The Accidental Expat: A Guideline for Employers on Employee Cross-Border Travel

By Kerry Weinger of Baker & McKenzie – (Oct. 5, 2015) – Explosive growth in emerging markets has created a significant demand for companies to move workers around the globe to explore and seize new opportunities. This is particularly true for energy companies in Texas that send employees abroad for exploration and production. As multinationals enter newly emerging markets to capitalize on growing consumer populations or to explore new territories, they need the ability to send workers abroad quickly to scout new locations, set up operations, provide specialized skills and fill critical talent shortages.

Further, the evolution of country-based multinationals into truly global entities has created an increasing need to make sure workers with the right skills are in the right place at the right time. But with traditional expatriate assignments being so expensive, many companies question whether it would be easier and less costly to simply send workers abroad 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, stealth visitor, business commuter and short-term assignee, accidental expats may engage in many of the same activities as the traditional expatriate, but do so from their home countries, traveling frequently to the destination country to perform their duties.

The accidental expat’s rise in popularity should be particularly worrisome for companies. These workers are constantly moving in and out of countries, but are often not subjected to the same level of organizational oversight as their traditional expatriate counterparts, and typically fall outside of a company’s formal global mobility program.

While a large majority of companies have experienced an increase in extended business travelers and short-term assignees, many companies do not have formal guidelines for managing frequent cross-border travelers and, admittedly, fall short of properly educating their business managers and mobile populations on the consequences and potential risks of these types of arrangements.

What’s the Real Risk?

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. To not do so may inadvertently create foreign income tax and social security withholding requirements, and depending on the nature of the activities performed and how long they stay, the accidental expat’s overseas travel could also create a corporate taxable presence for their employers, data privacy issues, equity awards and compensation issues, anti-corruption restrictions, duty of care issues, immigration and visa violations, and labor concerns – all of this in addition to a potential employee-relations debacle.

It’s not just a matter of individual workers getting turned away at the border 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 a country without proper visas. Companies that are prosecuted for these types of violations (including labor law violations such as not providing an employee with a “safe” work environment) face civil, and even criminal, action, as well as penalties that can undermine revenues and damage reputations.

With more than 200 million people now working outside their home locations, the rising demand to import talent has vastly outpaced government quotas. Legislative progress has been slowly trying to catch up to the times, but this has done little to mitigate the risk of compliance violations due to the exponentially quicker acceleration of global mobility.

For example, there are a large number of employees from Houston oil and gas companies working abroad as engineers, project managers, rotators, etc. This leaves plenty of opportunities for governmental organizations to catch Texas companies not paying attention to this issue.

What’s more, if caught flat-footed, companies with mobile employees could face unexpected expenses (not accounted for when pricing the contract or budgeting process) and experience delays with employees entering or departing the host location – things that no company has time to deal with in the fast-paced global market.

While most of this discussion has been in the context of international mobility, let’s not forget about state-to-state business travelers in the United States. Unfortunately, many of the same risks exist when residents of one state are traveling to other states in the U.S. (even for short periods of time), leaving both employers and employees in jeopardy of being blindsided with additional compliance obligations at the state (and potentially local) level.

For example, Texas does not assess state-level personal income tax on employee wages. But what if a Texas company needs to send one of its Texas resident employees on a business trip to New York? The mere fact that the Texas resident employee is performing services in New York on behalf of the Texas company may expose the employee to New York state (and potentially local) income taxes on a portion of his or her wages almost immediately, which also requires the Texas company to operate New York state income tax reporting and withholding on the wages attributable to the employee’s services performed in New York.

Likewise, the Texas company may now become subject to New York corporate income taxes. It’s just one example of why it’s important to remember that even domestic travelers are not immune from the issues generally associated with international mobility.

So What Do We Do?
To account for these risks and keep pace with an increasingly mobile workforce, companies must adjust their policies and procedures accordingly. Here are some recommendations to help you better manage this process.

- Establish a company travel policy, incorporate it into your employee handbook and make sure employees and business managers are educated on its substance.

- Create standard procedures for business travelers to detect and address immigration, tax and other compliance issues by requiring employees to fill out an online compliance checklist before booking their travel.

- Establish a policy that all extended or frequent business travel must be reviewed by HR or general counsel, create formal short-term assignment and extended business travel programs that provide a sufficient level of oversight, or revise your global mobility program to incorporate the more modern international assignments. >
Limit the activities of your business travelers by educating employees and their business managers on the types of activities they can engage in as business travelers. 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.

- Get weekly updates on the entry and work authorization rules in the countries where you do business.
- Use immigration experts who routinely file for particular visas in specific regions.
- Have a centralized system for initiating and tracking cases, monitoring deadlines and providing companywide reporting.

The Future
While the issue of business travelers and short-term assignments is nothing new, the growing prevalence and popularity of these informal arrangements and governments looking for ways to increase revenue, has resulted in governments becoming more motivated to monitor and enforce how companies classify and move large groups of workers. With the assistance of technology, these governments have become increasingly adept at catching transgressions.

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, as well as corporate counsel at multinational companies. With more global workers than ever, companies must stay ahead of the curve by finding new ways to track worker 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 not only cheaper to prevent problems early, but also the best way to protect your workforce, your business and your reputation.

Associates Emily Harbison and Grant Uhler contributed to this article. All authors are part of Baker & McKenzie’s North American Compensation & Employment Law Practice.

These topics and more will be covered at Baker & McKenzie’s Doing Business Globally conference in Houston Oct. 14 and in Dallas Oct. 15. Now in its fifth year, Doing Business Globally is the premier cross-border business event, bringing together senior business executives, in-house counsel, and Baker & McKenzie practitioners from around the world to discuss trends and best practices in doing business across borders. The Texas Lawbook is serving as the event’s media sponsor. Register for this complimentary event at http://doingbusinessglobally.bakermckenzie.com/

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