



Checklist for Global Immigration Policy Formation

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Global Immigration compliance is a business imperative. At all times, but particularly in the politically charged environment with historically high levels of immigration enforcement in the U.S. and abroad, immigration compliance needs to be planned for as effectively as any other business process. A company's brand is at stake. What follows is a checklist to help get a sense of the immigration issues that need to be developed, memorialized as policy, and continually reviewed and refined.

1. Comprehensive Immigration Data is Critical to Managing Your Workforce and Your Business.

Good data allows the company to be organized, proactive, efficient, and methodical when planning and extending existing immigration statuses. Good data proves its value throughout the lifetime of employment relationships including:

- a. Organizing and having the data available allows for cost projections and informed budgeting discussions.
- b. When dealing across borders, departments and cultures it can be stressful to respond to international crises. Not having readily available data undermines one's effectiveness in a crisis and can cause a situation to evolve from bad to worse.
- c. Whether in the U.S. or abroad, immigration laws can change from one year to the next, but government adjudication, approval, denial rates, and processing times can change from month to month. Having the data regarding your workforce allows one to respond to unanticipated changes in immigration legislation or economic conditions.

The data fields most international companies would want to track include:

- i. Expiration dates of immigration status for employee and family.
- ii. Immigration category.
- iii. Home and host locations.
- iv. Sponsoring company in host location.
- v. Source of payroll.
- vi. Type of Employment relationship.

- vii. Nationality.
- viii. Birth country.

2. Foreign Corrupt Practices Act (FCPA) Compliance Must be a Focus of Worldwide Immigration Applications

The U.S. staff needs to retain accountability for global corruption compliance. Enforcement in the U.S. and abroad has created a standard where accountability cannot be passed on to subsidiaries without due diligence, system implementation, and oversight. The immigration program surrounding locally filed applications should be regularly reviewed for FCPA compliance.

3. All Employees Outside Their Home Country Must have Appropriate Immigration Status

If the destination country requires work authorization in a given case, and the employee does not have it, the employee is working illegally.

Non-expatriates are not necessarily business travelers and are certainly not tourists. It is common, but not necessarily acceptable, for short-term activities to be pursued without work authorization. A compliance program has systems in place in which fact-specific analysis is applied to each international activity to determine if work authorization is required in the destination country based on the activity, such as:

- a. Travel associated with a project.
- b. Travel associated with consulting activity.
- c. Short-term assignments.
- d. Employees providing service to a customer.

4. Special Process Flows May Need to be in Place to Identify and Address the “Consultant” Fact Scenario:

- a. Does your company need to reanalyze existing travel practices and address a long-term problem that is no longer in step with the current regulatory environment?
- b. How do you ensure that your critical employees are not deported or forbidden reentry due to careless, frequent noncompliance?
- c. How do you manage the response, “Our competitors are sending this kind of person in all the time!”?

5. Do Not Forget Locally Hired Foreign Nationals

Locally hired foreign nationals are often subject to ongoing immigration compliance requirements. Employee tracking systems only track the data that is put into them. It is common that locally hired foreign nationals are not on-boarded in the same way as intercompany transferees, and therefore their data may not be captured in expiration reporting, quota reporting, and other reports involving

immigration planning. If your immigration policy is written around expatriates, these local hires can be invisible in your tracking systems.

6. Involve Immigration Counsel in M&A Planning Early

Mergers, acquisitions, divestitures, and joint ventures will often involve:

- a. Transfer of status to new employers.
- b. Compliance filings to reflect changes of name, ownership, address, corporate relationship.
- c. Impact on employees with intra-company transfer status.
- d. Impact on ongoing qualification for permanent residence.
- e. Entirely new applications for work permits to achieve continued work authorization.

7. Immigration Compliance for On-site, Third-Party Vendors Cannot be Avoided

Lack of an employer-employee relationship does not preclude liability for illegal workers. A holistic approach to ensuring immigration compliance for all workers, and all contractors at a specific worksite, is the new standard.

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