

LABOUR & EMPLOYMENT 2023

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Global overview

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The business environment for companies with global operations is constantly and rapidly changing. As companies face economic headwinds in 2023 and emerge from the covid-19 pandemic, a number of workforce-related trends stand to impact multinational employers' bottom lines. This chapter highlights some key topics that employers should note as they work to manage their global workforces in line with their business objectives.

Pay equity and pay transparency

An increasing number of pay transparency and gender pay reporting requirements are being announced around the world. Legislators are enacting pay transparency laws to further pay equity under the theory that engaging with employees on compensation opportunities by clearly communicating pay structures, ranges and practices supports the elimination of pay disparities based on protected characteristics.

Employers face a heightened compliance burden when navigating an increasingly complex web of requirements. An EU directive proposed by the European Commission on pay transparency will apply to employers in all EU member states and is expected to take effect in 2024, with measures covering pay transparency for jobseekers, rights to pay information for employees, reporting on the gender pay gap for employers with at least 100 employees and remedies.

In the United States, a number of states and cities have pursued laws requiring employers to disclose salary or wage ranges to job applicants; some US jurisdictions also require that employers provide pay data to the government. In Japan, new rules require companies to disclose wage gaps on their websites and in annual securities reports.

In addition to responding to new legal requirements, many employers are taking a more proactive approach to voluntarily collecting and analysing workforce diversity and pay data with the goal of ensuring equality of opportunity and representation.

Whistle-blowing

Several factors are impacting the global whistle-blowing landscape, including:

- legislative moves in numerous jurisdictions;
- changes to the work environment resulting from the effects of the covid-19 pandemic and the rise of remote working; and

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- heightened attention to workplace behaviour and culture amid challenging social, political and economic conditions.

There is a steady stream of new global legislation – such as the EU Whistle-Blowing Directive, the Japanese Whistle-Blower Protection Act and the Australian Corporations Act – that will challenge multinational employers' abilities to keep up with the new regulations, and ensure that their processes to receive, investigate and follow up on reports meet their new obligations.

In the United States, the 2022 annual report issued by the Securities and Exchange Commission Office of the Whistleblower reported the largest number of whistle-blower tips received in the history of the Commission's whistle-blower programme. The report also highlighted the programme's global reach by revealing that whistle-blower tips were received from multiple global jurisdictions, with the highest number of foreign tips originating from Canada, the United Kingdom, Germany, China, Mexico and Brazil.

Employee activism

Over the past several years, employees have demonstrated more willingness to advocate for their rights and make demands of their employers. Employee activism – in the form of strikes, walkouts, protests and other public demonstrations – has affected employers across sectors and involved employees at nearly every level of the workforce. In the United States, there has been a marked increase in unionisation efforts, including many high-profile campaigns at companies that are facing such efforts for the first time, which is a trend that is only expected to increase. In the United Kingdom and across Europe, there has been an increase in industrial action, often caused by high energy prices and mounting costs of living.

However, employee activism now encompasses more than industrial action and strikes. Employees are more willing to confront their employers, and expect employers to take a stand, regarding social issues, values and principles. Societal movements (eg, #MeToo and the Black Lives Matter movement) and issues of widespread concern (eg, climate change and war) have had a material impact on the workplace as well as on which interests and issues employers are expected to promote. To attract and retain the right talent, employers have begun to realise the need to stay attuned to changing societal expectations and the evolving mindsets of their workforces.

That said, employers need to recognise that there may be a wide variety of employee opinions on some issues, particularly across a global workforce, and adopt an approach that seeks to maintain a culture of inclusivity and respect. With employees increasingly stepping forward to express themselves, businesses must be aware of additional areas of risk, potential exposures and reputational concerns.

Cross-border working

Three years on from the beginning of the covid-19 pandemic, issues related to remote working continue to confound and challenge employers; in particular, situations in which an employee wishes to work in a different country to that of the employer. Offering such flexibility is attractive to employees and may help a company in the war for talent, but a lack

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of well-defined policies or a failure to consider risks can create significant cross-border problems. Compliance issues that employers should consider include the following:

- Immigration status (ie, the question of whether the employee has the appropriate work visa for the destination country). This is a particular issue across the United Kingdom and the European Union following Brexit. A number of countries have implemented digital nomad visas that may be helpful in this regard, but companies will still need to consider the level of immigration support that they are willing to provide for employees looking to work remotely across borders.
- Statutory employment law protections. In many countries, an employee will benefit from statutory employment protections simply by virtue of performing work in the host country for more than a very temporary period.
- Tax and social security. An employee working from another jurisdiction may pose a risk of permanent establishment for the company. Additionally, there may be risks related to local income tax and social security liabilities, which the employer may be liable for, not the employee.
- Regulatory issues. Depending on the industry, there may be regulatory and compliance issues surrounding having an employee perform work from outside of the regulated territory.

Companies that adopted a more permissive attitude during the height of the covid-19 pandemic may wish to revisit their approach with a keener eye towards defining limitations and protections. This may necessitate working with internal stakeholders, including legal departments, human resources and managers, to ensure a consensus, then clearly communicating any revised guidelines to employees.

Use of professional employer organisations

It is unarguable that the covid-19 pandemic has caused a significant rise in remote work, including a rise in employees wishing to work in locations where their employer does not have a workplace. At the same time, some employers realised that there is a global remote talent base upon which they can draw, including in countries and jurisdictions where they are not located.

However, employers have increasingly realised that employing individuals outside jurisdictions where they have a legal presence creates a host of challenges, such as the needs for income tax and social security contributions to be withheld, income to be reported and local employment laws to be complied with. It is often difficult to do this without a local legal presence, but establishing local subsidiaries or branches with local employees takes time, and adds compliance risk and cost.

Professional employer organisations (PEOs), or employers of record, appear to offer a simple solution. In essence, a PEO is a human resources outsourcing organisation that hosts employees in foreign countries, enabling employers to hire employees in-country without the burden of establishing a foreign legal entity. The PEO ensures that local hires have compliant employment contracts; oversees payroll, benefits and tax matters; and handles compliance and risk mitigation issues. This type of arrangement can enable an employee to enter and be operational in a new market quickly, and the employer benefits

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from maintaining day-to-day control of employees while offloading compliance and risk concerns to the PEO.

However, as is often the case, a PEO arrangement is not always the panacea it first appears. PEO arrangements are regulated in many countries around the world. Such regulations may, for example, limit the type of work that the individual can do for the client, impose a time limit on how long an individual can work under a PEO relationship or require that the PEO is licensed and for the PEO relationship to be reported to local authorities. In addition, there are likely to be tax and securities issues with offering PEO-employed individuals' participation in equity and other incentive plans or difficulties in enforcing confidentiality, intellectual property and restrictive covenant provisions. Finally, some countries have in fact outlawed PEO arrangements. For example, PEO arrangements are now largely impossible in Mexico, and the Philippines has for a long time prohibited such arrangements.

Workplace culture

The impact of the covid-19 pandemic on workplace culture is also being noticed as more employees return to the workplace. Several studies have revealed that issues related to workplace behaviour and civility are increasing, including allegations of retaliation and victimisation. It appears that these increases are due to two main factors. First, it appears that after two or more years of working remotely, many employees have forgotten how to act appropriately in the workplace. Second, the societal issues mentioned above mean that employees are generally both more attuned to workplace culture issues and more willing to complain about inappropriate behaviour or unfairness.

Workplace studies also show that, in many workforces, there is a concerning increase in mental health issues, including anxiety, depression, exhaustion and stress, and bullying cases. Employers are having to increase the internal support given to employees; for example, through employee assistance programmes and internal reporting systems.

Conclusion

The labour and employment area remains a uniquely challenging landscape for global employers in light of current geopolitical and socio-economic issues. As the global employment landscape continues to evolve, employers' responses to the trends discussed above (and to others that continue to arise) will be critical to their future success as employers of choice. The global employers that have most successfully navigated the past several years of tumultuous change have kept channels of communication open with employees, ensuring that their employees understand what is expected of them and know how to raise concerns. Equally, successful global employers have responded nimbly and flexibly in response to the ever-changing demands of their workforces.

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