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EXPATRIATE EMPLOYMENT AGREEMENTS

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Expatriate employees have a unique relationship with the companies they work for. They have particular needs and requirements because there is little separation between their professional and personal lives. Therefore, as companies become increasingly multinational and transfer U.S. employees to different countries abroad, companies have greater and far more complex responsibilities to those employees and their families, including increasing the risk of their liability. For the expatriate employee and her counsel, the great challenge in negotiating expatriate benefits is to ensure that the economic and personal living needs of her and her family are satisfied and that they remain “whole” throughout the assignment. If this is achieved, the expatriate experience is a win-win for both the company and the employee.



EXPATRIATE BENEFITS CHECKLIST

Tax Equalization. Every expatriate agreement should provide the employee with tax advice and tax equalization and should make an employee financially “whole” in going abroad.

Cost-of-Living, Housing & Automobile Allowance. Usually, an employer should provide the employee with additional compensation in the agreement to help offset cost differentials for living in the host country.

Health Benefits. The employee should be provided with at least the same health benefits that would be available to them in their home country. Some international plans may not guarantee that a U.S. citizen or resident will, upon return to her home country, be entitled to COBRA. If that is the case, an employee may want to negotiate continued coverage.

Relocation Allowance. The employee usually qualifies for the same number of vacation days/weeks that she would be entitled to in the U.S. However, during the time of the assignment, the host country’s holiday schedule usually applies.

Vacation. The employee usually qualifies for the same number of vacation days/weeks that she would be entitled to in the U.S. However, during the time of the assignment, the host country’s holiday schedule usually applies.

Home, Personal or Emergency Leave. Generally, the employee and her family are eligible for one or two home leaves per year.

Children’s Education. The employer often pays for the cost of the private education of the expatriate employee’s children.

Social Security. The rules concerning Social Security are different from country to country but the employee should be protected from duplicative coverage.

- **U.S. Rules.** Coverage under the U.S. Social Security system is based on (i) employment within the U.S. without regard to nationality of the employee or the employer, or (ii) employment outside the U.S. if both the employer and the employee are U.S. persons, i.e., a U.S. corporation, a U.S. citizen, or a U.S. resident.
- **Foreign Rules.** The U.S. has entered into bilateral Social Security Agreements (“totalization” agreements) with other nations that prevent duplicative coverage. The bilateral relationship allows an individual who is temporarily in two systems at the same time to get a certificate of coverage from one system and to use that certificate and the totalization agreement to avoid coverage in other systems. The following countries have entered into bilateral Social Security agreements with the U.S.: Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, South Korea, Spain, Sweden, Switzerland, and the U.K.



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Reassignment/Repatriation. Most U.S. employers reimburse the employee for relocation expenses as long as the employee is still employed by the employer in the home country.

Immigration Issues. If necessary, the employer will hire immigration counsel to assist the employee in obtaining necessary documents and licenses to work abroad. These arrangements should be made prior to departure and the job should not be conditioned on immigration approval "after the fact".

Language Training. The employer should provide the employee and her family with language training before and during the expatriate assignment.

Spousal Assistance. The employer should provide the employee's spouse with career and housing assistance in the host country.

Hardship Payments. If the employee and her family are going to or are already residing in a host country where there is political turmoil or a war has broken out, the agreement should provide for hardship payments for the employee.

Claw-backs. In regard to the monetary allowances or benefits provided to the employee and her family, such as relocation allowances or benefits, an agreement may state that the employee is expected to repay these benefits if her assignment ends in a shorter time than anticipated. Minimizing the possible effect of these claw-backs is an important point for the employee and her counsel.



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WENDI S. LAZAR is a partner at Outten & Golden LLP where she co-heads the firm's Executives & Professionals Practice Group. She practices in many areas of employment law with a focus on executive agreements, including retention, expatriate, non-competition, talent, severance and compensation agreements. She also represents teams of executives transitioning during mergers and acquisitions and other corporate transactions.

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