



## Hiring Foreign Workers – At Home and Abroad

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As the world economy expands with increasing global connections, we find that more and more of our clients operate in foreign locations or hire foreign workers. There are a number of statutes and rules to be aware of, both on a State and Federal level, when hiring foreign workers. We provide a summary of issues and areas to think about if your company is moving into this arena.

When hiring foreign workers in-state, employers should be aware of the following issues:

- **Hiring Questions.** In all states, discrimination on the basis of national origin and Visa status is prohibited. While it is appropriate to ask if the person is authorized to work in the United States (as long as that inquiry is made of all applicants) and to make any offer conditional on the ability to work in the United States, an employer should not go beyond these carefully scripted questions. An employer should not ask "where are you from" or "what is your native tongue."
- **I-9s.** Your employees responsible for hiring should be aware of how to properly fill out an I-9. If you use an automated system, you are still responsible for collecting the appropriate data.
- **Visas.** There are a number of different types of authorizations to work (i.e., H1-B, TN Visa, etc.). You need to understand the types of Visas available to the employee and your financial and other obligations, if any.
- **Anti-Human-Trafficking Notice.** A Washington state employer must provide a disclosure statement on Anti-Human Trafficking to certain foreign employees who come to Washington state based on an offer of employment under a nonimmigrant visa for temporary visitors. [RCW 19.320](#).
- **Harassment or Discrimination.** As national origin and race are protected classes under federal and state law, an employer should be vigilant that inappropriate race or national origin comments or divides are not appearing in the workplace.

When hiring employees in other countries, employers should be aware that there are US laws that are applicable to employment abroad, as well as the foreign country's possibly very different labor and employment laws:

- **Federal Income Tax/Social Security and Other Withholdings.** There may be specific agreements existing between countries that identify what withholdings must be made and for which particular country.
- **Foreign Corrupt Practices Policy.** Companies doing business overseas must be mindful of U.S. federal law that prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. Such companies are well advised to develop a formal Foreign Corrupt Practices Policy that informs employees of the law and provides a mechanism to report improper conduct.
- **Notice of Termination, Right to Work and "Garden Leave."** Other countries may not be "at-will" but have notice or other requirements before an employer can terminate an employee. A carefully crafted employment offer letter or contract can address some of these issues. We have relationships with law firms in a multitude of locations and can provide referrals in almost every country and jurisdiction.



- **Privacy Issues.** Similarly, other jurisdictions may have strict rules regarding releasing employee information. Even something as simple as an internal all-employee directory may be a violation of the law in a foreign country.

For more information about this eAlert, or for assistance in complying with these laws, please contact the author, [Kyle Sciuchetti](#), or the [Employment Group](#) of Bullivant Houser Bailey PC.