent) from colleagues, through my colleagues in Germany, France, and across the EU and because, of course, we have E.U. directives covering employment legislation. So, it's a real criminality of laws across the E.U.. So, although I have expertise in England and Whales, I'm also experienced (inaudible - accent) field and, indeed, there are lots of comparisons and similarities.

So, over to Darrel.

Phil Strauss - *Actuate - General Counsel and President of the San Francisco Bay Area Chapter*

Actually, this is Phil. I forgot to mention, this went out with the instructions, if you have questions during the presentation, please email them to me at pstrauss@actuate.com. Thanks.

Darrel?

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Well, thank you and good morning, good evening to everyone around the world that's listening in on this. We're glad you joined us. One thing I also want to add to this is the fact that, obviously for as many different countries, there are as many different laws, and no one can know everything about everything. So, what we're trying to do today and actually, we're kind of - you know we have to do this - is present a broad approach to it, giving you the similar situations and it's gone to a case study.

If you take a look at Page 2, if we could move to Slide 2, excuse me, you could see if you look at the international employment contracts, when we were putting this together, we were trying to say, well, what does this most parallel. And we got to be a little bit silly and we thought, you know what, this really does kind of, when you're talking about the employment relationship and this and that and we thought, it really does kind of parallel in marriage.

So, if you look at the courtship and the engagement, so, we're talking about the prenump in this particular case. Here we're talking about the courtship would be the recruitment efforts. The engagement would be, we are coming for interviews. We're trying to sell you, you're trying to sell us on yourself, et cetera.

Then you've got the wedding, which is the actual hiring. And here it's very important. The status does count here. For example, is the employee going to be an employee? Will it be a self-employed contractor? Will there be an agent? Each one, of course, has a million of different things that apply to it.

Then, of course, there's the divorce. And that's what we're really going to focus on today because it really can be one of the hardest things to go through in terms of legal standpoints, what you did earlier in the prenump section, and really set things up for how you end up in the divorce.

And then, finally, we'll talk about things that happened before the break down. It will be a checklist of take away in terms, if you will and conditions. If you want to be aware of and obviously, two, we can't cover, in the time we have allotted, every single country. So, what we try to do is select countries that would be a good representative sample of things around the world to kind of give you an idea of what happens because as you're aware, many countries follow the English common law, but others follow something else entirely.

So, if you move, look to Slide 3, please, the approach we're going to take, bearing that in mind is we're going to talk a little about England and Whales. We'll talk about France and Germany; it's kind of representative factions around the world. Then we'll talk about Australiasia as well and we focused on Singe pore, Australia, and India for three very, very different types of things. Have to look at Slide 4, please.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Okay. Here now we're talking about the courtship, engagements, and prenump. Looking at status then, what kind of engagements do you want or what type of engagements have you actually already (inaudible - accent) and is that the right type of engagement? There are generally newer about four different categories of staff. And each of them attracts different rights and regulations. (inaudible - accent) you're self-employed in your treating (ph - accent), (inaudible) person, your contract, your commercial agent and it's very important to note that even if somebody's generally in business on their own account, they could actually be a commercial agent. I just wanted to say a quick note on that because it is quite important.

In 1986 an EU director was passed, which basically (inaudible - accent) to the significant departure from the principle of allowing individuals and companies to contract or whatever terms they so (ph - accent) fit. Our commercial agent is self-employed intermediary, who's already got continuing authority to negotiate or sell or (inaudible - accent) of the principle. It excludes distribution agreement but the essential point here is that on termination, that individual is entitled to compensation of up to five years' money.

You can specify in some countries that the compensation rules are going to apply and instead give an indemnity for up to two years' money. But you may find yourself caught that trap when you're looking to terminate an arrangement with an individual. If it turns out they are commercial agent in Europe, they know it well may be entitled to compensation or indemnity.

Another point to point out that's causing the nation to IP right, an employee, if you're the employer of an employee IP rights usually pass to you as a natural cost. If those IP rights arise in the cost of employment, it is that employed individual the IP rights often stay with the creator unless there are expressed rights in the contract to the paying party.

So, looking at the (inaudible - accent), particularly on termination. So, coming back then to looking at the sort of an employment contract, there are various sources, depending on the different countries that you're looking to engage people. You obviously hope to have offselectors. Those offselectors are often not made subject to contract and very much I would advise that you send out a copy of the contracts employment with the offselector and actually attached (ph - accent) document (ph - accent) to it. Otherwise, it could be quite difficult later on once you've already got an acceptance of employment, so actually get the person to sign up to the contract of employment, which may have additional or different terms.

Another source of employment right come to the handbook. Those implied to terms in many contracts in employment, turn such as low (inaudible - accent) stability (ph), some (inaudible - accent) and confidentiality obligations implied into the contract already, and an obligation for (inaudible - accent) to trace (ph) employees of dignity, and so on. Employees (inaudible - accent) imply to obey a reasonable instruction.

So, that's the agreement, particularly in France, there are a key source of employment rights and, indeed, in France you will have a labor code, beneath that the collective agreement, and beneath that the contract of employment. And, indeed, you might find that both the collective agreements and the works agreements, there are separate works agreements as well, and the labor code together, legislates most of the terms that you would want to or you would expect to see between two parties, the employer and the employee.

On that basis, many people answer it even worse having the (inaudible - accent) contract in (inaudible - accent) France. Many junior (ph - accent) members (inaudible - accent) note, however there are some good reasons to have an employment contract in France. (inaudible - accent) notion that in a contract, you cannot agree terms that are less favorable than those that are already in existence in the collective agreements and the labor codes.

The other points to point out in just about every (inaudible - accent) European country, is that there are mandatory terms that are applied (ph - accent) to all the terms or many of the terms of the contract. For example, in terms of holiday entitlement and who they pay, in relation to hours of work, and so on. And effectively in the contract, you cannot contract out of those mandatory terms. If we turn into the next -

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Phil Strauss - *Actuate - General Counsel and President of the San Francisco Bay Area Chapter*

There's a question here.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Okay.

Phil Strauss - *Actuate - General Counsel and President of the San Francisco Bay Area Chapter*

For U.S. companies that have a single U.S. employee handbook, how do those - how are those U.S. employee handbooks applicable to foreign subsidiaries.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

It's a good question. Thank you. Certainly a handbook is going to be very, very useful in most European jurisdictions, at least to set out a series of rules and regulations. I would normally recommend that the handbook does not contain contractual terms but it may be limited to just rules and regulations. Certainly that's the case in the UK However, if you have a handbook in the States, then what I would recommend that you do is that you send it to somebody to adopt it for local laws of each jurisdiction. But you can have a commonality in your handbook but there will certainly be some different things and additional things that you would need to include, depending on the jurisdiction that you operate in.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Great and one of the things that I have done in the past is to, I will have a separate section within the handbook that says employees of, company XYZ, the company I was with at the time, UK employees because obviously, excuse me, for employees outside of the United States, the Family Medical Leave Act, a number of things won't apply at all.

So, in particular one bone of contention many times is the time off schedule or the companies with a paid time, paid leave program where they start employees with two or three weeks. Statutorily in other countries, the minimum time off, they start with, could be four to five weeks. So, obviously it's not going to comply. What you'll need to do, too, is check to see within that particular country.

The other issue that you run into is that in many countries, you will have to publish it in the local language. So, sending out your handbook in English is effectively, you mind as well not even send it.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

The other thing I wanted to touch on, just jumping back for a second, kind of contrasted to American things where many countries require, and you hear we talked about the contract of employment, or what you'll hear referred to as the T&C, the terms and conditions. Obviously in the United States where many things are employment at will, you want to shy away from a contractor or an implied contractor in employment relationship.

One other thing that I've done, and one thing that I try to get people to do, is whenever you're dealing with your senior management, whether you're looking from the United States out or from the other country in, is the initial question you have to tell them is, okay, stop thinking like a blank, fill in your country here.

So, stop thinking like an American, stop thinking like the Frenchmen, et cetera, because just because we do things this way in this country does not mean that they're going to apply across, in the foreign, across the border. Even the difference between the United States and Canada. Go ahead, Jeanette.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes. And that's very right. What you can do quite regularly is that you may settle contracts, contracts that will and because of the mandatory laws that apply in each country, whatever you put in the contract, you can bet that there's a good chance that there will be mandatory laws that will supersede most of what's in there, or certainly add to it significantly and give significant new rights.

So, turning to Slide 6, then, the wedding. Again, coming back to stages and this is an important point. Very often you may well find that you think you have a self-employed contractor, but on the test that the courts that apply in that country, you may well find actually they are an employee and they have employment rights. And it's become particularly important; again, on termination or on the divorces we call it. The contract can help with this test. If you decide that you want to have somebody that is an employee, that's fine, but if you want them to be something other than an employee, perhaps a self-employed contractor, then you can actually specify in the contract for example things that will help.

An example of this, in the UK the tests, really for whether somebody's an employee, or self-employed, is personal service had an obligation to providing to do the work, what we call mutuality of obligation. In France, the test is whether or not there's a link of subordination or bond of obedience, as they call it. And the very similar test in Switzerland and Germany is that person in business on their own account or actually does it actually look and feel like an employment relationship. Very much the courts will look at how the services are provided, how they're paid, and the risk and reward and all those kinds of issues. Very often individuals, particularly sales people, want to be self-employed rather than an employee because there are tax benefits and because there are additional compensation benefits. So, it may not be few advantages, however.

Then looking at what law applies, we've talked a lot about mandatory laws; and we've said that mandatory laws apply to the terms of the contract very often, particularly on termination. EU countries similarly give significant rights to the employees, not to the unfairly dismissed. And in the UK you can enforce rights like that. Every section of what law we specify is applicable in the contract. And we'll talk about this again later. But even if you determine in your contract, the law of say California will apply, you can bet that in most European countries, the mandatory protections of unfair dismissal will apply anyway. So, what you can often find is if you specify that the laws of California apply, you could then go into litigation into countries. You could end up litigation on the terms of the contract in one country and through the employment courts of another country in terms of the mandatory rights and laws.

So, when people ask me what law should I say applies, when we've talked it through, it often seems more reasonable and actually more helpful to actually specify that the laws of that particular country apply. At least in that sense, you're only going to be litigating in one country and there's uncertainty about where you will end up in court if it ever comes to that. In terms of the test is to which law applies, the Rome Convention of 1980 had a lot to say in the Europe (inaudible - accent) and it can just make things a lot more confusing if you do specify the laws of another country applies rather than whether the employees actually carrying out the work.

So, we now move to our divorce, the case of the facts on Slide 7.

Darrel?

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Thank you. One other thing you want to look at too, a good - a very, very basic rule of thumb, obviously, there are exceptions to it is just using the expressions, local rules apply, in most of the time in an employment relationship. With a multinational, of course, what you're going to have is the fact that the employee will be in one country and they'll, they will shop for the most favorable jurisdiction; and they'll probably sue you in both countries anyway. But, however, if you set the rule of law as where they're actually located, you're in a little better shape.

All right. And here, as you can see, there, obviously as we said, there are so many different countries and not everything can be cookie-cuttered into something. So, what we've done is we've chosen a senior area sales manager because, obviously if you have an executive, there will be certain other rules that apply, if you have a factory worker or an assembly person, some other rules might apply. There might be unions that apply, et cetera. So, we took with a senior exempt person. You can see that he works for IT Global, Inc. and he's responsible for ten sales and account reps across Europe and Asia. He has a U.S. at will sale contract.

So, as you can see his California employers paid him a U.S. offer letter and Bob is going to be located. We're going to make the assumption here because again, this brings up another set of diversity in that, is the individual ex-patriot, are they the third country national? And for the purposes of this presentation, we will assume that Bob is a local national of all the countries that we will be speaking about.

So, Bob's got five years of service and he's brought us a very profitable new account as you can see. But recently his performance has dropped. These expenses are extortionate. And he just says it's the cost of keeping his clients' accounts happy. But the manager's seem to feel that he's really spending more time on the golf course than doing his work. He's reporting to a brand new VP of Sales, who is named Top Dog, who finds Bob very difficult to manage. He's kind of a lone gunman, doesn't really fit the company's style, the picture, the image they want to project. So, he goes to the head of Human Resources and tells them that he wants "Mad Dog" out a.s.a.p.

We jump to the next slide then. So, they're a little worried, though, about the impact of the sales figures if they lose his key accounts because he was the person who brought this business in. The HR Directors worried about the impact on the rest of the sales team because they're afraid that if he goes, he's going to take the sales team with him to another competitor. And finally, the IT Director is worried about protecting trade secrets because Bob was exposed to some high level discussions. He has also been involved in some of the development and, of course, he's been outsided around the world.

So, what to do now, Page 8. Counsel was passed a copy of Bob's contract of employment and, of course, now you are being asked can we really rely on the contract and dismiss him forth with because California is an employment at will state. Will there be any financial penalties or compensation due to him. So, are there any commissions that are due, are there any statutory leave taking provisions that we have to provide? Does the contract contain any terms that might dissuade some of board's fears around the confidentiality? Did he sign anything or is there anything in the letter? And then, finally, are there any mandatory and local rules that will supersede anything in the contract and then, finally, the all encompassing, what you need to tell us that we don't know.

So, let's take a look at Slide 9.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Well, if we were divorcing, or having the employment divorcing in Whales, I think the board should be worried. They would certainly want to change the contract to see what help we can provide from there. However, it's as Darryl pointed out, although we're looking here at internationally employment contracts, you always have to go back to the point to see if there are mandatory laws that will give people protections over and above that which is in the contract.

And that's a very similar in England and Whales and all of the other European countries and that's usually the basic right of unfair dismissal. Well, at least it might not be unfairly dismissed and to dismiss Bob we would have to have a fair reason and follow a fair procedure. Just because Bob's getting on your nerves, that's not going to be enough of a fair reason in this case and personally, I'll get the impression that the boards don't want to follow a long drawn out procedure of warning him and performance managing him.

So, if for just one moment, I'd like to assume that actually English law would specify to the claim, or certainly that the people believe the law is silent on which law does apply. Let's just assume that we go English employment contract law. The first point to look at in the contract will be in the notice period and is. The notice period has to be at least the satisfactory minimum and if you've got a senior executive, such as Bob, and there is no notice period specified, then the law will imply into that contract a reasonable notice period.

Now, what's reasonable for senior executive will often be between 3 and 6 months and possibly even 12 months. And if you don't want to give that person, don't want to give Bob his notice, then you're going have to look at compensating him for that notice period to payments, making a payment in lieu of notice.

So, you could be looking there at 6 to 12 months monies for the notice period. Bob would be under duty to litigate his losses for finding another job, (inaudible - accent) of know that he could do that. So, we've got his unfair dismiss right, on top of that we have his notice period. In terms of both termination provisions, sometimes helpfully, you might find in a contract some further termination provisions and certainly I would recommend drafting those in. So, for example, provisions related to (inaudible - accent) to being entitled to be a director, if he was a director or if he can look at growth in his conduct or he'd become a bankrupt person, in which case he may be justified in termination immediately under terms of the contract. However, those are fairly rare, unless you're just looking at senior direct over senior a member of the staff.

Something else that might help the board in this case is guardian leave. Is there a contractual right in the contract to put Bob on guardian leave? If we have put him on guardian leave, the benefit is a cost but the implied terms of trust and confidence continue to apply. And that means he can't do naughty things behind the board's back and try and persuade his staff to go off and work for competitor and you certainly couldn't canvass account to go move the competitor. Many contracts to have guardian leave clauses and even have causes that would specify the other duty, we can ask him to carry out other duties. But that's a very useful clause.

Another clause that you would want to find in the contract or most occasions you would want to at least check out is what we call a pylon clause or payment in lieu of notice clause. If you wanted to get rid of him summarily, and he's entitled to say six months notice, unless you've got one of these payment in lieu of notice clauses, you're going to be acting in breach of contracts. A pylon clause, particularly says something along the lines of the company has the right to terminate without notice by making payment in lieu. Pylon clause is important because they affect to the tax position in relation to any payments, and it's also important because it can affect (inaudible - accent). Arguably there's no duty to litigate loss if you have a pylon clause.

However, the very upside, the very positive side of having one of these clauses is that you would not be terminating in breach and breach of contract and therefore, the validity of any post termination restrictions will be unaffected. We ask the pylon clause if you do terminate without giving notice then effectively you maybe damaging your ability to actually enforce post termination restrictions such as confidentiality provisions, and non-compete provisions, it's that important. And then looking at whatever else he would be entitled to. In addition to his notice moneys, in addition to any unfair dismissal compensation if you decide not to follow a fair procedure, he'd be entitled to some of his benefits for the notice period, whether it's car allowance, pension, contributions, and certainly accrued untaken holiday pay.

What you would want to find in the contract are some fairly useful confidentiality provisions. Because although there are some implied confidentiality protections in the contract of the employment, most of those only apply during employment and they would only extend post termination through any information that is of the nature of a trade secret. Confidentiality provisions in the contract can certainly specify to that strategic employee, what sorts of information the employee would consider is confidential and capable of protection post termination.

However, like Bob you have particularly sensitive information. That individual has maybe priced information or information about customers and accounts. Then it may not be sufficient just to have confidentiality provisions and that's when you may well want to turn to the post termination restrictions. These can be very important for sales staff and key managers and directors. So, they have to be very carefully drafted. The sorts of things that you'd want to see are restrictions on soliciting staff, existing staff. They can't take their teams with them.

Restrictions on actually going to work for competitors, at least for specified periods, and a restriction on going to actually entice customers away. Those restrictions have to be reasonable in terms of length of their restriction itself and in terms of its geographical scope. So, if the individual works only in the UK, then it would not be reasonable, which extends that sections

cover the whole of Europe. In the UK, you do not, if you have your post termination restriction, have to actually provide compensation to them to be enforceable.

Obviously, moving on, another term to the contract that you would want to see there, depending on what their role is during employment are some protection in relation to IP rights. And in particular, maybe a power of attorney in the contract, enabling you to actually capture IP rights and sign any documentation that you need in order to protect those rights. This is something that's very often overlooked.

And then moving down, Bob will be very concerned about any share options that he has and especially about any commissions and bonuses that are outstanding. In order, very often on termination there are lots of arguments about commissions and bonuses, particularly those that might have been earned during the notice period.

What you would want to try and make sure with any contract that you have done is specify very clearly what happens on termination in respect to commissions and bonuses that are outstanding. The court was often very keen to enforce or ensure that employees receive their commissions and bonuses, if those have already been earned. But what about those that they could argue might have been earned, had they worked for further six months? So, you really do need to look at how as expressed clear terms in relation to commissions and bonuses, particularly if these form a key part of the individual (inaudible - accent).

Of course, other useful things, resignation of directorships, the clause that obliges them to resign from many directorships if they are a director, it clauses covered expenses and the return of company property, particularly, for example, in relation to company cars and laptops and mobiles.

Moving on to the next slide...

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

If I could just jump in for a second.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Again, I just wanted to contrast as to what we do in the United States as well. Pylon is a very common thing over in the U.S. but as you're aware, we have no statutory notice period over here unless, of course, you do have a contract of employment with, typically with an executive. But you also just want to be aware of, depending on what you pay or in or out, the severance can show up, have different tax consequences, depending on how it pays off. They can affect how they apply for unemployment then, of course, the other thing you run into here is non-competes. For example, out here in the Federal Republic of California, I'm in a state of San Diego, a non-compete is most often not worth the paper on which it's written.

So, again, this goes back to 'stop thinking like a' so if you have an executive in southern California who thinks that they're going to, they're going to apply a non-compete agreement or some of these other things, either inside the state or if you're working in California from another country, you have to realize that a lot of the things that might stand up overseas, will not work in the United States. I'm sorry. Go ahead. Let's move. Let's go to France.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes. Thanks, Darrel. That's very right and, indeed, it's fair to say that in terms of non-compete, they are not necessarily that easy to enforce in the UK either. You do need to show that you have a real business in trust to protect. And you can only have them for as long as you need to in order to get somebody else in post and to try and recoup, for example, customer relationships.

Unidentified Speaker

The key is very narrow tamari (ph).

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes, absolutely. You can't, it's a one size fits one and not all. So, moving to divorce in France. Likewise, again here, we have the mandatory rights, particularly in relation to unfair dismissal. So, the unfair dismissal protection in France applies that you have more than 11 employees and all that have at least two of service. The compensation from fair dismissal in France is the minimum of six months. That's if you don't have a fair reason to get rid of them. In both cases, that would be very, very true. The fair reasons would include serious reason, related to conduct, capability, or an economic reason, for example, redundancy. And so, you can see in the example that we have, it's more just a general falling out and there's no real and serious reason other than (inaudible - accent) getting on everybody else's nerves.

So, moving on, if you haven't been following the fair procedure, because you have to have your fair ground and follow a fair procedure, you're looking at an extra one-month indemnity on top of the minimum six months. So, you really do need to think about the unfair dismissal and the other rights, including redundancy rights and discrimination rights, in addition to what's at the contractual rights. And then turning to the contract, notice period for indefinite contract, very often they are provided in the collective bargaining agreement. Now, collective bargaining agreements apply to probably about 90% of French employees. They, with respect to the employee, to the union member or otherwise.

The labor codes were often what will sit out minimum notice periods, which will depend on them for service. So, less than six months service, the notice period will be whatever is customary for the industry. So, there is an increase in net to service entitlement. And over two years, the notice period will be two months. As we can see with Bob, we are looking at 5-year service here, so, he would certainly be entitled to at least two months notice.

There are further, in addition in France, --in addition to the notice period and the unfair dismissal, there is also an entitlement to severance payment and that's even if the fair procedure is followed. Again, this might well be in the collective bargaining agreement and the amount of it will vary and it will depend on whether or not the termination is for a serious or a gross misconduct. So, generally it's about 1/10 of a month's salary for every year of service. However, in certain circumstances, it does increase. For example, in a redundancy situation, you're losing approximately 4/5 of a month's salary per year of service.

Moving on of course in relation to benefits, that person will be looking at, what will be looking for his car allowance, accrued untaken holiday pay and the same way that he would be if he was working in the UK. And post-termination, again, you're looking at the non-competes and confidentialities.

Again, in France as in the UK, there is implied duty of confidentiality that's just during the employment contract. But post-termination, you really do need to look at having an express clause in the contract to show that the employer has at least notified the employee of the duty that they have of confidentiality and that post-termination will cover trade secrets.

I think that's probably all we need to say in terms of France, very, very similar to the UK, and again, very similar to the situation also in Germany. So, if we turn over the page to Germany there. Again, in Germany, we're looking at after dismissal rights.

Employees here need six months so as to qualify for those rights. So, Bob would certainly qualify. Although you have to have 10-plus employees in the undertaking. Prior to December'03, that used to be five employees.

However, there are special rules where the dismissal would actually be voided if the dismissal is in breach of somebody's constitutional rights. Constitutional rights would be, or include, things like dismissals for breach of equal treatment or for trade union related reason. And certainly, you don't actually need any sort of qualifications for dismissals in those circumstances.

You're looking to note as well that, in Germany, if there was a works council assigned to the employer, then the employer must consult with the works council about the proposed dismissal. And the works council can actually object. So, Bob might be in a fairly strong position if he's friends with somebody on the works council, and it may be a little bit more difficult than it certainly would be in England and France.

So, the law in Germany, in relation to notice, there are these statutory notice periods. For two years service-plus, it's at least a month, and it can increase in scale up to 20 years service, which will go up to about seven months notice. Years before the age of 25 are not taken into account. However, notice has to be given in writing here, and it has to be given by the HR manager or an officer of the company acting as such.

And if the dismissal hasn't been - or the notice hasn't been given properly, then the dismissal can be challenged in the labor courts and can be voided. So it's very important that procedure is followed, particularly in Germany. That's probably true of all countries in the EU where there are very much procedural obligations in terms of dismissal, and heavy sanctions for failing to do that.

Again, we've listed there the usual things that you would want to ensure what's in the contract pact to make life a little bit easier, in relation to IP rights, bonuses, making clear how those are going to be paid on termination.

But particularly, just to point out at the bottom there that company directors do not enjoy unfair dismissal protection, as they're not seen as employees under German law. In France and the UK, that's not the case. They're still seen as employees, and they have the same protections as other employees do.

So, moving to the next slide, then. Divorce in Australia.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

OK. A couple of things I want to add as well.

Just to remember what we said earlier, is that in other countries in which we're speaking, these notices need to be delivered in the local language. And the thing is, depending on the country, you may have a choice of languages.

For example, when you're working in Belgium, when you're working in Switzerland, you have a Swiss - excuse me - you have a German section, a French section and an Italian section. And the notices have to be delivered in the local language. And even though you're working with the same federal laws in those countries, they are interpreted a little bit differently in each section.

The other thing is that, when you're working in the E.U., you are also looking at the potential for a joint works council, which means not only do you have the federal works council, but you'll have an E.U. works council that might get involved as well.

And then finally, one thing I want to touch at on all of these is, as we start on in Australia, is the danger of an implied right to bonuses.

For example, if you have a company that has a bonus scheme, and each year for the last three or four years the guys got close to it, they didn't quite make their marks, but the company paid it out anyway, because they tried hard and there were some external forces that they couldn't control, so we're going to pay them out.

Well, now, you're terminating the individual. He says, you know, where's my bonus? They said, well, you didn't earn it this year. You've got a potential for an implied right there.

So, speaking of breaches of notice, once you notice here, in Australia, again, you do have a statutory notice period. And this depends on the level and the rank of the individual.

The Workplace Relations Act covers the employees under a certain level of salary. And, again, this might vary per industry, as well.

The nice thing about Australia is, there is actually no written contract of employment required, so you're kind of freewheeling.

However, you can, if you so choose, put in place an Australian workplace agreement, which is a contract of employment between the employer and the employee, and it talks about their wages, conditions of employment and everything else. However, you cannot contract out of - excuse me - you cannot contract out of statutory requirements.

The notice period also increases for the employee, if they are over the age of 45. So, again, these are statutory notice periods. If you are a U.S. company, for example, and you want to terminate somebody - Bob in Australia - Bob's 46 years old, you can't just give him two weeks notice and go from there.

The same type of things here as well. You can't contract out of statutory awards that are required. These would be the notice periods, any other benefits or retirement benefits that are due. Again, the issue of confidentiality, which is going to come up.

And one other point that we'll touch on a little bit later on, though, is the key issue of data protection around the world. Again, the commissions and bonuses. And this is where you might want to have the agreement in place when they start, so you can identify, all right, what happens if we terminate you? How will your commissions be paid? And then, of course, there are expenses and anything for company property.

If we move to India now, in India you are required to have a written letter of appointment. Everything is going to be governed by the Industrial Disputes Act. There is a difference there, too, that you have to look at, which is the issue of dismissal versus removal. And a dismissal, you're merely dismissed from your employment. You have the potential for a rehire. However, if you have been removed, you are not eligible to be rehired by the company ever again.

But also, if you're doing references and everything else, it's a key point and a stigma, if you were dismissed versus removed.

Again, we have the issue of PYLON (ph). And you will have to contract on this. As we mentioned in the UK, if you don't have it in the contract, you could be in breach of the Industrial Disputes Act. You could just pay them outright.

Statutory benefits cannot be denied, as you can see. So you've got the provident fund - and most of this will fall under the general health schemes, the retirement schemes and anything else you do. And, again, as we mentioned, there might be a benefits entitlement. What have you done in the past? What has been your practice?

And key in India, in particular, because of all the software that's being developed there in the offshore - everybody moving it offshore. It is absolutely critical that you have some sort of confidentiality clause built in, whether it's in the contract of employment itself, or whether it's incorporated by reference, and you have the standard, you know, IP, intellectual property and invention agreement in place.

If we move to Singapore now, again, there is a notice period, a statutory notice period. And it can be based on the level of the employee.

They can use leave to offset the notice. So, if an individual has leave built up, you can use that to offset the notice period that's required. So, that does kind of let you out of - it's kind of a PYLON safety net, if you will.

There's very, very specific termination provisions. Now, again, we could spend an entire session just talking about Singaporean law. But our point here really is to raise an awareness, so if you do have an employee over there, or if you're anticipating opening an office over there, you know the questions to ask.

Obviously, in all of these situations, it's advisable to seek local counsel, you know, or somebody who knows the local rules, if you will. You can set up - excuse me - within your employment contracts. Again, the employment act does not allow you to come into a less favorable condition. So, if a statutory notice period is 10 weeks, you cannot contract out and make it two weeks' notice.

You can be dismissed for not meeting the terms of the contract. And any appeals on a dismissal will go before the Ministry of Manpower. Move to termination agreements.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes, let's see if the board, actually, somewhere, have actually resolved in there with Bob, to make life a bit easier for them. Certainly in England and Wales, one option that I'm sure the board would be interested in is the negotiation of what we call a compromise agreement.

This is a legally binding document under which you can agree with Bob that his employment will come to an end, and you can choose the termination date. And you agree under that compromise agreement to pay him a certain lump sum of money, effectively to buy out some of his rights.

The agreement itself would list various things he would be entitled to. He would be looking for his notice monies, some compensation to buy out his unfair dismissal rights or anything else that he's got, and some bonuses and commissions.

But it's one way of actually getting around having to litigate in the courts, and certainly having to restructure notice. It's a clean break. You have to be very careful, however, when actually raising the issue of a compromise agreement, because once you've raised it with the employee, potentially, it's made quite clear that their position is now untenable. You clearly don't want them around anymore.

Some employers try and get around this by using without prejudice discussions. You have to be very careful. Very often it will not be without prejudice, even if you use the term without prejudice. Strictly speaking, there has to be a dispute on (inaudible) to use the words "without prejudice."

In France, without prejudice doesn't work at all, and you need an agreement, almost, to reach a settlement agreement. Effectively, to be valid, a settlement agreement in France must be signed after the dismissal is notified. And if you compare that to England, you can actually effect the termination by way of the compromise agreement.

In France, in practice, you can negotiate during the dismissal process, and they usually recommend that negotiations start at the time that you invite them to the preliminary meeting, to tell them that they're no longer very welcome in the organization. And that hopefully would avoid the risk of a constructive dismissal.

The fact that you agree at an early stage during the process of dismissal, that at the end of the process when they've been dismissed, you will actually enter into a settlement agreement to prevent them from trying to enforce their rights in the courts.

In Germany, compromise agreements or settlement agreements are used much less. You can do them.

However, if an employee signs up to a compromise agreement, it can lead to them being barred for a period of time from claiming unemployment benefits. Therefore, most employees will prefer to bring their claims to the courts, and then settle out of court, and that way they're not barred.

And certainly, also in Germany, the employer may have to have - will have an obligation to inform the employee of any disadvantages of entering into the compromise agreement. So, perhaps not quite so useful in Germany at all.

The other thing I ought to have pointed out with Germany, as well, is that the usual remedy for unfair dismissal is reinstatement. Unlike France and England, usually you can terminate and pay off, and usually get away with that. Whereas in Germany, you're usually looking at a reinstatement.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Australia.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Well, the best thing about the three countries that we spoke about in the Australasian region, is that you are not required to put together a termination agreement. You may. And typically when you're looking at senior level managers, executive level, you will do this, because, you know, you'll get an actual parting of the ways.

The other critical feature about this, though, is that in the contract of employment from the, you know, the engagement period on, you only want to put these things out later on, so what happens if, you know, while - you know, it's kind of like planning your will. Nobody really wants to do this, but you're going to die.

So, what we need to do is take a look at, all right, what if a worst-case situation comes up? Because this is where I've run into situations with many of my employers who were small companies that were growing - and you've probably seen this in the past, too, where - and this generally falls under IP.

They don't put any sort of agreements or confidentiality agreements together. They say, hey, if something comes up, you know, we're all friends. We can work on it.

And then somebody leaves the company, takes IP with them, and suddenly they're not friends anymore and there's nothing to document how they want to do it. Very similar to the situation here.

In Australia, like I said, you're always going to be better off, especially with your higher level employees, to put something in writing. And so, everybody knows the ground rules. Everybody knows, if you're going to contract out, there's a PYLON available.

And quite frankly, it's going to be, you know, one of the main reasons people want to, like, implement a garden leave or something else is for spite, along the mindset of, well, all right, if you're not going to work for me, by golly, you're not going to work for anybody.

But it's the employer ends up paying. The other individual sits in their garden, you know, reading the newspaper and playing with the dog, and you're still paying them.

So, those are the types of things you want to look at.

Again, in India in particular, you want to be very, very specific about a lot of your IP and software development requirements. In Singapore, you really want to make sure that you have everything laid out in advance. Let's jump to slide 16.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes. We talked a little about divorce. And, of course, from a contract point of view, it's usually a divorce phase that the employment contract terms become very, very important. But there are the clauses of the contract that perhaps don't apply so much on termination, but apply during the relationship.

And in England and Wales, there is an obligation on the employer to issue what we call a statement of terms and conditions within a certain period after the employee started work, within one month.

If you fail to do that, then the employee can go to the tribunal and actually ask them to clarify what their terms of employment are.

In addition, if there's any ambiguity about any terms of contract, again, the employee can go to the tribunal and ask the employment tribunal to determine what the party's contractual intentions were.

So, looking at sort of a checklist of clauses that would be very advisable to put in the contract, we talked about the termination provisions already, and all of those are included in this list, so I didn't want to repeat them here.

But looking at other mandatory laws, we talked about unfair dismissal and mandatory termination laws, but we also want to mention again things like holiday and holiday pay and working hours are covered by directives and local legislation.

I should make one point about directives. As people are probably aware, European directives are enforced in each individual jurisdiction by way of their own national legislation.

Therefore, once you have a piece of legislation or directive that is common to all of the E.U. countries, the way it's actually implemented in each country will be very, very different in some respects.

So, it's the same, but different and, hence, why you will need to get the advice of a lawyer from that particular local jurisdiction. Maternity and parental time off. Those types of rights will be implied, effectively, into all the contracts of employment. And, again, you won't be able to contract out of those.

There are particular protections for part-timers and temporary workers in England and Wales. And I ought to mention fixed term contracts. Fixed term contracts are not popular anywhere in the E.U., whether it's France, Germany or the UK, and in other countries as well. It actually complicates things, and the benefits of having a fixed term really are not there anymore.

So, you might want to think very carefully about whether it's even worth doing. And indeed, in the UK, fixed term employees actually have additional rights over and above those that have permanent contracts. So, indeed, they're not very helpful at all.

I would mention one point about data protection - that thorny, favorite subject for most people. It's very true that, again, data protection is a European-wide issue.

A contract can be helpful in this respect. There are implied consent, because of the employment relationship, to the holding and processing assertion (ph) data.

However, you can actually get a wider consent to hold for the (inaudible) personal data or (inaudible) data, for example, medical data, particularly if you have an employee who's not been very well, and you've obtained a medical report on that employee, which is a requirement in some circumstances, or you've taken data about their race, nationality and so on.

Actually, the case law has developed on this. And it's not advisable to actually put the data protection consent within the main body of the contract, because they have to be freely given. And the odds meant (ph) that it cannot be freely given if it's included in the main part of the contract. The employee can't sort of opt out of that one clause.

So I usually recommend to clients that they put a data protection consent at the bottom, and have a separate signature at the bottom of the contract, to say that they agree to the processing and use of data - of their personal data.

Finally, it's worth pointing out that it's very useful indeed to ensure that you do cover in some detail any benefits within the contract, rather the handbook. Permanent health insurance is a particular thorny issue, and as the others, such as life insurance, pension and other benefits can be.

You would want to make sure in the contract that their entitlement to participate in these schemes is subject to the rules of those schemes from time to time in force, as the rules often do change, particularly in terms of insurance policies. And it's very useful to have that.

And indeed, you might want to expressly draft just out (ph) a right to remove or change benefits in that respect. So, include some flexibility in your contracts as far as you can.

And indeed, I would go as far to say to include as much flexibility as possible in relation to all sorts of terms, including location or place of work and mobility, et cetera.

Over on the next page, just a final few sort of things to think about. Expenses, duties. Again, draft some flexibility in relation to duties. That can be very, very helpful.

You might also want to include a clause allowing you to deduct (inaudible) sums from salary. You can reclaim overpayment to salary, but there may be other aspects that you would like to deduct from salaries. And without actually having an agreement before the event occurs that requires you to make the deduction, you won't be able to do that.

And remuneration. It's always very important to get that clearly - remuneration - particularly in relation to commissions and bonuses, as we talked about, and to state (ph) exactly what happens as far as you can, in terms of termination and how it's paid, when it's payable, and so on.

And finally, I have seen some contracts, some U.S.-style contracts, that give people golden handshakes or parachutes.

Bearing in mind the rights that employees have in terms of unfair dismissal, and so on, that may not be advisable, because if you include a contractual golden parachute, for example, that employee will be entitled to that parachute. But also, still can claim unfair dismissal, and the notice monies and any other monies that they're due. And so they're kind of getting a double bonus there, if you have included that.

Finally, I haven't included there, but I would add that it's very helpful to put into the contract, if it is the case, that there is no agreed enhanced redundancy payout. There is a statutory redundancy payment under English law, but it's very, very small, you'll be pleased to hear.

But many organizations do have an enhanced redundancy scheme, but they don't make it very clear whether it's discretionary or whether it's contractual. And, indeed, many employees will try to argue that it is contractual.

And in that respect, I would make very clear that it is non-contractual, and that gives you the flexibility to change your scheme and make it less favorable sometimes, more favorable when the company's doing well, maybe, and prevent employees from relying on the argument that you've always paid it out, so it's got to be due to them.

Turning to the next slide, then, France, again, just a checklist here for you of other things that you might want to include in the contracts.

Again, just remember that if something's in the collective agreement, or something's in the labor code that deals with the issue, you cannot effectively supersede that or contract out in the contract. The contract, effectively, can only give better rights, apart from a few extra bits and pieces.

So, for example, probationary period. Some collective bargaining agreements do set maximum lengths for probationary periods, but there's nothing implied into any basic legislation in terms of the contracts. So if you want to have a probationary period, certainly include it in your contracts of employment.

There are various provisions also in relation to incentive schemes and profit sharing schemes and participation schemes. That way you have a certain number of employees in France, and it's worth checking it out as well.

Turning over the page, then, to Germany, just picking out a couple of things here. You've got a list of must-haves and good to have.

Again, in Germany, there is an obligation to provide a statement of terms and conditions within one month of the employee starting their employment. So there are certain things that you have to tell them, and that's in the must-have list there.

There are other terms. We talked about implied terms of confidentiality and so on. So, always remember that there are often implied terms anyway, but you can always make them clearer and provide some clarity in the contract anyway.

And then good to have, again, the maximum duration of a probationary period in Germany is six months. But it can be a very useful thing, because you can specify that during the notice period, they can have - pardon me, during the probationary period - they can have a notice period as short as just two weeks.

And interestingly as well, you can agree in the contract, if you wish, that the contract will terminate automatically at the end of the probationary period, unless the employer actively approves and confirms the employment.

So that can actually have a real beneficial effect, and shows that a carefully drafted contract can be worthwhile.

And then finally, moving - turning over the page then to Australia, (Darrell), over to you.

Darrell Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

OK. Again, like I said, I'm just going to touch on a couple of things here, because I want to leave some time for questions, as well.

But the key point you want to look at here is, one, is there are no statutory requirements to the contract. However, a best practice is to do one.

As you look down towards the bottom there, you see the Australian workplace agreement and certified agreements. The thing is, you can negotiate them collectively with a group, but they all have to be signed individually.

The other thing I want to tie on, too, in terms of data protection, it is not just in the E.U. There are data protection policies and standards in place in Australia, in Hong Kong, in Singapore.

And probably the closest thing we have to it over here in the United States is (HIPAA). And, you know, they're all - they're conflicting in some points, but you really have to take them on a case-by-case breakdown.

The other thing I want to look at just in Australia, you notice that compulsory unionism is prohibited.

Let's move to the next slide now. In India, again, the general rule is that the letters of appointment are required. And in the letter, you can see the standing order. These are some of the things that you need to put in place, that have to be detailed in there.

So, if you think back to what we talked about in the divorce, these are things that were covered up front in the pre-nup, but will be taken care of in the divorce, and that everything's spelled out, so everybody knows what the rules are.

And then finally, if we look at the last slide on Singapore, there's no requirement as to the form of the contract of service. It can oral, it can be express, it can be implied.

But once again, the best practice is that you really have to make sure that it's in writing, because that way there's no he-said, she-said. When you go into court, you know, it's not a bunch of finger-pointing.

If it's in paper, if it's writing, it's covered, and everybody knows what's in there.

The other thing is that, you don't really have to give a preference in hiring over there, but this is a key thing that employers with more than 10 employees must not employ anyone who's not registered as having completed their national service.

Now, there are some exceptions under the National Serviceman's Act, and there are several of them. But this is where you can run into trouble too, is that your people who have not done their service work, they're avoiding, and you employ them, you can run into some difficulties here.

So, Jeannette, did you just want to cover very quickly (inaudible)...

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes, I just want to (inaudible) a few points.

A very summary checklist of issues there. Most of those we covered.

The last two I just want to comment on, really. There are in most European countries restrictions on variation of contract. So, once you've got your contract, it's going to be much more difficult than you might imagine in order to get any addition, change or whatever, to that contract.

Effectively, consent is required. And if you're trying to make a detrimental change, you can bet that that employee's not going to consent.

So, to try and make changes is very, very hard, so it's important to get it right at the outset.

Secondly, a transfer of undertakings regulations, or CHEAPIE (ph), as it's well known in Europe. If you inherit employees from another employer, through a merger-acquisition type scenario or an outsourcing, then there is a restriction - a very big restriction

- in most European countries, if not all, on the harmonization of terms and conditions, or the change in a terms and conditions following an acquisition.

Effectively, you cannot harmonize or change their termination - change their terms and conditions, if the reason you want to do so is because you just inherited them and their terms don't suit you. So, beware of that.

I think I'll just hand it over to you, then, Darrell, and we can ask questions.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Yes, that's fine.

Actually, you can see the issues of Asia. We've talked about them. I really - you don't need me to read them to you. So, let's just go to questions if there are any - Phil.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

OK.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Hello?

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Hi.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

I think they cut us off.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Is it just us?

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Phil?

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

OK. Should we dial back in?

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Could be, because I heard a beep.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

I heard a beep.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Ten o'clock. OK. Let's - I have a hard stop at 10, so I may drop off.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

OK. (inaudible) online here, but if we just agree that if anybody have any questions, if you are still tuned, if you would like to e-mail one for Darrell, we'll be very happy for you to do that.

Our e-mail details are at the back of those slides, on slide 26. We should be very, very happy to answer any questions separately, and please do e-mail those and get in touch.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

OK. Actually, here, hang on one second. I've got - Phil just e-mailed me a couple of things. I realize it's impossible to cover every country, but after the basic presentations, I wonder if the speakers have any experience with the PRC or Japan, and might be able to direct us to some resource to determine the basic issues and complications in these two countries.

I actually have a little bit of background in Japan and very recently am developing some work in the PRC. If somebody has some specific questions, I would advise you to take a look at the last slide and e-mail me. And I know, Jeannette, you have some colleagues, as well.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

I do, yes. I can certainly put people in touch with the right people. We have a full list. So, get in touch.

I wouldn't say that I've got personal experience of those particular jurisdictions, but I can put people in touch and get answers for you.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

OK. And the next one. If you change the terms of your handbook - assume you take away a privilege - do you have to offer some additional consideration for the change to be effective?

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

In the UK, the handbook, you would hope, would not contain anything which is actually a contractual right.

So as long as it's not a contractual right, then you can change it as much as you like. However, if you're talking about a privilege, then it seems to me that you probably are talking about something that's their entitlement, and you would not be able to take that away and if they agreed to it.

There are some circumstances whereby a very draconian way of getting consent, or rather, getting your own way, to be to terminate and re-engage on different terms and conditions. But it is a draconian sanction, and unfair dismissal rights and all the other paraphernalia will apply.

So, it's very much the case, if you don't like something, get it right in the first place, because otherwise, it's going to be very difficult to get rid of.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

The other thing I recommend is that you have in your handbook a clause that says, the company reserves the right to change a policy, et cetera.

And as we said, as long as it's not a statutory right, the company does reserve the right to update the handbook and change policy with a certain amount of notice to the employees.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Next question.

I've heard a lot about the inability to agree to (West end) - let's see - I've heard a lot about the inability to agree to less than is (ph) required by law or union.

Is this an absolute? Or is it possible, in the case of a highly compensated executive, to give them some special benefit or extra compensation, in order to waive their Rights?

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

I think generally, you can't get them to contract out of their rights. That's a basic principle. On termination, in the UK, you can agree a compromise agreement, which would mean that you could actually get them to contract out of their rights in those circumstances.

But during the employment relationship, it's much more difficult to just provide them with additional remuneration, and get them to waive their rights to any of their contractual mandatory sort of protections. So, usually, it's not possible.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

OK. And then finally, how do you provide international due diligence in an international M&A transaction without violating data privacy?

For example, a U.S. target providing a U.S. acquirer with info on the target's European subsidiaries.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes. That's an interesting one.

Basically, most information that's provided about the employees should be provided anonymously. So, for many organizations, you're looking at amounts of bonuses and (hard) redundancy termination provisions, and termination rights, because you want to know what it's going to cost if you don't want to actually keep those employees.

And you would not actually necessarily have to give the employees' names, and the data can be given in such a way that the individuals cannot be ascertained from it.

Furthermore, you would want to contract with the party in your heads (ph) of terms, to agree that information will be kept confidential and will be protected, particularly if we're looking at data going outside of the E.U. to the U.S., and the U.S. organization is not part of a Safe Harbor.

Then you would need to make sure that you've got an agreement in place, whereby the acquiring party will keep safe (inaudible) data that it does receive.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

Right. The other thing you can do - and just adding on to what Jeanette said - is to make sure that, you know, you could identify them by some sort of number, whether it's a number that you assign - obviously, not their social insurance number or their Social Security number or something like that.

Or, if you could just put, identify them by job, you know, by job title. That's another way to go.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Yes.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

In the United States, though, I really recommend that you become a Safe Harbor company. We just had one more question come in. It says, if a company plans to employ, say, more than 25 - this is for India - more than 25 Indians, does it have to worry about preferential hiring of scheduled castes?

I'm not sure. I can - I will get an answer to this question, and get it back to you. Do you know off the top of your head there, Jeannette?

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

No, I don't, I'm afraid.

Darrel Wice - *TVA Fire and Life Safety - General Counsel and V.P. of Human Resources*

It's been a while since I worked in India. So, I will have to get another answer to that. Barring that, I don't see any other questions. I'd like to thank everybody for listening today. To the individual who wrote in the question about India, I will get an answer and respond to the (ph) e-mail.

Jeanette Wheeler - *Partner and Employment Loss Specialist - Eversheds*

Thank you very much.