

The FUTURE OF WORK series  
Global Mobility Report

BAKER & MCKENZIE

# Moving target

The new age of international assignments  
and the rise of the accidental expat





# Moving target

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# Radical rethink

Before the global economic crisis, large multinationals routinely sent employees to work abroad for years at a time to acquire new skills and gain international experience. These assignments typically involved relocating the employee and his or her family with generous expatriate packages that included housing allowances, cost of living differentials, cultural training and foreign language classes.

But when the global economy went into free fall, multinationals pulled back. Like the music shutting off during a game of musical chairs, the movement just stopped.

“When the economy tanked, we saw companies send no one for a period of time because it was viewed as an add-on expense they didn’t need to incur,” says Betsy Morgan, a global immigration and mobility partner based in Baker & McKenzie’s Chicago office.

Since then, local economies have stabilized and business executives have returned to the airports — but with some notable differences. Multinational companies have been shortening international assignments from years to a matter of weeks or months and using technology to create less expensive work arrangements such as cross-border telecommuters and virtual teams. Employees are now more likely to be sent on shorter, more project-based assignments to fill specific business or customer needs than relocated overseas for the international experience.

At the same time, explosive growth in emerging markets has created a significant demand for companies to move employees around the globe to explore and seize new opportunities. As multinationals enter newly emerging markets to capitalize on growing consumer populations and offshore their manufacturing and customer service centers to lower cost locations, they need the ability to send employees abroad to scout new locations, set up operations, provide specialized skills and fill critical talent shortages. And they need to do it quickly.

“Companies are expecting their workforce to be more mobile than ever, but not mobile in the traditional sense because the assignments don’t always involve relocation,” says Kerry Weinger, a global employment partner based in Baker & McKenzie’s Chicago office. “We’re not consigning the existing models for international assignments to the history books yet, but the changes underway surely call for a radical rethink.”

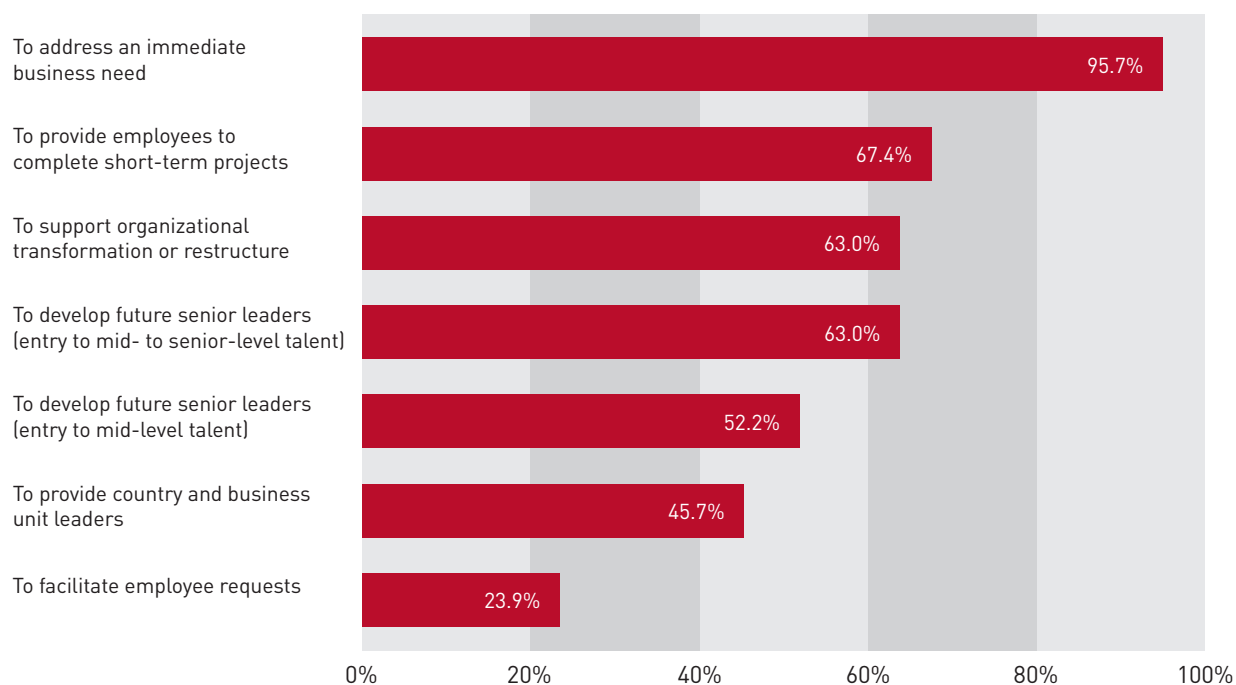
For many multinationals, it's not just a matter of moving individual employees into new markets, but mobilizing large groups of workers, often from multiple countries, to an overseas worksite. With flat to moderate growth in their domestic markets, multinationals are finding the real growth opportunities in emerging markets, where the rule of law is still developing. To meet the demands of these new markets, they must recruit local and foreign workers to develop their products, provide services and complete special projects, creating new compliance risks and immigration, tax and employment law challenges.

A UK construction company, for example, may be vying for a contract to build a new power plant in Saudi Arabia. To win the business, it will have to find teams of experts, both internally and externally, to deliver on the contract. That could mean recruiting workers from six or seven different countries and getting them to Saudi Arabia as quickly as possible, knowing that if the company performs well on this project, it could gain a foothold in the Middle East and win more work throughout the region.

This transformation of the global workforce has turned mobility from an administrative HR function into a front-burner, high-risk issue for multinational companies. With a large percentage of their revenues now coming from overseas, companies have been forced to confront new regulations and stricter enforcement of how they move, manage and classify their workers.

## Why workers are sent abroad

What are the main objectives of international assignments at your organization?



Source: RES Forum Annual Report 2014: Key Trends in Global Mobility



# The new mobile workforce

The evolution of country-based multinationals into truly global entities has created a fundamental shift in how and where business is conducted. A sharp growth in international mobility is a clear consequence of this, as organizations work hard to make sure they have the people with the right skills in the right place at the right time.

In an increasingly interconnected world, companies are questioning whether they need to relocate individual employees to provide those skills, particularly when relocation is so expensive. It can cost a company three or more times an employee's base salary per year he or she spends abroad because of the additional taxes, housing, cost of living and other expenses. Why not just send them to a particular location as needed?

This shift in thinking has led to the rise of a new breed of worker: the accidental expat. Also called the extended business traveler and short-term assignee, accidental expats engage in many of the same activities as the traditional expatriate, such as providing management direction and specialized skills in the destination country. The difference is they do so from their home country, traveling frequently to the destination country to perform their duties without family members and the bells and whistles of an expatriate compensation and benefits package.

Alongside the accidental expat, there's been a noticeable rise in the number of cross-border commuters, virtual teams and global nomads. Aided by technology, these workers use tools like email and video conferencing to connect with teammates around the world and conduct their work from anywhere. Each of these new breeds of worker creates unique tax, immigration, work environment and employment law challenges for their employers. But it's the accidental expats who represent the highest compliance exposure.

Accidental expats pose a particular risk for their employers because they move in and out of other countries frequently, often traveling as tourists or business visitors to avoid the expense and bureaucratic processes of getting work authorization, despite the fact that the nature of their activities often require higher level visas. Thus, they are more likely to get denied entry or detained at customs, creating emergencies for human resources and general counsel.

Despite their growing numbers, accidental expats are often not subjected to the same level of organizational oversight as their traditional expatriate counterparts. Because these are not long-term relocations, they typically fall outside of a company's formal global mobility program. They often book their own travel or have their assistants make their reservations. Given that multinationals have thousands of employees working on hundreds of projects, human resources and general counsel often don't know where in the world they are — until there is a problem.

The short-term nature of these accidental expats also has the potential to turn into longer term assignments, as local management may ask them to stay on for another month or two, inadvertently creating foreign income tax and social security withholding requirements. Depending on the nature of their activities and how long they stay, their overseas assignment could also create a corporate taxable presence for their employer and data privacy issues, as they often carry laptops, mobile phones and other devices with sensitive company information back and forth across borders.

It's not just a matter of individual employees getting turned away at customs or penalized for tax violations, which is happening with much greater frequency. Even more concerning is that governments are increasingly going after companies for exhibiting a pattern of violating certain laws, such as sending large numbers of workers into their country without proper visas. Companies that are prosecuted for these types of violations face civil and even criminal action, penalties that can undermine their revenues and damage their reputation.

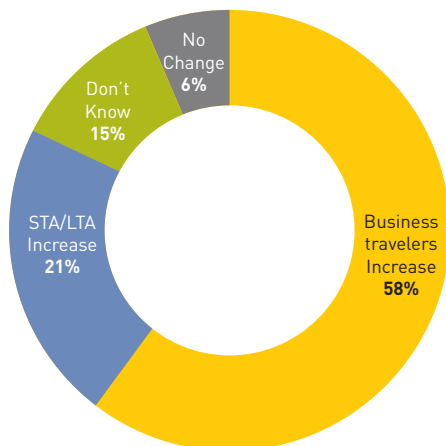
## Additional employer duties

As if violations of tax, immigration, privacy, customs and employment laws were not enough to worry about, companies also have a duty under most countries' laws to protect the health and welfare of their employees and to provide them with a safe work environment **wherever they are working**. Failing to fulfill this obligation can give rise to civil and criminal liability for employers, and in some cases, for their directors and managers.

## Frequent business traveler activity

A large majority of companies have experienced an upward trend in frequent business travelers when compared to short-term and long-term assignments.

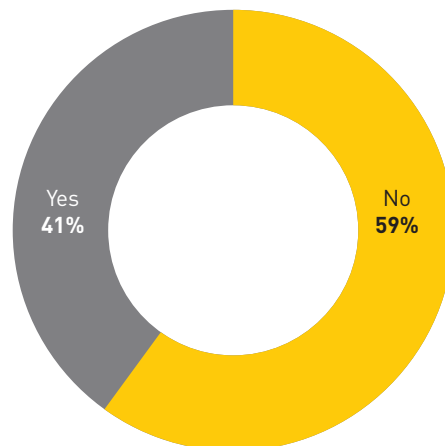
**Is your company seeing a change in frequent business travelers vs. short-term and long-term assignments?**



## Frequent business traveler policies

Although frequent business traveler activity has significantly increased, many companies do not have formal guidelines for managing frequent business travelers.

**Does your company have a policy in place to ensure compliance among your frequent business travelers?**



Source: Ernst & Young Frequent Business Traveler Survey Report 2012



# Border control

More than 200 million people (roughly the entire population of Brazil) are now working outside their home locations. That increase, along with critical talent shortages in specific markets and disciplines, has pushed mobility to the top of many corporate agendas. It has also turned immigration reform into a major political issue in countries from Canada and the US to the UK and Australia.

In the US, there's been a noticeable outcry from the US business community claiming that the country's immigration system is hurting innovation and economic progress. US business leaders have been urging lawmakers to make the country's immigration policy more employer friendly. It's an issue that has united competitors and become a critical item on the corporate agenda.

The reason for the outcry is simple: The rising demand to import talent has vastly outpaced government quotas. In the US, for example, the government issues 65,000 H-1B visas a year for highly skilled workers. Those visas get snapped up within days, even hours of being offered, creating huge backlogs and talent shortages. About 25 percent of H-1B visas go to Indian nationals filling a growing demand for specialized skills in fields like engineering and computer science.

A major concern when reforming immigration policy is retaliation from other countries. If, for example, the US put more limits on H-1B visas, the Indian government is likely to place greater restrictions on US workers coming into its country. In today's interconnected world, balancing the need to protect the local workforce with filling domestic talent gaps and safeguarding overseas opportunities for their citizens and corporations has become increasingly tricky for governments.



“Most of the changes to the US immigration system since 2006 have not been very helpful for the employer community,” said Lisa Atkins, director of immigration policy at the US Chamber of Commerce, during a panel discussion at Baker & McKenzie’s Global Employer Forum. “Anyone who has dealt with the movement of temporary employees, green cards or STEM graduates knows that our immigration system is difficult to navigate. We’re really doing ourselves a disservice.”

Another effect of immigration policies not keeping pace with demand is noncompliance. To circumvent strict limits on visas and avoid lengthy bureaucratic processes, companies are more likely to send employees into other countries without the proper work authorization. In one such case, the US government recently reached a multi-million dollar settlement with a multinational IT outsourcing company for allegations that it was using more easily obtained business visitor (B-1) visas rather than the more expensive, limited H-1B visas, to place its workers on long-term projects with US companies.

As the workforce in developed countries continues to age and the nature of work shifts toward highly skilled labor, many governments are recognizing the need to lower their immigration barriers to allow businesses to import much-needed talent. But change is slow, and in many cases going in the opposite direction. Since the global economic crisis, many governments have cracked down on visa misuse and tightened their borders to protect their local workforces. As a result, the acceleration of global mobility is happening in spite of governments in many regions, rather than aided by more open policies.

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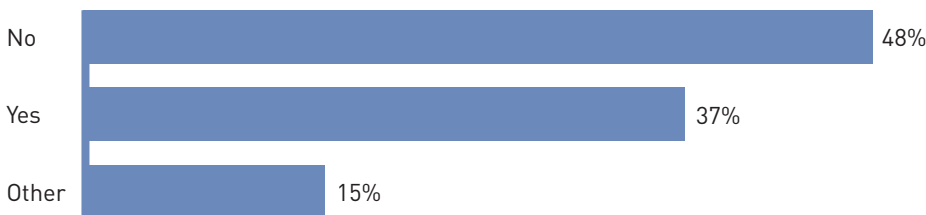
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**Lisa Atkins**

Director of Immigration Policy  
US Chamber of Commerce

## Educating business travelers

Are your frequent business travelers briefed on the potential tax and immigration issues related to their international travels?



Source: Ernst & Young Frequent Business Traveler Survey Report 2012



# Recommendations

All of these changes in the nature of business, the global economy, border control and international assignments amount to a major issue for employers: new compliance risk. Those risks include immigration and visa requirements, tax and social security implications, data privacy mandates, employment laws, equity awards and compensation issues, and anti-corruption restrictions.

To account for these risks and keep pace with an increasingly mobile workforce, companies must rethink their talent and mobility strategies and adjust their policies and procedures accordingly. Politics and political unrest are constantly shifting the barriers to mobility and any global mobility strategy needs to be nimble enough to react quickly to those changes. Here are some recommendations to help you better manage this process.

■ Educate employees and business managers on your business travel policies.

In today's fast-paced business environment, it's nearly impossible to know where all of your employees are at any given time and to monitor their activities. That's why it is so important to establish a company travel policy and incorporate it into your employee handbook. Based on that policy, you should develop an education program for business travelers and their managers to inform them of the types of business trips your company will authorize and to instruct employees on relevant immigration, labor and tax laws of different jurisdictions so they don't inadvertently violate them. Wherever possible, managers who frequently send their employees abroad should be trained on the types of activities that require work authorization and the consequences of non-compliance. To raise sensitivity to these issues, some companies have developed training videos that depict various business travel crises and how they could have been avoided.

■ Require employees to fill out an online compliance checklist before booking their travel.

Most multinationals have formal global mobility programs for managing the relocation of employees for long-term assignments. But in many organizations, short-term business travel is arranged by the employees themselves without oversight from human resources or anyone familiar with the potential legal and tax issues. Recognizing the increasing compliance risks this creates, some companies have moved toward creating standard procedures for their business travelers to detect and address immigration, tax and other compliance issues before they leave the country.

One way to identify immigration red flags is to have employees fill out an online questionnaire that assesses these issues as part of obtaining travel authorization. Before booking their tickets, employees must answer questions like: What is the purpose of your trip? Do you have the proper visa? Have you ever been stopped at customs? Have you or anyone on your team ever been detained? Do you have direct reports in the country you're visiting? How many days have you spent in this country over the last year?

Based on their answers, the program should tell them whether a business traveler visa is sufficient or alert HR or the legal department that further investigation is needed to determine the proper level of work authorization. If your company uses a dedicated travel agency for booking business travel, you can task the agency with having employees fill out the checklist and monitor the responses for escalation within your organization.

Having systems like this can not only help track employees and prevent compliance problems, but show enforcement authorities that you have a formal process for conducting immigration due diligence, which can work to your company's benefit if you come under investigation. The key is demonstrating that your company is actively managing its business travelers and has systems in place to help employees comply with immigration, tax, and labor laws so that single incidents don't blow up into larger enforcement issues.

■ Establish a policy that all extended or frequent business travel must be reviewed by HR or general counsel.

As the line between international assignments and business travel has become increasingly blurred, it raises the question of whether it still makes sense to separate the management of global mobility and business travel. Although the need for work authorization is usually based on the nature of the activity rather than the length of time in the country, the longer an employee is spending at an overseas worksite suggests that they are doing more than attending meetings or conferences. That's why travel to one country for an extended period or frequent trips should be evaluated by the HR department or general counsel's office to determine whether work authorization is required.

Some companies have also moved toward creating formal short-term assignment and extended business travel programs that provide a level of oversight typically lacking of business travelers. If, for example, a company is sending large groups of workers in and out of Germany every few months to work on a big project, human resources and legal counsel can analyze the types of activities the workers will be engaged in, make sure they secure the proper visas and monitor whether they are complying with host country tax laws.

“Managers who frequently send their employees abroad should be trained on the types of activities that require work authorization and the consequences of non-compliance.”

Another approach is to revise your global mobility program to incorporate the more modern international assignments, such as having a multi-tiered system with different packages and procedures for employees sent abroad for strategic business reasons, employees sent overseas for developmental purposes, and employees who would simply like to work abroad for the cultural experience, such as the millennial generation.

■ Limit the activities of your business travelers.

One way to mitigate your business traveler risk is to educate employees on the types of activities they can engage in as business travelers and if necessary, modify their activities so they don't do any substantive work that would trigger the need for work authorization or create adverse tax consequences. For example, if you have a US-based sales manager whose territory includes Quebec, even if Quebec accounts for a small portion of his or her sales, that manager would still need authorization to work there. To avoid this requirement, you could have the US sales manager work with a Canadian manager who serves as the lead on customer relationships and does all the sales work, while the US manager provides background knowledge on the product and other support that doesn't rise to the level of substantive work. With advanced planning and proper training, it may only take slight modifications in an employee's activities to protect your company while conducting necessary business.

## Frequent business traveler risks



Source: Ernst & Young Frequent Business Traveler Report 2012

■ Get weekly updates on the entry and work authorization rules in the countries where you do business.

Keeping up with the changing rules and requirements to enter and work in the countries where your company operates can be a real challenge. Since the global economic crisis, governments around the world have become stricter about enforcing their immigration laws, scrutinizing petitions and implementing new rules for getting visas to protect the local workforce. Russia, for example, recently passed a rule requiring those applying for a specialist visa to provide an education certificate from their college or university that is translated into Russian, an administrative task that can add a month to the visa application process. Because these rules change quickly, it's easy to be surprised by a denial of an application in what is typically a routine filing for your company. That's why you should receive regular updates on local developments from sources such as outside counsel that specializes in immigration law in particular regions, global mobility publications and business newsletters that cover these issues.

■ Use immigration experts who routinely file for particular visas in specific regions.

Immigration laws and the rules for applying for visas can vary widely from jurisdiction to jurisdiction. To avoid unexpected delays and unpleasant surprises, it can be helpful to work with outside counsel that routinely handles a high volume of transfers into the countries where you operate. This type of experience is invaluable for knowing the local laws, staying abreast of changes and understanding how to quickly and efficiently navigate the process. Activities that may constitute a business visa in China, for example, may not be the same in Saudi Arabia. By consulting experts who know how to analyze the activities employees will be engaged in to determine the appropriate type of visa, you will be able to move your workforce more quickly while reducing your legal exposure.

■ Have a centralized system for initiating and tracking cases, monitoring deadlines and providing companywide reporting.

In an ideal world, the human resources department, legal counsel and tax experts would be consulted on the comings and goings of every business traveler. In reality, that's impossible. To gain better oversight of the movement of their workforce, many multinational companies are using just one outside law firm to manage all of their employee transfers rather than having four different vendors in four different regions. By consolidating their representation, companies gain access to one centralized system that provides a big picture view of their increasingly global workforce. Through that centralized system, companies can establish standardized procedures for leading employees through the visa application process, monitor the status of various cases and keep closer tabs on the interrelated tax, benefits, data privacy, labor law and corporate compliance issues.

Keeping up with the changing rules and requirements to enter and work in the countries where your company operates can be a real challenge.



# The way forward

Short-term assignments are nothing new and accidental expats have been around for decades. What's changed in recent years is their growing prevalence and the fact that governments have become more motivated to crack down on business travelers and, with the assistance of technology, increasingly adept at catching their transgressions. Governments have also become stricter about monitoring and enforcing how companies classify and move large groups of workers to overseas worksites for longer term projects.

Practices that used to be commonplace are now facing much greater scrutiny, making talent recruitment and extended business travel hot button issues for human resource and tax professionals and corporate counsel at multinational companies. With more global employees than ever, companies must find new ways to track their movement and make sure their cross-border trips and activities are compliant with a growing number of rules and regulations that span numerous legal and tax areas.

"It's a lot cheaper to prevent a problem than to remedy it after it happens," says Global Employment Partner Kerry Weinger. "A lot of companies don't want to address the changes in global mobility because it costs money and distracts them from their jobs. But it is the best practice."

It's not only cheaper to prevent problems early, but the best way to protect your workforce, your business and your reputation in the new age of global business.

# Millennials on the move

Adapting to a changing business world isn't the only reason multinational companies are innovating their approach to global mobility. International assignments are now recognized as a key element in attracting, retaining and developing talent. This is particularly true of the millennial generation (those born between 1981 and 2000), which will form the majority of the workforce by 2020.

In fact, 71 percent of millennial workers say they expect to have an overseas assignment during the course of their careers, according to a recent PWC report. They are more interested in flexible work arrangements and work-life balance, place higher value on working for companies with strong corporate social responsibility programs, and are more likely to seek out volunteer opportunities that help them feel like they are making a difference. Millennials also seek faster career progression and are more likely to leave a job if they are not feeling fulfilled in their work environment. Unlike their predecessors, they expect to work for a number of employers during their careers, making retention a major concern for the companies that employ them.

To appeal to these preferences, many companies have been revising their mobility programs and implementing initiatives like international volunteer programs. Through these programs, typically administered by the human resources department as a leadership development tool, companies send their employees to other countries for one month to a year to work on special projects within the local community. Dow Corning, for example, has sent electrical apprentices from its Michigan headquarters to India to help local companies improve their manufacturing processes.

"When that international volunteerism experience is well crafted so that millennials can stretch their professional skills and provide long-term benefits to the project, companies report getting an employee back with new ideas and a different perspective on the emerging market where they were posted," said Paula Caligiuri, a professor of international business and strategy at Northeastern University, during a global mobility panel discussion at Baker & McKenzie's Global Employer Forum. "We're seeing a 250 percent increase in companies that are beginning these programs. It's truly a best practice."

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**Paula Caligiuri**

Professor of International Business  
Northeastern University



# Modern mobile workers and associated risks

MOBILE WORKER	POTENTIAL RISKS
<p><b>Business traveler:</b> An employee traveling to another country for less than a month to attend meetings, trainings or conferences.</p>	<p>If traveling with a tourist or business visitor visa, a business traveler is not authorized to engage in substantive work, such as managing subordinates and performing system maintenance.</p>
<p><b>Extended business traveler:</b> An employee sent to another country for one to three months. This worker remains an employee of his or her home employer, remains on the home employer's payroll and receives reimbursement for travel expenses. If traveling as a business visitor, he or she can only attend meetings, conferences and trainings or scout new business ventures or office locations. If the extended business traveler's activities morph into substantive work, he or she will typically need a temporary work permit. Also called <b>frequent business travelers, stealth expats</b> and <b>rogue travelers</b>.</p>	<p>The extended business traveler poses significant compliance risk for employers because he or she often travels under the radar, using a tourist or business visitor visa to enter a country to perform substantive work that benefits the host company, which violates local immigration law and can create a local corporate taxable presence for the home country employer. The worker's visits to a particular country may be subject to local income tax withholdings and reporting, and social security obligations, even if compensation costs are not charged back to the host company.</p>
<p><b>Short-term assignee:</b> Similar to an extended business traveler but typically sent overseas for a longer period of time, between three to 12 months, with a richer compensation package and greater oversight. The short-term assignee's employer may, for example, cover travel expenses for his or her spouse or partner to visit every three months.</p>	<p>If the short-term assignee's visa does not match the type of work he or she is doing in the host country or the assignee and employer do not meet local tax and registration requirements, this worker can create significant compliance risk. Reimbursement of spouse or partner costs can also increase the tax cost.</p>
<p><b>Cross-border commuter:</b> An employee who generally works Monday through Friday in one or more countries and returns home to another country on the weekends. It is a growing phenomenon as companies expand throughout various regions and executives become responsible for supervising teams and operations in larger territories.</p>	<p>A major legal issue with this type of worker is determining the appropriate income tax and social security withholdings and reportings in the relevant jurisdictions and avoiding double taxation. To avoid immigration violations, the cross-border commuter will also need work authorization in the countries they are commuting to.</p>
<p><b>Cross-border telecommuter:</b> An employee who works remotely for a company based in another country. This arrangement often arises when a worker's spouse or partner has been assigned to work overseas and the spouse follows the partner to that country while continuing to work for his or her home employer remotely.</p>	<p>Potential legal issues with this arrangement are the possibility that the telecommuter's employer could be subject to corporate income taxes in the host country based on the worker's activities there and that his or her home office or work practices could violate local labor laws such as health and safety requirements and wage and hour laws. The telecommuter will also be subject to income taxes and social security withholdings in the host country.</p>



MOBILE WORKER	POTENTIAL RISKS
<p><b>Global nomad:</b> An employee who moves from assignment to assignment with no real home base or intention to return to a home country. With the rise of emerging markets, there has been an uptick in this type of worker because of the demand for those with the leadership and specialized skills required for setting up operations in new markets.</p>	<p>The legal challenge with a global nomad is providing him or her with an appropriate compensation and benefits package because this worker doesn't often stay in one country long enough to accrue benefits such as social security. Companies may need to develop separate health insurance, compensation and retirement plans for this unique group, as well as evaluate their activities for work permit purposes.</p>
<p><b>Business expatriate:</b> An employee relocated to a host country with plans to repatriate the employee to his or her home country after two to five years. This worker is the traditional expatriate, typically a senior or high potential executive sent overseas to develop leadership skills and global competencies to be groomed for larger roles. This worker receives an expatriate package that often includes a housing allowance, relocation fees, cost of living differentials, home leave trips, tax reimbursement, cultural training and language classes.</p>	<p>To avoid immigration exposure, business expatriates definitely need work authorization in the host country. But because of the expense of expatriate packages, companies have been cutting back on these arrangements in recent years. A traditional business expatriate also poses a retention risk to his or her employer because more than half of these workers leave the company within two years of returning from an international assignment.</p>
<p><b>Indefinite transferee:</b> An expatriate who is shifted to the local salary structure and benefits plan after being in the host country for five or more years. This worker can also be localized from the start of their transfer date, such as those who request transfers for personal reasons.</p>	<p>Because of the substantial expense of maintaining employees on long-term overseas packages, more companies are phasing out or taking away expatriate benefits after the employee has been abroad for a number of years.</p>

“Companies are expecting their workforce to be more mobile than ever, but not mobile in the traditional sense because the assignments don't always involve relocation.”

Kerry Weinger, Baker & McKenzie Global Employment Partner

# 5 mobility myths

There's no question that it can be a time consuming, labor intensive process to obtain proper work authorization for employees conducting business in other countries. But the problem with not paying enough attention to immigration and tax requirements is that government officials around the world are tightening their borders and cracking down on visa misuse and tax violations. Here are some of the most common mobility misconceptions that can get employees and their employers in trouble in today's environment of heightened scrutiny and enforcement.

## **1** It's the length of time an employee will be in another country that determines what kind of visa he or she needs.

This is a common misconception. It's actually the types of activities an employee will be performing rather than the length of time he or she will spend in another country that determines the need for work authorization. If employees are traveling across borders to attend meetings, trainings or conferences, they are typically fine using a tourist or business visitor visa. The same is true of employees visiting another country to scout new business ventures or office locations, such as meeting with potential customers or real estate brokers. But the moment that work becomes substantive, such as managing subordinates and performing systems maintenance, local law will most likely require that they have a work permit. It doesn't matter if that employee will be in the country for one hour or one month. If they are doing substantive work that benefits the local office, they will need work authorization.

## **2** Entering the country as a tourist or business visitor worked last time, so it will work this time.

Not necessarily. Since the global economic crisis, immigration authorities have become increasingly aggressive in scrutinizing whether foreign business travelers have proper work authorization. This is largely because higher unemployment rates during the economic downturn has caused many countries to become more protective of their local workforces. As a result, practices that used to be commonplace are now facing greater scrutiny. Customs officials are more likely to stop travelers and question them about how long they plan to be in the country and what they plan to do there. Those with passport stamps that show they have been coming and going frequently could face extensive questioning about the nature of their activities. If those activities involve substantive work without proper authorization, the employee could be detained or denied entry into the country. Their company could also face fines and even criminal action.

## **3** The worst thing that can happen if our employees get caught traveling without proper visas is being denied entry to the country.

Not anymore. It's distressful and disruptive enough for employees to get stopped at customs, detained and denied entry to a country where a major project or local team awaits them. But the stakes have grown much higher. Governments are imposing large fines and even criminal penalties on companies that send workers into countries without proper work authorization. In one of the most notable examples to date, the US Department of Justice reached a multi-million dollar settlement with a multinational IT outsourcing company for allegations that it was

using business visitor (B-1) visas to place its staff on long-term projects with US companies. The settlement, announced in October 2013, is the largest visa fine ever imposed by the US government. It's also reflective of a growing trend of government agencies around the world cracking down on business travelers who engage in substantive work.

#### **4 It's easier and less expensive to send employees on a series of short business trips than to relocate them during a project.**

Not really. This strategy could create greater travel expense and doesn't avoid the need to obtain employment authorization for the employee in the destination country. Once a company does the math, it will sometimes find it's actually cheaper to send an employee to a destination country for three or four months at a time with the visa that allows for employment than to have him or her traveling back and forth on shorter trips. You not only eliminate the additional air fare, but hotel stays and other pricier temporary housing arrangements that quickly add up. The misconception that as long as business travelers keep their visits brief, they can enter other countries as tourists or business visitors has led many companies to take this short cut. But with the heightened scrutiny of these practices, spending the extra time and money to get the right visa at the outset can prevent future immigration headaches. It can also potentially shorten the length of the project and enable the employee to focus on the task at hand without the interruption of traveling in and out of the country.

#### **5 If employees limit their overseas stay to less than six months, they won't be subject to local income taxes or social security contributions.**

Sort of, but it can be tricky. Whether a foreign employee has to pay local income taxes or make social security contributions depends on the host country's domestic tax laws and social security rules, as well as what kind of tax treaty or social security agreement his or her home country has with the destination country. The US, for example, has income tax treaties with more than 70 countries. Under most of these tax treaties, the general rule is that as long as employees are tax residents of the home country and employed and paid by the home country employer, they do not have to pay local income tax if their cumulative stay is less than six months (184 days). The tricky part is that in some tax treaties, that six-month period is within a calendar or fiscal year while in others, it spans specific dates. In newer treaties, the trend is to start the clock when the employee first enters the destination country and count the 12 months from that date. If an employee is making frequent business trips to a destination country, it's important to keep track of the time they spend there, as those days can quickly add up to more than six months. Another issue that can trigger foreign tax liability is if the home country employer charges the employee's compensation back to the destination country company. In that case, the employee will generally be subject to local income tax no matter how long he or she is there.



# Visa Checklist

## How to better track your business travelers

Some companies have designed online forms that employees must fill out before they book their travel to determine whether the activities they will be performing require work authorization. Employees are asked to explain the purpose of their trip and based on their answers, receive direction on whether they can travel with a business visa or need to obtain a work permit. Although these distinctions can vary by jurisdiction, here are some examples of the types of activities that fall into the two categories.

Visa Type	Visa Activity Description
Business	Attend meetings with colleagues, customers, vendors, etc.
Business	Collect information for bid/proposal efforts
Business	Negotiate contracts (in some situations)
Business	Visit an overseas office to review progress on a project
Work permit	Deliver training
Work permit	Site supervision
Work permit	Site surveys
Work permit	System maintenance
Work permit	Troubleshooting
Work permit	Warranty work
Work permit	Installation
Work permit	Fill in for someone's absence

# The Future of Work Series

The Future of Work is a series of client reports based on panel discussions at our Global Employer Forum, a two-day thought leadership conference we first hosted in September 2013. During the forum, nearly 70 clients, academics and consultants gather with our employment partners to discuss pressing workplace topics like talent shortages, data privacy, global mobility assignments, globalization of unions and managing the employment aspects of M&A deals.

Rather than the traditional “how to” legal format of most law firm conferences, the Global Employer Forum features panel discussions of in-house counsel and senior-level executives from some of the world’s largest multinational organizations who discuss their personal experiences addressing these challenges and the solutions they have found to overcome them.

Based on the hottest topics arising out of those panel discussions, we create these reports to share the current trends on these issues, insights from members of major multinational organizations, academia and government agencies on how they are navigating these trends, and the legal expertise of our lawyers who are on the front lines advising clients on the shifting employment landscape. We hope you find these reports helpful in meeting the new challenges of managing a modern workforce.

## About Baker & McKenzie's Employment Law Practice

Our Global Employment Practice includes more than 500 locally qualified practitioners in 47 countries. We have more lawyers with mastery of the subtle intricacies of labor, employment, immigration and benefits issues in more jurisdictions around the world than any other leading law firm. Chambers Global 2014 ranks both our Global Employment and Global Immigration practices as Tier 1. Baker & McKenzie is recognized by PLC Which lawyer? Labour and Employee Benefits Super League 2012, as the top global law firm with our Global Employment practice ranked in 25 countries, and we are among the 10 firms US general counsel list most often as "go-to" advisors on employment matters.

If you have any questions about this report or would like to know more about the Global Employment Practice, contact:

Patrick O'Brien  
+1 312 861 8942  
[Patrick.O'Brien@bakermckenzie.com](mailto:Patrick.O'Brien@bakermckenzie.com)