

INTERNATIONAL EMPLOYMENT ISSUES



Employment relations and human resources management straddle international borders as more businesses enter the global marketplace and operate outside their home territories.

Whether advising domestic corporations doing business overseas or representing international companies in the U.S., the Jackson Lewis [International Employment Issues](#) practice area assists clients in managing employment, immigration, and labor matters in a seamless, integrated, and cost-effective manner. The reach extends to:

- Global restructurings, plant closings and collective redundancies;
- Drafting and global revision of employee codes of conduct, policies and work rules to ensure that headquarters initiatives and requirements are implemented in accordance with local laws and regulations;
- Cross-border or international executive separations;
- Global compensation and benefit matters;
- Labor and employment law issues associated with global M&A and other transactions, such as the transfer of undertaking rules governing whether employee contracts are transferred from the acquired company to the acquirer;
- U.S. employment laws applying extra-territorially, including Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act;
- Global labor relations and works council matters (including European Works Council);
- Expatriate and other global mobility issues, including immigration compliance;
- Cross-border litigation, for example, disputes with or involving employees with ties to multiple jurisdictions;
- Implementation of data protection policies and practices;
- Complying with NAFTA and other trade agreements; and
- Understanding and complying with the laws and regulations of host countries.

Supported by a network of leading labor and employment law practices throughout the world, Jackson Lewis is a founding member of [L&E Global Employers' Counsel Worldwide](#), an international alliance of law firms devoted exclusively to workplace law matters.

Within the International Employment Issues practice area, [JOHN L. SANDER](#), partner in the New York office, focuses on cross-border labor and employment matters for multinational clients. John works closely with [STEVEN D. BADERIAN](#) and [WILLIAM J. MANNING](#), both partners in the White Plains office, in coordinating client services on international employment issues and matters.

Q What recurring employment law issues have multinational clients faced?

A (MR. SANDER) Global integration issues have presented clients with a wide variety of challenges. Litigation with works councils, European Works Council contract negotiations and management, implementation of global codes of conduct, and investigative issues are among them. Clients have sought assistance with negotiation of executive

separations throughout the world, multi-country reductions in force, global severance plans and plant closures, as well as various expatriate matters. Many of these matters have required working collaboratively with our network of international labor and employment counsel.

INTERNATIONAL EMPLOYMENT ISSUES



Q *What issues have been the most vexing for employers with cross-border responsibilities?*

A (MR. SANDER) The biggest problem for many employers is how to manage labor and employment law issues globally. In most companies, the legal department must focus on the issues which currently drive the business. Global labor and employment matters are typically not a day-to-day priority, even where they are very important. An in-house resource dedicated to global labor and employment issues often is a luxury.

For U.S.-based law departments, the fundamental differences in labor and employment law with other countries can be particularly troublesome. Management and human resources here may find other nations' laws counter-intuitive and frustrating. Uncertainty as to who is responsible for international issues may add to these difficulties. Even in large companies, global issues sometimes fall between the corporate headquarters (which concentrates on matters in the home country) and a field-based international law group (generalists who handle contracts, regulatory work, transactions, corporate governance, local litigation and many other issues besides labor and employment).

The most vexing problems for multinational employers still involve European nations and the European Union. Their strong individual employee protections, requirements of works councils and other employee representative bodies and transfer of undertaking rules affecting employee contracts and rights across corporate transactions necessitate continual monitoring and attention to assure compliance. Clients increasingly are interested in developing countries in Asia and Latin America – a trend that will only accelerate given the continuing flow of capital and labor. However, the major European markets, given their unpredictability with time, cost, and risks from politics, media and litigation, still present the great challenges.

Employers in the international arena are well-served by looking to a single resource for legal solutions to many employment-related issues. Our team combines the quality and cost-effectiveness of a labor and employment law boutique with the reach and expertise of

a global network. We think it is ideal for large and small employers alike.

Q *How have attorneys in your practice area handled the big issues and how would you evaluate the outcomes from the client's perspective?*

A (MR. SANDER) Experience has taught our attorneys to approach a client's major issues from several perspectives.

We ask (1) *how global or regional counsel can add value without undermining or wasting the time of local personnel;* and (2) *how they can set expectations of management, finance, and HR personnel, who have the responsibility for managing global integrations, restructurings and other initiatives.*

In major undertakings, implementation issues inevitably involve time, cost, local morale and reputation, and predictability. With reasonable forethought, it is almost always possible to achieve the company's objectives. Our team advises a client on how to realize its goals in a way that is as predictable, cost-efficient and low-risk as possible.

Q *What are the big trends in employment and labor matters for multinational employers?*

A (MR. SANDER) The flow of labor and investment toward the BRIC (Brazil, Russia, India and China) and other developing countries of Asia, Europe and South America will continue despite the current economic slowdown. International investment in these areas will bring incremental changes. Over time we are likely to see a convergence of labor and employment law standards, as developing countries add protections for employees (as China has), while developed countries (particularly in Europe) consider streamlining or reducing restrictions to encourage more hiring, especially of younger people. As always, clients must remain vigilant and ready to reassess their objectives and risks during changing global business conditions.

📌 Attorneys in the [International Employment Issues](#) practice area monitor global environments and assist clients in achieving employment and human resources management objectives within those changing conditions.

With a reasonable amount of forethought, it is almost always possible for multinational employers to navigate the differences in labor and employment laws and to achieve their objectives.

INTERNATIONAL EMPLOYMENT ISSUES



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Another Jackson Lewis attorney assisting multinational clients is [Joseph Lazzarotti](#), who has developed a particular expertise in data security and information privacy in cross-border employment matters. Mr. Lazzarotti, a partner in the Morristown, NJ office, heads the Firm's [Privacy, Social Media and Information Management](#) practice group.

Q What are the data security and information privacy issues affecting companies' international operations?

A (MR. LAZZAROTTI) According to a [mobiThinking.com report](#), there were six billion mobile subscriptions at the end of 2011, estimated by [The International Telecommunication Union](#) to comprise nearly 90% of the world's population. Such wide-ranging connectivity has propelled data security and information privacy restrictions to prominence on the agendas of C-suite professionals.

The impact on global operations are many: (i) *slowing down certain transactions to ensure compliance with developing – and at times conflicting – data security standards;* (ii) *extending negotiations of services and other agreements to address increasing information risk;* (iii) *devoting time and resources to risk assessments and related inquiries with governmental agencies and business partners;* (iv) *developing new ways to manage multinational workforces and communications in countries with vastly different legal and*

cultural views on privacy and security; and (v) rethinking strategies and steps for managing discovery in litigation.

We urge clients to seize the initiative in dealing with data privacy and security in anticipation of new technologies in communications and information sharing.

Q What legal reforms affecting international employment issues do you think would be desirable?

A (MR. SANDER) Certainly, the reforms in some European countries to reduce the largest termination indemnities are, from the employer's perspective, more conducive to hiring and efficient operation. Also, from an American employer's point of view, it would be helpful to streamline and build predictability into some of the more open-ended works council information/consultation processes in countries like France. These matters reflect the values and political realities in individual societies. However, greater global economic stability would benefit international commerce generally.

Fulfilling Staffing Needs with Expatriate Workers

Working closely with the International Employment Issues practice group are attorneys in the Firm's [Global Immigration practice group](#). Multinational clients have a number of immigration avenues available to fulfill staffing needs, including:

- *L-1 intra-company transfer visa, requiring at least a year of experience with the organization abroad before transferring for up to five years for specialists, or seven years for managers and executives;*
- *H-1B specialty occupation visa, for bachelor's degree level or higher roles, often used when employers hire foreign nationals who have completed a degree at a U.S. university; and*
- *E visa, used by foreign-owned companies when hiring or transferring expats with the same nationality as the employer ownership/registration jurisdiction.*

The B-1 business visitor category, with visa requirements waived for nationals of a select group of countries with low rates of visa fraud, is an oft-used short-term (up to 90 days) mechanism to send representatives of a foreign office to the U.S. for short-term meetings and related non-productive employment activities.

Multinational employers can improve significantly their expatriate strategy through critical timing and planning. Securing an employment visa in the U.S. may take weeks or months, so consideration of immigration options and restrictions should be conducted early in the planning stages. Once an expat is working successfully "in country," the employer should assess the long-term organizational needs for this employee and explore the more complex permanent resident visa ("green card") process.