

UNITED ARAB EMIRATES

كلید اند کو
CLYDE & CO

Global mobility considerations in Abu Dhabi

By Rebecca Ford



Managing an internationally mobile workforce can be challenging, particularly as home country and host country laws can be vastly different. Below are some issues to consider.

1. What contractual documents do you need? – Whilst international staff may wish to maintain home jurisdiction contracts, the immigration requirements of the host country can often drive the employment documentation process. Expatriates working in the UAE, for example, must have a residence visa and work permit which enables them to live and work in the country. As part of the application process, an employee will usually be required to enter into the Ministry of Labour standard form local.

2. What law applies to the international assignment? – Local laws will usually apply to the employment – in the UAE, in most cases, this will be Federal Law No. 8 of 1980, as amended (the Labour Law). This means that a company must consider how the host country laws will dovetail with the home country, where a home country contract is maintained. For example, in the UAE, the Labour Law sets out certain minimum standards which cannot be contracted out of. A company will therefore have to consider its usual policies to see if these need to be enhanced for UAE law compliance.

3. Who is the employer? – Where an international employee is provided with a host country contract, as well as a home jurisdiction contract the employee may be able to bring a claim against both employing entities in the event of a dispute. The home and host entities should therefore be aligned in their management of employee relations which can be dealt with by way of an agreement between the two entities.

4. Taxation – The multinational employer should consider both the tax implications for the employee (for example, in what circumstances is income tax payable in the home or host country, or both), as well as the tax implications for the employer – for example, is a permanent establishment created when one or more employees are sent to a particular location?

5. Medical requirements – In some jurisdictions, it is illegal to require an employee to take an HIV test. However, in others, such as the UAE, the immigration process includes a medical test which checks for communicable diseases, including HIV. The employee must understand that the medical examination is mandatory. The

employer should consider how it will deal with the employee if he or she fails the medical test, either at the outset or during the course of employment when the employee's visa is renewed.

6. Policies – can one size fit all? – Although a company can maintain similar employment policies globally, it is unlikely that they will all be the same. For example, a policy providing accommodation and other benefits to an unmarried couple would not be appropriate in the UAE, where to live together would be illegal.

7. Health & Safety and company beliefs – Different nationalities may have different views as to what is and is not appropriate behaviour in a workplace. Equally, certain policies may be so important to a company – for example, health & safety policies – that the multinational employer will need to provide training to its workforce, both to introduce the required behaviours and to maintain an awareness of them.

8. Nationalisation requirements – Multinational companies need to be cognisant of local nationalisation laws in the host jurisdiction; for example, in the UAE, there is a focus on Emiratisation.

9. Unions – The multinational employer should bear in mind that it may not be able to promise the recognition and activity of a union in certain jurisdictions. For example, in the UAE, there is no right to freedom of association and collective action such as striking is expressly prohibited by the criminal code.

10. Public relations – Even where a jurisdiction does not require compliance with certain standards – for example, there are no anti discrimination provisions in the UAE Labour Law – nevertheless, from the viewpoint of an international workforce, the integrity of a company and its policies should be consistent throughout the world.

Conclusion

As companies and their employees become more globally mobile, in part as a response to economic challenges in home jurisdictions, the issues identified above will need to be considered on a more regular basis. The most appropriate time to consider the issues is at the outset, before an employee starts to work in a host location, in order that the correct legal and immigration policies can be put in place in order to best serve the company and its employees.

Clyde & Co LLP

PO Box 7001, Rolex Tower
Sheikh Zayed Road, Dubai
United Arab Emirates

Tel: (971) 4 384 4000

Fax: (971) 4 384 4004

Email: rebecca.ford@clydeco.com

www.clydeco.com