Global Workforces Create Compensation Challenges for Employers

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Contributing Partner

Erica Schohn
New York

Contributing Associate

Benjamin J. Bay
New York

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Four Times Square
New York, NY 10036
212.735.3000

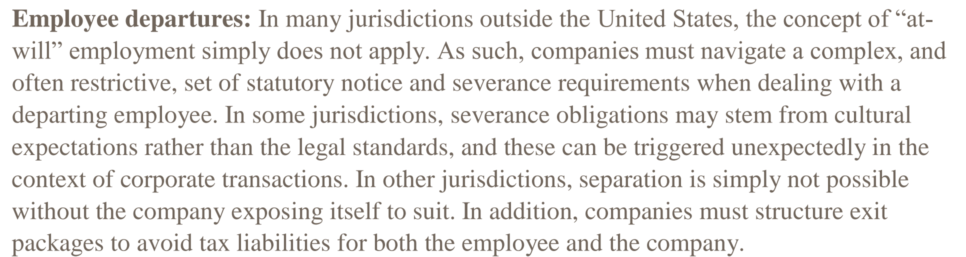
skadden.com

In-house legal and human resources professionals at companies of all sizes are expected to navigate the legal and cultural ramifications of employing a global workforce. Compensation programs designed for employees at a company's primary location often must be adapted to comply with local customs while still maintaining the "one culture — one company" mentality. To successfully adapt these programs, legal and HR professionals must have a working familiarity of tax, securities and employment laws around the globe; be able to spot common areas of noncompliance; and know when to seek out the local experts. The following areas present particular challenges for companies taking their U.S. compensation platform and applying it to employees globally. With careful planning and recordkeeping, companies can successfully incentivize employees on a global scale.

Equity Compensation Programs. Rarely can a company's existing equity compensation plan be applied in a cross-border context without adjusting for local tax and employment laws. For example, phantom equity is taxed on vesting in some jurisdictions and therefore is not an effective compensation tool where deferred compensation is desired. In addition, some jurisdictions prohibit discriminating against part-time employees in plan-eligibility provisions, in the same way that U.S. laws prohibit discriminating on the basis of gender, age or race. Introducing equity compensation programs in new jurisdictions also can trigger unexpected and significant disclosure and government notice requirements, additional pension contribution expenses and increased severance obligations. It is important that a company not only understand the legal differences between the jurisdictions in which it operates, but also maintains detailed records of where its employees are located and when they are located there in order to precisely allocate, among countries, the tax obligations associated with the equity compensation.

Employee Relocations. The current global business environment is changing the way companies view employee relocations by increasing the pressure to reduce costs and improve the speed of relocation, ultimately creating new and alternative models of global deployments. Before applying any relocation model, a company not only must know the location, duration and responsibilities connected to an employee's relocation, but also have a solid knowledge of the laws in the deployment country to determine which structure is the best fit for the situation and to account for any potential corporate or employee tax risks. As discussed above, this is particularly important when dealing with equity incentives for employees working in multiple countries.

Employees in Cross-border Transactions. Even the most straightforward transaction can become increasingly complex and time consuming once cross-border employment issues and legal obligations are introduced. Union and works council rights tend to be stronger in jurisdictions outside the United States, and often include collective consultation requirements (even where no union or other collective body existed absent the transaction) that can place significant burdens on a seller. Buyers often have limited opportunities to change the terms and conditions of employment for employees absorbed by the transaction and frequently are required to obtain the consent of the employee or the consent of a union or works council to do so.



Employee departures: In many jurisdictions outside the United States, the concept of "at-will" employment simply does not apply. As such, companies must navigate a complex, and often restrictive, set of statutory notice and severance requirements when dealing with a departing employee. In some jurisdictions, severance obligations may stem from cultural expectations rather than the legal standards, and these can be triggered unexpectedly in the context of corporate transactions. In other jurisdictions, separation is simply not possible without the company exposing itself to suit. In addition, companies must structure exit packages to avoid tax liabilities for both the employee and the company.