

Go Global and Get Local: Complying with International Employment Laws



By

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Beginning work in a new country can be very exciting and a great way to further your organization's goals and mission. Whether your organization provides educational opportunities or medical care or aid after an emergency, providing services in another country can open the door to a variety of new opportunities and challenges. When determining whether to expand your nonprofit's offerings to a new country, there are many important things to review and consider. Major factors that will play into your decision will include the amount of resources (money, supplies, people) your nonprofit has available, the needs of the target country, and the legal landscape for employment and charity services in the target country.

Finding Workers to Fulfill Your Mission

Once you have decided to start working in a new country, two of the biggest decisions you will need to make are what type of employment arrangement to use, and who to hire to further your mission. It is important to understand that an employee hired to work in a foreign country will be subject to the local employment laws of that country. This means that a full understanding of the intricacies of the country's laws is necessary. Some of the potential options for utilizing workers for your operations overseas include:

- Using United States-based personnel solely
- Contracting with an organization (or sole practitioner) local to the community or country where you are starting operations



- Forming a partnership with another group, such as another U.S.-based NGO already present in the country
- Hiring local workers to fill open positions in the new locale

Many United States-based NGOs will end up choosing a combination of the above to fulfill their employment needs and ensure that the mission and goals of the organization are the focus for the work done in the new country. For the purposes of this article, the primary focus will be on hiring local workers to fill open positions for your nonprofit.

Hiring Workers Abroad: How is it Different?

Once your organization has decided to recruit new workers internationally, the first thing you'll need to do is

figure out whether there are specific rules and requirements for the recruiting process that are different from those that are typical in the United States. Some of the areas where laws may differ in the early phases of recruiting include:

- Interviewing — when it can be done and what types of questions can be asked
- Selection criteria — what guidelines or criteria are permissible
- Reference checking — when and if it is allowed, and whether there are limitations
- Pre-employment requirements — whether tests or preliminary assignments can be given prior to hiring
- Employment contracts — whether they are allowed or required
- Non-compete — whether they are allowed, or restricted in scope

The primary thing to remember when hiring abroad is that each country will require a different approach. Trying to design and implement a single approach to use in every country where your organization does work (or is considering doing work) is not practical.

Complying with Local Employment Law: What You Need to Know

Once you have appropriately hired new employees compliant with the recruiting laws in the country where you are working, there will be numerous additional laws with which your nonprofit will need to comply regarding human resources decisions, including:

- Discipline
- Changes in pay amount or frequency
- Overtime pay
- Changes in title or duties
- Dealing with leave requests or tardiness
- Discrimination
- Employment at-will
- Termination

Several areas of the law are frequently divergent from the laws of the United States. Some of the more common areas that you will want to consider include:

Time-off Laws — Many foreign countries are more generous than the United States in providing time off benefits to their employees. Understanding the differences and expectations of workers in a new country is important prior to hiring. The United States has no statutory minimum paid vacation or paid public holidays; therefore, employers are free to set these benefits. Conversely, many countries in Africa require employers to provide their workers with a specific amount of paid leave and paid holidays.

Union Power — There are several countries where unions have quite a bit of power, and working conditions are guided by the power of the unions. Understanding the differences from law in the United States, and the parameters of decision-making your nonprofit as an employer can make are essential. Unions are especially complex in some countries, such as China, where the All-China Federation of Trade Unions (ACFTU) is the only lawful trade union nationwide and is also government controlled.

Employee Privacy — Some laws are incredibly strict about protecting the privacy of employees and even the publication of something as innocuous as an employee directory may run afoul of the law. For example, some European countries prohibit ongoing monitoring of employee communications unless the employer has concrete suspicions of wrongdoing.

International Employment Law Compliance Tips

- **Don't Assume that Another Country's Laws Are Similar to Laws in the U.S.** — One important legal area where the laws of many countries (including Canada and Australia) diverge from common U.S. law is in the area of at-will employment. In most states in the U.S., employees are hired at-will, meaning the employment relationship can be terminated at any time by either party. In many other countries, at-will employment is not recognized. Instead, employees may have more significant protections which prevent them from being terminated.
- **Customize Your Employee Handbook** — Many of the topics your nonprofit covers in the employee handbook are related to the employment law environment in the United States. When hiring workers overseas, you will not want to blindly apply your U.S. employee handbook to those workers. Instead you will want to review the provisions therein to ensure that they are aligned with the local laws. Additionally, while most employee handbooks in the U.S. contain a disclaimer that they do not constitute an employment contract, in many other countries, employee handbooks are treated as binding contracts,

regardless of any disclaimer language.

- **Create a Comprehensive Code of Conduct** — Although a comprehensive, universal employee handbook is not practical for an organization with operations in numerous countries because of internationally diverse employment laws, creating a global code of conduct can be a good way to outline your nonprofit's general expectations in a more appropriate way. When creating a code of conduct, a committee from your organization might determine what basic rules and standards of conduct are non-negotiable for employees and other representing your nonprofit, regardless of where they occur. The code of conduct should be accompanied by training for employees, so the importance of the issues to your organization's mission can be conveyed, and employees will have the opportunity to ask questions about your expectations to ensure that they understand how to comply with them.
- **Get Perspective from Locals** — Even if your organization has retained U.S.-based employment counsel, you may find it helpful to consult with individuals living in the country into which you wish to move. In addition to understanding the legal requirements, having a deeper understanding of the local culture and mentality toward foreign NGOs may help give your nonprofit a head start in hiring and creating a strong connection to the new country.
- **Audit Your Approach to Employment Law Issues** — Once you have created your system for recruiting and handling HR issues in a new country, it is important to review your process periodically. This type of review should be designed to make sure that your current processes are compliant with applicable law, and are still the most effective way to deal with employment in each country. When undertaking an audit, review all policies and practices in each country, and have legal counsel oversee the entire process, or at least review the findings. An audit may expose areas of risk, or it may expose areas where your policies and procedures can be strengthened and made more efficient.

Thoroughly understanding and complying with international employment laws is only one piece of the larger puzzle of undertaking operations in a new country. Taking a thoughtful and deliberate approach to considering expanding operations is a good way to make sure that you are thinking through all the possible new areas of exposure that your nonprofit may face in a new country. A careful analysis of the potential costs and benefits associated with expanding into each new country you consider will help your nonprofit plot the way forward, and make compliance a priority.

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