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Best Practices for Transferring US Employees Overseas

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A Note from our website on the best practices for US companies to follow when establishing and maintaining an overseas (or expatriate) employment relationship. State and local statutes and regulations may impose additional requirements on employers in this topic area, but the information contained in this resource is useful and relevant to employers in every state. The continuously maintained version of this Practice Note is available on practicallaw.com.

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US employers often assign their US-based employees to work in their overseas operations as “expatriates”. For the relocation to succeed, employers must carefully select suitable candidates, plan the terms of assignments, prepare employees for relocation, manage the assignments and coordinate their conclusion. The goal in preparing for expatriate assignments should be to eliminate surprises for both employers and employees.

This Note addresses:

- Employer options for structuring the expatriate arrangement, including policies to guide and govern the assignment.
- Potential liability for violations of employment law in the US, the US Foreign Corrupt Practices Act of 1977 (FCPA) and law outside of the US.
- Overseas confidentiality and intellectual property questions, including an assessment of the European Commission’s Directive on Data Protection of 1998.
- Issues relevant to restrictive covenants.
- Issues relevant to selecting an appropriate candidate.
- Immigration questions.
- Compensation questions such as payroll administration, taxes, incentives and allowances.
- Non-monetary terms and conditions, including medical issues, holiday leave, home leave and education for dependents.
- Practical and logistical considerations, including training, orientation, housing and transportation.
- Best practices to respond to emergency situations such as natural disasters, personal crisis and death of the expatriate while overseas.

- Coordinating the end of the assignment through repatriation or because of voluntary or involuntary termination.

Although this Note includes a discussion on taxation, a full assessment of the tax issues associated with expatriate assignment is beyond the scope of this Note.

Structuring the Expatriate Relationship

An employer who sends an employee overseas is effectively relocating that employee (expatriate) from the country where the employment relationship began (home country) to the country where overseas operations take place (host country or target country). Employers may choose from several approaches to structure the expatriate relationship:

- Keep the employee “whole”, so that the employee will realize neither significant financial advantage nor disadvantage.
- Treat the expatriate the same as existing employees in the host country.
- A combination of these two approaches.

To encourage employees to undertake expatriate assignments and improve the chance of the assignment’s success, most employers take the “keep whole” approach. The keep whole approach requires that employers provide:

- Compensation and benefits competitive with home country peers.
- Allowances and premiums that support living conditions in the host country.
- Relocation assistance that helps with the initial move, adjustment and repatriation.
- Tax return preparation and equalization calculations resulting in no financial gain or loss to the employee.

Use of the word “whole” is standard but can lead to unrealistic expectations from the expatriate. Employers should discuss the keep whole option with the employee by explaining what it will do (attempt to limit the impact that the transfer will have on the expatriate’s standard of living) rather than what it is called (keep whole).

The keep whole approach is less suitable for appointments lasting five years or more. Maintaining the keep whole administrative process for many years is tedious and counter

to the employer’s intention that the long-term expatriate become fully acclimated to the host country. For assignments of five years or more, the employers should consider either treating the expatriate the same as existing employees in the host country from the outset or phasing out the keep whole approach at around the fifth year of the assignment.

Expatriate Policy

The expatriate policy is the core document governing the overseas assignment. Although all of the issues addressed in this Note should be considered when creating a suitable expatriate policy, the following key issues should be resolved in policy drafting:

What Entity Will Employ the Expatriate?

Employers may employ an expatriate through the:

- **Original US employer.** Maintaining employment through the original US employer during the assignment may expose the employer to restrictions under both US and foreign law and create a situation where the US employer could be sued in the target country (see below *Liability for Employment Violations*).
- **Affiliate employer in the target country.** In some countries, to secure a work permit, the employee must be employed by a company located in the target country.
- **Offshore employer.** Another alternative is to set up a company outside of the US but not in the target country. Key issues to consider when setting up an offshore employer include:
 - the legal and tax consequences when selecting the location of an offshore company. Some nations offer lower and more predictable employment taxes and enhanced protections for company confidentiality. For example, many employers set up offshore companies through the laws of Bermuda, the Bahamas or Guernsey;
 - which company will be responsible for benefits, compensation and other expenses (see below *Compensation, Benefits and Allowances*); and
 - possibilities for profit sharing. Laws requiring that employers share profits with employees are common in South America, Central America and Mexico, for example. Profit sharing requirements may be as high as 10%. In some countries, such as Mexico, profit sharing obligations may be avoided by creating

separate companies in the target country, one that owns the assets and receives the profits and another that employs the employees. In other countries, such as Venezuela, this type of dual company arrangement is illegal. Employers should contact local counsel in the target country for more information.

Which Country Will Be the Home Country?

If the expatriate's country of origin is different from the country in which the employee was originally hired and/or the country of citizenship, the employee and the human resources department should decide which country will be considered the home country. Of particular concern in resolving this question is the employee's immigration status (see below *Immigration Issues*). Employees who are not citizens of the country in which they were originally hired may need to retain a presence in that country to avoid losing their immigration status.

Which Country Will Be the Host Country?

Although the primary consideration in selecting a host country is business necessity, employers should also consider the risk of assigning employees to dangerous countries or those with unstable political situations. As some defense contractors have discovered, the fact that the employee knowingly goes to a dangerous country does not protect the employer from a claim for injuries or death that may occur during assignment to an unsafe area.

Employers should also determine if the host country restricts employment of foreign managers.

How Will Dependents Be Addressed?

Employers should consider extending assignment benefits to spouses, unmarried children under the age of 25 who are full-time students and dependents of whom the expatriate or spouse are the legal guardian. For additional detail on expenditures on behalf of dependents, see below *Education for Dependents*.

How Long Will the Assignment Last?

Employers should communicate with employees about the specific termination date of the overseas assignment. Failure to set up an end date for the assignment may deter employees from accepting overseas assignments or may set an employee up for significant disappointment when the assignment ends.

An expatriate assignment typically lasts between one and five years. Expatriate assignments of over one year may

have a significant impact on immigration, work permits, taxes and other terms and conditions of the expatriate assignment. Due to the additional complications associated with assignments lasting more than one year, employers often maintain separate policies for shorter overseas assignments. For international assignments lasting three months to one year, employers should consider creating temporary international assignment policies. For international assignments lasting no longer than three months, employers should consider creating extended business trip policies.

For assignments that may last longer than five years, many employers reserve the right to treat the expatriate as a full-time employee in the host country rather than continue to equalize the expatriate's terms and conditions of employment. In other words, they phase out the "keep whole" arrangement by gradually eliminating assignment allowances and benefits, changing employment status, transferring employers and/or changing immigration status.

Is a Contract Intended?

Certain countries require employment contracts and employers are obligated to create an employment contract for an expatriate who is assigned to a country with that requirement.

For countries with no contract requirement, employers should avoid accidentally creating a contract or modifying an existing contract by including a disclaimer in the expatriate policy. As an additional precaution, this same language should appear in a letter of assignment (see below *Letter of Assignment*). The following is appropriate model disclaimer language:

"The contents of this Policy/Letter shall not be construed as constituting or creating an employment agreement or contract with an employee. Employment with the employer will remain at-will and can be terminated either by the employee or the employer at any time with or without cause or reason. If applicable, this Policy/Letter will be interpreted and applied in conjunction with any existing, written employment agreement or contract. If this Policy/Letter conflicts with a written employment agreement or contract, the employment agreement or contract will supersede this Policy/Letter."

Letter of Assignment

Because the expatriate policy cannot address all the details of an expatriate assignment, employers should also consider

creating a letter of assignment to provide a summary of the compensation, benefits and terms of employment for the assignment. The letter should state the terms and conditions of the assignment and include the employee's signed consent. The letter should be presented to the employee before expatriate orientation and any pre-assignment activities.

Relationship Between the US Employer and the Host Country Employer

For long term assignments where the expatriate will be transferred to the employment of a company in the host country or offshore, there are usually no agreements between the US employer and the new employing company. However, in some circumstances, particularly for short-term assignments, the US employer may second the expatriate to the new employing company.

The reason for a secondment is to maintain an employment relationship with the US employer for matters such as benefit plans. One concern with these agreements is that they may subject the US employer to legal claims in the host country or subject the new host country or offshore employer to legal claims in the US. How potential liabilities between the parties to this agreement will be apportioned should be specifically addressed in writing. For information on the US and international laws governing employment violations, see below *Liability for Employment Violations*.

Relationship Between the Expatriate and the Host Country Employer

Whether the expatriate will be supervised by managers in the host country or will continue to be supervised by US managers should be clearly stated to all parties. If the US employer retains management rights but the expatriate's employment is transferred to a company in the host country, the US employer must recognize the risk of the US employer's potential liability under the host country's laws and should consider addressing this risk in an agreement with the new employer.

Liability for Employment Violations

US Employment Law

Continued employment by the US employer will mean that some US discrimination laws apply to the expatriate's employment during the overseas assignment. Even if the

>> For country-specific information for over 50 countries on many of the topics discussed in this Practice Note, refer to the [PLC Cross-border Doing Business in...2010 Handbook](#) on our website. The Handbook is one of PLC's multi-jurisdictional Q&A guides to the legal systems and key laws in jurisdictions worldwide and covers, among other things:

- Work permit requirements (Question 11).
- Employment contract requirements (Question 7).
- Laws regulating employment relationships (Question 6).
- Data protection laws (Question 27).
- Employment tax information (Questions 12 to 16).
- Social security information (Question 13).
- Information on layoffs and terminations (Questions 8 to 10).

US employer transfers the expatriate's employment to a company in the host country, US laws may apply if the host country employer is controlled by the US employer. Whether this control exists depends on the relationship in operations, management, labor relations and finances between the US and host country employer. The more integrated these matters are between the two, the more likely that the US employer will be found to control the host country employer.

The following US employment laws include provisions extending protections to US citizens working abroad for US companies or for entities controlled by US companies:

- Title VII of the Civil Rights Act of 1964 (Title VII) prohibiting discrimination based on race, color, religion, sex (including pregnancy) or national origin (*42 U.S.C. §§ 2000e-2000e-17*).
- Americans with Disabilities Act of 1990 (ADA) prohibiting discrimination against qualified individuals on the basis of disability and those regarded as having a disability (*42 U.S.C. §§ 12101-12113*).
- The Age Discrimination in Employment Act of 1967 (ADEA) prohibiting discrimination against individuals aged 40 or older (*29 U.S.C. §§ 621-634*).

US discrimination laws generally recognize that if a host country's law requires the employer to act in a manner that violates US law, the employer should not be held liable under US law. However, this is a very narrow exception and employers should rely on it with caution.

US Foreign Corrupt Practices Act

Every expatriate policy should refer to the employer's ethics policy's provisions that prohibit payments to foreign officials in violation of the FCPA. If the US employer does not have

an ethics policy, it should prepare one before it sends any employees outside the US. The US government aggressively enforces the FCPA and penalties can include criminal sanctions.

>> For more information on the FCPA, search [Achieving Best Practice in FCPA Compliance](#) and [Foreign Corrupt Practices Act: US Legislation with Global Implications](#) on our website.

Liability Under Non-US Law

If the US employer continues an employment relationship with the expatriate, either directly or through a secondment, the US employer may subject itself to legal claims in the host country or under the host country's laws. A transfer of the expatriate's entire employment relationship to the host country or offshore employer provides a layer of protection for the US employer from these claims.

Protection of Information

Confidentiality

Data protection laws vary across borders from no protections at all to the stringent requirements of the European Union (EU).

Of particular concern are the data protection requirements of the EU. The European Commission's Directive on Data Protection of 1998 (the EU Directive) is broadly worded and covers all personal data related to the employment relationship.

>> The following resources on our website provide more information on the EU Directive.

>> **Simply search the name OR resource number:**

[Data Protection Compliance Policies](#) or 5-385-8628

[Solutions to the Cross-Border Transfers of Personal Data from the EEA](#) or 7-107-4765

To overcome the obstacles created by the EU Directive, the employer in the host country should obtain a release from the expatriate to allow it to provide all information pertaining to the expatriate's employment to the US employer. To ensure the enforcement of this release for expatriates located in the EU, the host country and US employers should take advantage of the Safe Harbor provision negotiated by the US and the EU.

The US government has created a website to help employers comply with the Safe Harbor requirements (see [export.gov/safeharbor](#)). There are seven core principles with which US

employers must comply if they intend to exercise the Safe Harbor option:

- **Notice.** US companies that intend to collect information on expatriates must provide them with notice about the purpose of the information. They must also provide:
 - company contact information;
 - the sort of third parties to whom the information may be disclosed; and
 - the options and methods the company has for restricting the information's use and disclosure.
- **Choice.** US companies are required to offer expatriates the option to opt out of third party disclosure. This choice must be made explicit as an opt in for sensitive personal information, such as medical conditions, political affiliations and racial/ethnic/religious information.
- **Onward transfer.** When employers want to transfer information to a third party acting as an agent, they are bound to a different set of notice and choice requirements. They can either ensure the agent:
 - adheres to the Safe Harbor principles;
 - is bound by the EU Directive itself or its equivalent; or
 - agrees in writing to adhere to the Safe Harbor principles.
- **Access.** Individuals must be given access to their own personal information and must have an opportunity to correct, update, modify or delete inaccurate material. Exceptions to that rule are circumstances involving undue expenses or administrative burdens to the company or circumstances that would undermine the rights of others.
- **Security.** Employers must take reasonable measures to prevent loss, wrongful use, unauthorized access, disclosure, modification and destruction.
- **Data integrity.** Employers must disclose the purpose for which information will be used and take reasonable precautions to be sure that the information is reliable for the purpose for which it will be used, correct, complete and up to date.
- **Enforcement.** Employers must offer recourse for complaints and mechanisms for verifying adherence to safe harbor principles and established obligations to resolve failures to follow the dictates of the principles. There must be sanctions that are adequate to guarantee compliance.

Intellectual Property

For information on intellectual property rights capable of protection in over 50 countries, including the nature of the right, how the right is protected, how the right is enforced and the length of protection, refer to [PLC Cross-border Doing Business in...2010: Country Q&A tool: Question 24](#) and [Labour and Employee Benefits: Country Q&A tool: Question 32](#) on our website.

Restrictive Covenants

Employers can use the expatriate assignment as an opportunity to obtain a non-compete from an expatriate. As much as laws concerning non-competes vary across states in the US, laws governing non-competes in the international arena vary even more widely.

The primary issue to resolve in contemplation of non-competes for expatriates is choice of law. Employers should evaluate whether the law selected will be enforced in the jurisdictions where the employer may seek to enforce the non-compete. For expatriate employees who travel the world, this is particularly difficult. The trend is that the host country will normally apply its law to these issues regardless of the choice of law in the agreement. If the expatriate resigns, leaves the host country, but moves to another country other than the US, the law of the country to which the expatriate moves is likely to apply.

At a minimum, the US employer should review the non-compete law in the host country to determine if a non-compete may be enforced there and, if so, consider what must be included in the non-compete for enforcement in the host country.

Selection of an Expatriate Employee

Employers should avoid both discrimination and the appearance of discrimination on the basis of an employee's membership in a protected class such as race, color, national origin, religion and gender when selecting US-based candidates for overseas assignment. For a list of federal laws prohibiting discrimination in the US, search [Federal Employment Anti-Discrimination Laws Checklist](#) on our website. Discrimination may be perceived, for example, by women with children who believe they were passed over for assignment because of assumptions about family obligations

or by candidates with a disabled family member who believe they were passed over because of the disability.

The selection of an employee for overseas assignment may either be a closed or an open process. In a closed process, employers do not notify employees about the opportunity, but rather make decisions about the overseas assignment without employee input. In an open process, employers publicize the opportunity and interested employees submit applications.

In some circumstances there may be only one obvious choice for overseas assignment. However, when there are several potential candidates, employers should seriously consider conducting the process openly. Courts more closely scrutinize legal claims from employees passed over for assignment if the assignment decision was made in the closed process rather than the open process.

Immigration Issues

The expenses associated with the immigration aspects of an overseas assignment are generally paid for by the employer. The employer's human resources department should refer the expatriate to legal counsel for obtaining the immigration documents required by the host country. In some countries, obtaining work visas or permits can take months.

Employers must consider the timing of efforts to obtain visas or permits when making an expatriate assignment. An assignment's start date may be adjusted based on the timing of acquiring the necessary documents.

Also crucial to the immigration question in an overseas assignment is the status of the expatriate's immigration in the home country. For example, the expatriates that are green card holders in the US will want to maintain some ties to the US during the overseas assignment to maintain that status.

>> For additional information on employment and employee benefits laws in countries around the world, refer to the [PLC Cross-border Labour and Employee Benefits Handbook](#) on our website.

Compensation, Benefits and Allowances

The compensation and benefits components of an employer's expatriate assignment should be structured as a package that enables the expatriate to be competitively paid based on a comparison to home country peers.

Payroll Administration and Payment Schedule

By paying expatriates in the host country currency, the expatriate avoids the need to exchange currency and to deal with fluctuating exchange rates. Most countries allow this type of payment. Many countries have requirements for the timing of wage payments and apply these laws to expatriates.

Some countries, particularly in South and Central America, require additional months of pay. For instance, they may require a 13th month of pay equal to the pay set for each month or Christmas and other holiday payments based on the monthly salary. If these laws apply to the expatriates, the effect of these additional required payments must be considered in setting the base salary.

Taxes and Benefits

Employers should be aware that how salary payments are handled and which company of the employer is charged for those payments may have significant tax consequences in some countries, as in China, for example.

Tax Counsel

Employers should consider maintaining a tax equalization policy that would apply to every expatriate assignment. An expatriate assignment may cause significant changes in an expatriate's personal tax situation and employers should require the expatriate to meet with a tax advisor before the assignment initiation. Employers generally pay for this expense.

Hypothetical Tax

To aid in the complicated tax implications of relocating US employees, employers should consider using a "hypothetical tax" concept in administering the employer's tax equalization policy. This tool is used to calculate taxes as if the expatriate had been employed in the home country for the entire year. The hypothetical tax does not belong to the expatriate, nor is it paid to the government; rather, it is used to establish amounts to be withheld from the expatriate during the year and to determine the offset to federal and foreign tax payments made by the employer.

The hypothetical tax generally takes into account the expatriate's base salary, bonuses, appropriate allowances, company-sourced income and certain types of outside

income. At the end of the tax year, a tax reconciliation must be calculated. The reconciliation will determine if the expatriate must reimburse the employer or the employer must reimburse the expatriate. Tax equalization arrangements, including the use of a hypothetical tax concept, generally involve a significant level of complexity, and employers should consult with tax professionals when creating and implementing these arrangements.

Social Security

Where possible, expatriates should be maintained on home country social security plans. The expatriate will continue to be responsible for payments up to the defined limit calculated from the base salary and other applicable compensation. The employer should continue to make contributions as required by law. If it becomes necessary for the expatriate to contribute to the host country's social security system, and the expatriate is unlikely to receive any benefits from the host country, any compulsory employee or employer contributions in the host country should be paid by the employer.

Long-Term Incentive Compensation and Benefits

If permitted by law, tax effective and applicable, expatriates should continue to participate in the employer's stock option and long-term incentive compensation programs. If possible, the benefits package for expatriates should include those benefits that are currently provided in the home country. Alternative benefits should be provided if host country regulations mandate them or if it is not administratively practical to maintain the home country benefits.

Continued participation in programs will depend on the rules of the particular scheme or local laws. In many circumstances, an expatriate can only retain benefits such as 401(k) plans if they are employed through the US employer or an offshore company. In other cases, where the host country does not allow an expatriate to work in the country unless employed by a company created under the laws of the host country, these benefit plans may not be available to expatriates.

Allowances

Cost of Living Allowance

Because the cost of living varies from country to country, additional funds may be required for the expatriate to realize

purchasing power equivalent to that of the home country. A cost of living allowance (COLA) protects the expatriate from the higher costs of items in the host country as well as fluctuating currency exchange rates on the spendable income. If a COLA is offered by the employer, it should be paid to the expatriate semi-monthly via their regular paycheck. The employer may adjust the COLA by giving notice to the employee.

Hardship Allowance

If applicable, employers should consider offering a hardship allowance. Hardship allowances are provided for employees in certain locations due to political unrest, danger, excessive physical hardships, natural hazards, isolation, disease, notably unhealthy conditions or inadequate medical facilities. The allowance should be based on recommendations of the US State Department and independent consultants.

Non-Monetary Terms and Conditions

Medical Examinations/Immunizations

Each expatriate and relocating family member should be strongly encouraged to complete a thorough medical examination before departure and annually thereafter during the expatriate's visits home. The employer should consider reimbursing reasonable costs for medical exams. In addition, each expatriate is responsible for obtaining the appropriate immunizations or medication required for entering and/or living in the host country. The employer should also consider reimbursing these costs.

For employees with personal or family health conditions who are interested in expatriate assignments, employers must have a careful, but full discussion about the health issues raised by the overseas assignment (for example, medical care may be substandard or difficult to obtain).

The area of medical examinations and immunizations also raises issues of potential discrimination. Employees who have significant health problems or who have family members with medical conditions may be protected by the ADA or equivalent state law. Employers should not decline to offer an overseas assignment to an employee on the basis of health concerns.

Holidays

The expatriate typically should observe the host country holiday schedule.

Home Leave

Employers should consider offering one home leave trip every 12 months of assignment for the expatriate and accompanying family members. If an expatriate's entire family remains in the home country during the assignment, consider offering the expatriate an additional two weeks of vacation to be used for an additional home leave trip every 12 months. If the expatriate's spouse and/or children choose to visit the expatriate in the host country instead of the expatriate returning home, the employer should consider reimbursing the cost of round trip, economy airfare.

Education for Dependents

When the overseas assignment involves relocation of dependent children (Kindergarten through 12th grade), the employer should attempt to provide education equivalent to that of the home country. Employers should account for the significant cost of providing schooling to the children of expatriates when calculating expenses for overseas assignments. Employers should consider three possible options:

- **Assignment location education.** If the assignment location provides education equivalent to the home country, the employer should consider reimbursing the expatriate for expenses that are above and beyond the cost of education in the home country.
- **Boarding school.** When schools at the assignment location are deemed inadequate to meet home country standards, it may be necessary to enroll children at a private boarding school away from the assignment location. Employers should consider reimbursing expatriates for reasonable expenses of boarding school if this option is necessary. Reasonable expenses include tuition, enrollment fees, room, board, books and supplies. The employer should also consider providing three round-trip economy class airline tickets for each school year for travel to and from the school location to the assignment location. These tickets may be used by either the child or parent.
- **Home country education.** Under special circumstances, an employer should consider authorizing dependent

children to remain in the home country to continue their education. This exception may be granted if education is not available in the host country or the dependent wishes to prepare for college in the final years of high school (two-year limit before graduation). The employer should consider reimbursing additional, reasonable education expenses that are incurred due to the overseas assignment. The employer should also consider providing two round-trip economy class airline tickets for each school year for travel to and from the home location to the assignment location. These tickets may be used by either the child or parent.

Practical and Logistical Considerations

Expatriate Orientation

Employers should consider using expatriate orientation to explain specific details of the assignment to the employee and the employee's family. Orientation should include, for example, compensation, allowances, benefits, relocation issues and security briefing. The employee and any relocating family members should be required to attend.

Cultural Training

For assignment to countries with substantial cultural differences from the US, the employer should consider providing cultural training for the expatriate and any relocating family members before relocation to avoid potential cultural misunderstandings from the beginning of the assignment.

Language Training

For relocation to a nation where the primary language is not English, employers should consider providing language training for the expatriate and relocating family members to promote personal and professional success during the assignment.

Mentoring Program

Employers should also consider offering a mentoring program. Having a dedicated contact person for the expatriate in the host country can greatly increase the efficiency with which the expatriate and the expatriate's family assimilate to the host country's culture and logistics.

Housing Issues

Familiarization/House-Hunting Trip

Employers should consider allowing employees and spouses scheduled for overseas work the opportunity to travel to the host country to familiarize themselves with the host country, identify appropriate housing and find local schools for dependents (if applicable). If possible, housing should be consistent with the expatriate's expectations and convenient to the expatriate's needs, such as schools, banks and grocery stores.

In dangerous countries, safety and security must be primary concerns. For information on political and safety issues overseas, see the US State Department's country-specific information.

Use of relocation services available in the host country is strongly recommended. These services can, with proper oversight, control expectations and cost while providing for a smooth transition.

Home Country Housing

During the assignment, the expatriate has the option to dispose of or maintain home country housing. Employers should consider assisting expatriate employees with housing issues as follows:

- **Renters.** If the expatriate was renting a home/apartment, the employer should consider reimbursing the costs associated with forfeited rent, security deposits and/or lease termination fees.
- **Homeowners.** By providing assistance to the expatriate with their home country residence, employers may avoid logistical problems when the expatriate returns to the home country. Assistance involving expatriates who are home owners may include:
 - Selling the home. If the expatriate decides to sell their primary residence, employers should consider paying for marketing assistance, reimbursing expenses associated with the sale and paying any loss on the sale that is due to market conditions. The employer may also agree to pay the cost associated with buying a new home when the expatriate returns to the US.
 - Retaining the home. If the expatriate decides not to sell their primary residence, the employer should consider providing insurance and property management services (covering maintenance, inspections and repair) through

a property management company selected and paid for by the employer.

- Renting the home. If the expatriate decides to rent out the primary residence, the employer should consider providing financial assistance for associated costs and home maintenance as well as assistance in renting out the home.

Host Country Housing Contribution and Allowance

The employer may require that the expatriate be responsible for some of the housing expenses to control housing costs. However, in its expatriate policy, the employer should consider providing an allowance for housing in the host country. The housing allowance may be based on income level, family size and home location. The purpose of the allowance is to provide adequate and comfortable housing in the host location consistent with host country housing options. To support this process, the employer should have a firm grasp of the real estate market in the host country.

The employer should strongly discourage an expatriate from purchasing a home in the host country because of the associated costs and burdens that follow after repatriation. The employer should not tax equalize or bear any risks associated with the purchase or sale of a home in the host country.

Household Goods

The employer should:

- Consider paying for the reasonable cost of shipment of household goods to the host location and back following the end of the assignment.
- Control the shipment of goods by the expatriate to avoid excess costs.
- Consider paying for insurance on the household goods during shipment.
- Place limits on some kinds of overseas shipments. Shipping laws of some countries impose restrictions. For example, many countries do not allow pets to enter.

Employers should consider imposing weight limits on shipments of household goods at the beginning of the assignment and at repatriation. Employers should not feel obliged to pay for the costly shipment of heavy items such as cars, boats, food, weapons or campers. Exact weights and sizes of shipments may be decided by the employer

and may vary depending on the length of the assignment, the location of the host country and the conditions in that host country. However, an employer may consider the following an appropriate weight limit for overseas shipment of household goods:

- For a single or married expatriate with no children, the employer might authorize a surface shipment of a 20-foot container and an air shipment of 500 pounds.
- For a married expatriate with children, the employer might authorize a surface shipment of a 40-foot container and an air shipment of 500 pounds for the expatriate and spouse and 200 pounds for each child.

The employer also should consider paying reasonable costs associated with storing household items not shipped to the host country, including the insurance costs on the stored items as well. Employers may impose time limits on claiming reimbursement for these costs. For instance, eligibility for reimbursement of storage and insurance costs might terminate 60 days after the expatriate has returned to the home country.

Temporary Living

It may be necessary for the expatriate and family to obtain temporary accommodations either immediately before relocating or on arrival in the host country. Allowing the expatriate additional time to find a more permanent home may enable the expatriate to make a better choice, particularly if the expatriate is relocating a family. The employer should consider providing reimbursement during the temporary housing period for meals, lodging, tips, laundry services and a rental car for a designated period (for example, for up to 14 days).

Initial Visit to Host Location

Employers should consider reimbursing the expatriate and relocating family members for the cost of direct-route airfare for their initial visit to the host location. Actual and reasonable travel expenses may be reimbursed, including baggage handling, ground transportation, airport or road taxes/fees and meals during travel. The employer may also want to cover the employer and relocating family members under the company's travel accident insurance during the initial visit.

Sale of Personal Automobiles

In the home country, the employer should consider protecting the sale of two personal automobiles against

losses due to market and selling price differences. The amount reimbursed for each vehicle will be the difference between the published average retail value (as valued by the Kelly Blue Book) and the actual selling price. A suggested maximum protection amount is \$2,000 for each car.

Host Country Transportation

Employers should consider providing expatriates with a transportation allowance. Depending on the host country regulations, a company car may be provided to the expatriate instead of a transportation allowance.

Emergency Management

Public Emergencies

If the employer or the government of either the host or the home country declares an emergency, the employer should evacuate the expatriate and family. The employer should consider reimbursing the expatriate for travel, moving and/or temporary living expenses incurred while assessing the long-term effect of the emergency situation. If circumstances are warranted, the employer should relocate the expatriate and family to the home location. If the expatriate feels that evacuation of the family is necessary before the declaration of an emergency, the employer may advance travel allowances.

Personal Emergencies

In a personal emergency, the employer should consider providing airfare from the assignment location for the expatriate and/or dependents to a location determined to be best suited to address the emergency. A personal emergency may include a serious illness of the expatriate or serious illness or death of an immediate family member, including spouse, parents, grandparents, brothers, sisters, children, stepchildren, grandchildren and in-law equivalents of those family members.

Death in Host Country

The employer should consider:

- Reimbursing the reasonable and necessary costs for the preparation and shipment of the expatriate and/or family member's remains from the host country to the home country.
- Providing emergency leave for immediate family members including airfare to and from the home and/or host location as well.

Coordinating the End of Assignment

Repatriation

Employers should strive to repatriate the employee and offer a position that, where possible, uses skills that the expatriate gained during the overseas assignment. The employer should not guarantee the location of a position at repatriation. Once repatriation has been determined as the next step in the expatriate's career, the employer may initiate relocation assistance. The relocation benefits applied at the beginning of the assignment may be applicable to the repatriation.

Termination of Employment

Voluntary Termination

If the expatriate wishes to terminate the assignment or resigns their employment while on the overseas assignment, the employer does not need to relocate the employee or family. All benefits and allowances may cease immediately on termination. The employee should be required to vacate and return any employer-owned or leased property immediately.

If the expatriate voluntarily terminates the assignment within the first year of the assignment, the employer should consider requiring that the expatriate be responsible for reimbursing the employer for expenses related to the expatriate assignment. The employer should reserve the right to determine which expenses the expatriate must pay. These payment obligations and reimbursement obligations should be explicitly included in an acknowledgement signed by the expatriate before any deduction is made. However, the employer must recognize that in some countries these deductions are not allowed regardless of the expatriate's signed acknowledgement that these deductions may occur.

Involuntary Termination

If the expatriate's employment is terminated as a result of a layoff, sale of the company in the host country or other reason not related to job performance, the employer should provide the expatriate with repatriation relocation benefits.

If the expatriate is terminated for cause, the employer should consider reserving the right to determine whether relocation benefits will be provided. If for this purpose, the

employer wishes to define what cause is for termination, the following are common elements of this definition but are open for revision depending on what standard the employer wishes to use:

- A conviction of a misdemeanor involving moral turpitude or a felony.
- Engagement in conduct which is materially injurious (monetarily or otherwise) to the employer or any of its affiliates (including, without limitation, misuse of the employer's or an affiliate's funds or other property).
- Engaging in gross negligence or willful misconduct in the performance of duties.
- Willful refusal without proper legal reason to perform job duties and responsibilities.
- Material breach of any material provision of any agreement between employer and employee.
- Material breach of any material corporate policy set up and maintained by the employer that applies to employees in question (for instance, severance plan participants).

In many countries, employment legislation protects employees from unfair or unjustified dismissal. Particularly in the Middle East, what constitutes a justified termination is controlled by the country's laws rather than what the employer says in policies or even employment contracts. While in some countries, the penalty assessed against employers for an unjustified termination is fairly low (for example, three months of pay), in others, the penalty is

significant (for example, severance pay of a year or more or an order to return the employee to work).

Only in the most extreme cases should an expatriate be terminated from employment before the expatriate is returned to the home country. By returning the expatriate to the home country for some time before making a termination decision, the employer may avoid local employment protection laws or mandated severance. However, in some countries, the simple return of an expatriate to the home country triggers the severance requirements.

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Tom is a Partner at Vinson & Elkins, LLP and the practice group leader of the firm's labor and employment practice. Tom's practice includes counseling clients on labor and

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