



# Competing for global talent

## Employment law trends and best practices

## Your Presenters



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# Employee Classification

## Employee or Contractor?

- The Department of Labor issued a new rule on January 10, 2024, returning to the six factor test for determining whether someone is an employee or a contractor under the Fair Labor Standards Act (FLSA).
- The new rule took effect on March 11, 2024.

## What are the six factors?

- (1) opportunity for profit or loss depending on managerial skill
- (2) investments by the worker and the potential employer
- (3) degree of permanence of the work relationship
- (4) nature and degree of control
- (5) extent to which the work performed is an integral part of the potential employer's business
- (6) skill and initiative.

## How do you weigh the different factors?

- No single factor is determinative.
- Determination is made based on the “totality of the circumstances.”

# Global Look: Independent Contractor Classification

## The Basic Factors

- Control
- Integration
- Economic Realities
- Behavioral Factors
- Contractual Agreements

## Global Differences

**Common Law Countries (US, UK, CAN):** Emphasis on control and economic realities

**Continental Europe:** Consideration of control, integration, and, especially in Eastern Europe, the contractual agreement (i.e., Romania, B2B contracts in Poland, Ukraine)

**LATAM:** Focus on control/subordination and exclusivity

**APAC:** Economic realities and special considerations

## Additional Support

### Oyster Misclassification Analyzer

- 10 Questions
- 80 countries researched
- Assessment of high, moderate, or low risk of misclassification

**Oyster**

# New Exempt / Non-Exempt Rules

## Department of Labor's New Rule

- The new rule was issued on April 23, 2024.
- It raises the income thresholds for the white collar and highly-compensated employee exemptions.

## White Collar Exemption

- On July 1, 2024, the income threshold will go from around \$35,000 to \$43,888.
- On January 1, 2025, a new methodology for calculating the threshold will take effect, which will increase the threshold again to \$58,656.

## Highly-Compensated Exemption

- On July 1, 2024, the highly-compensated exemption threshold will increase to \$132,964.
- On January 1, 2025, the threshold will increase again to \$151,164.

# Today's Globally Remote Workforce

## Global Travel / Wandering Workers

- Defining this category of worker
- Risks
  - Taxation: personal income, payroll taxes (offshore payroll), social security, permanent establishment/corporate income tax
  - Health & Safety
  - Work authorization / immigration law
  - Local employment rights
  - Regulatory restrictions
  - Data privacy and IP security
- Policy Considerations
  - Company Risk Tolerance
  - Company Culture
  - Administrative Tolerance
- Special Considerations
  - EU Right of Mobility and the Posted Workers Directive

## Global Relocation

- Digital Nomad
  - Not all “digital nomad visas” are the same
  - Passport privilege
  - 12 months duration is typical
  - Proof of employment / income varies based on country
  - Potential for complex personal income tax issues
  - No path to citizenship
  - Employer cannot have a local entity
- Employer Sponsored
  - Must have a local entity or work with an EOR, like Oyster
  - Can be lengthy, expensive process (i.e., US); Multiple “easier” visas for highly qualified workers in Europe, but sponsorship may require a license (i.e., NL, UK)



## Managing a Remote Workforce

### Know where your employees work

- Your employment relationship is typically governed by the law of the state where your employee performs the largest part of their work.
- Consider adopting an employee relocation policy that covers:
  - The process for seeking approval to continue working from a new permanent location
  - The process for seeking approval to continue working from a new temporary location

# Things to Consider at Separation

## Separation Agreement or Acknowledgment

- Waivers of claims are governed by state laws.
- Consideration must generally be provided for a waiver of claims.
  - Garden Leave is a popular form of consideration.
- A separation acknowledgement is better than nothing.

## Final Paycheck

- Final paycheck requirements vary from state to state.
- Requirements may also vary depending upon whether it is a termination or a resignation.
- There can be penalties for violating final paycheck laws.

## Disclosures

- Many states have separation disclosures
  - Unemployment benefits
  - COBRA - continuation of insurance
  - State offered services
- Many states require employers to report the separation to a state agency.

# Global Considerations at Separation

## The Right to End Employment

- No unilateral right to terminate outside US, Canada (with notice), Brazil (with payments), and Singapore (apart from potentially during probation period)
- Options: misconduct termination, extensive quasi-judicial performance management process, or mutual termination agreement

## Litigious Cultural Considerations

- In some countries, filing a conciliation proceeding is common (i.e., Spain, South Africa)
- In some countries, employees are typically represented by counsel when negotiating their exit (i.e., Netherlands, Italy) or must be represented to sign a waiver of employment claims (i.e., UK, Ireland) and the employer is expected to pay

## What's Due at the End of Employment

- Notice pay
  - Garden leave / PILON may not be permitted
- Severance (calculations may vary)
- Accrued or allocated PTO (Accrual rules differ i.e., employee with two years' tenure resigns in January in Portugal must be paid their PTO for the whole year)
- Other payments (pro-rated Christmas bonus, commissions, etc.)

## Other Pitfalls and Know Before You Go

- Statutory requirements for a valid termination like wet ink signatures and proof of delivery of termination notice (i.e., Germany, France); limitations as to when a termination can occur (i.e., Netherlands - end of month)
- [Oyster Tools](#) (Employment Terms Comparison tool, templates and checklists, salary insights, country employment guides)

# Thank you!



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