

Expanding in LATAM? Key Questions (and Answers) for Employers Growing Their Footprint

While the pandemic has disrupted business operations across the globe, Latin America is emerging as a promising destination and many companies are setting their sights on the region. More and more, companies are keen to understand what they need to know when expanding in Latin America from an employment perspective and how obligations and risk vary from jurisdiction to jurisdiction. We provide some baseline guidance for employers here to set the stage.



When a company is considering expanding to the region and does not have a local subsidiary yet, is engagement through a local Professional Employer Organisation ("PEO") possible? If so, in what capacity can the workers be engaged (i.e., as employees of the agency? as temporary workers? as services providers?)

With the exception of Argentina, when there is no local presence, engagement of a workforce through third parties is possible, but not without risk.

What are the risks associated with a PEO-type of engagement in LATAM?

Workers can be engaged as employees of a PEO and provide services to a foreign entity, based on a services agreement between the PEO and the foreign entity. To mitigate the risk of employment misclassification disputes, companies should avoid, amongst other actions: (i) giving direct instructions, exercising disciplinary and/or supervisory authority; and (ii) providing work tools/benefits or any actions that could imply an employment relationship.



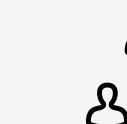
When a company is considering expanding in LATAM and does not have a local subsidiary yet, is it possible to have a consulting or independent contractor agreement directly with the foreign entity?

The most likely employment risks are misclassification disputes with claims from the individuals for unpaid rights. While the risk of judicial claims against a foreign entity might be reduced if there is no local legal entity or corporate presence/local assets, the financial exposure can also be mitigated if the PEO complies with the applicable labor and social security obligations.



What other types of worker engagement may a company consider in the region when they have no local presence yet?

In addition to the engagement via PEO or independent contractor/consulting agreements, commercial agreements (such as distribution contracts) could also be considered, depending on the type of work being retained.



Are there permanent establishment ("PE") concerns with any of the approaches mentioned previously that involve engaging a workforce without a local presence?

Besides engagement via PEO (which is not allowed in Argentina), as long as local laws are observed, a foreign entity may also retain the services of independent contractors or consultants in LATAM, subject to certain legal risks. In this case, misclassification is also the main employment-related risk, especially if the individual works under the supervision and instructions of the contracting company with potential additional tax and social security impacts.



Your contacts in Latin America

The modern workforce incorporates alternative types of workforce engagement, which bring increased flexibility and resilience to help future-proof businesses. As organizations continue to innovate and reshape their working practices, legal frameworks are continuing to evolve in order to define and recognize the rights of alternative workforces, which brings risk in places where the law remains unclear about the extent of those rights. We help clients in navigating those legal frameworks and key risk areas, in order to design future-proof and future-ready workforce models.



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