Hot Topics for Start-Up Companies in Global Employment Law and Equity Compensation

Austin HR Roundtable
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**Agenda**

*Common employment and equity compensation pitfalls for companies entering new countries*

- Employees and alternative workers
- Documentation: employment agreements, IP assignment agreements and policies
- Mobile employees and expatriate assignments
- Frequently asked questions on equity compensation by start-ups going international and trends in equity compensation for start-ups going overseas
- Global compliance challenges for start-up companies expanding abroad
- Thinking ahead: Determining the exit strategy
The Culture Crash
Employees

- Local corporate presence needed?
  - Employment law (e.g., Brazil, Mexico, Russia)
  - Corporate / doing business
  - Tax / “PE”
- Payroll
- Benefits
  - Mandatory benefits
  - Additional optional benefits
**Independent Contractors**
- what quacks like a duck is a duck
- withholding obligations (VAT, GST)?
- registration obligations
  - for contractor
  - for company
- sales agents

**Temporary Workers/PEOs**
- permissible?
- limitations on time or type?
- equal pay obligations

**Fixed-term Employees**
- are employees and need to comply with all applicable employment laws
- permissible
  - limitations on duration?
  - limitations on number of renewals?
  - reasons required for fixed-term?
Documentation

- Employment agreements
  - No at-will employment
  - Language requirements?
- IP assignment agreements
  - Global
  - Localized
- Policies
  - Code?
  - Handbooks / work rules / internal regulations
  - Policies
- Localized Stock Award Agreements
Mobile Employees
and Expatriate Assignments

- Increased focus on compliance (individual income tax, social changes, benefits, corporate tax, etc.)
- Global employment companies or GECs increasing in popularity
- Impact on stock awards

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“I’m FLUENT in six languages and speak in 200 different fonts.”
FAQ on Global Equity Compensation

- Can I grant stock awards outside the US?
- What do I need to do to grant stock awards outside the US?
- Are stock awards understood and popular outside the US?
- Are certain types of awards more popular?
- Can I grant Incentive Stock Options (ISOs) outside the US?
- Can I grant stock awards to independent contractors outside the US?
- I have a limited budget, what is the most cost effective way to grant overseas?
When are stock awards appropriate?

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Fast Food Burgers Inc.

“Your salary will be $75,000 per year plus a company car and stock options. Do you want fries with that?”
Global Compliance Challenges

- Global codes & whistleblower hotlines still on the battlefield
- Dodd Franck claims from abroad on the rise
- FCPA, UK Bribery Act and Brazilian Anticorruption Law, and other global compliance challenges
- Problem countries for stock awards due to local restrictions or lack of clarity (e.g., Argentina, Australia, China, Malaysia, Russia)
Thinking Ahead: Determining the Exit Strategy

- Reason for termination
- Data gathering
- Selection
- No protected employees
- Notice, severance, ex-gratia, other
- Steplist and documentation
- Implement!
The End
Thank You
Ute Krudewagen is a partner in DLA Piper's Labor and Employment group.

Based in Silicon Valley, Ms. Krudewagen focuses on providing multinational companies with solutions to the challenges presented in managing a global workforce. In addition, she counsels companies on employment issues triggered by cross-border transactions.

Ms. Krudewagen advises international and cross-border clients on a broad range of complex labor and employment matters, including background checks, employment agreements, discrimination and harassment claims, social media issues, global policies and procedures, non-compete and proprietary information agreements, works council and union issues, codes of social responsibility, workplace privacy, employee assignments and global mobility programs, global reductions in force, and severance and retention plans.

She also counsels global companies on employment issues associated with transactions, including cross-border mergers and acquisitions, outsourcing transactions, post-acquisition integrations and tax restructurings. Her experience includes successfully addressing employment issues in transactions with workforces in more than 60 jurisdictions, with deal values ranging from US$2 million to more than US$8 billion, including negotiation and drafting of the deal agreement, employee transfers, consultations with unions and works councils, benefits harmonization, interim operating models and acquisition-related downsizings.

A frequent author, Ms. Krudewagen has been published in Workspan, The Daily Journal, Association of Corporate Counsel Newsstand, The Recorder, California Employment Law Magazine and Worldwide Financier, among others. She has also presented on international labor and employment topics at leading industry events, including the Women in International Trade, SHRM and National Trade Counsel conferences.

Legal 500 has named her a recommended lawyer for workplace and employment counseling. She has been recognized as a Rising Star by Super Lawyers of Northern California (2011, 2012 and 2013). She is listed in the Daily Journal's 2013 list of "Top Women Lawyers," which recognizes the top 100 female lawyers in California. She is recognized by Top Attorneys as one of Northern California's Outstanding Young Lawyers.
Dean Fealk – Global Labor and Employment

Dean Fealk heads the Global Equity practice at DLA Piper. He advises leading multinational companies on a wide range of legal and strategic issues related to doing business overseas. He frequently serves as managing international legal counsel for multijurisdictional and multi-disciplined projects and matters implicating corporate, securities, regulatory, tax, labor, foreign exchange and data privacy. Mr. Fealk has considerable experience in cross-border equity-based compensation programs and international employment matters in Asia, Europe, Latin America, the Middle East and Africa.

The Los Angeles and San Francisco Daily Journal has selected Mr. Fealk for its lists of California’s "Top 20 Attorneys under 40" and "Top 75 Labor & Employment Lawyers." The Silicon Valley/San Jose Business Journal has named him to its list of "40 Under 40" movers and shakers in the Silicon Valley who impact their businesses and communities. He has been designated a Marshall Memorial Fellow by the German Marshall Fund and named a US-Spain Council Young Leader; both these honors recognizing the next generation of American leaders. The New Leaders Council selected Mr. Fealk for its "40 under 40 Leadership Award," celebrating young leaders across the nation for their involvement in entrepreneurship, advocacy, media and politics.

Mr. Fealk regularly counsels on international and cross-border aspects of international data privacy, immigration, intellectual property protection, choice of entity, tax and corporate structure. He also advises on a broad array of international employment matters including codes of conduct, employee handbooks, work rules, personnel policies, independent contractor agreements, offer letters, employment agreements, proprietary information and assignment of invention agreements, secondment agreements, lay-offs and redundancies, discipline and terminations, settlements and release and waivers.

On the transactional side, Mr. Fealk has provided counsel on more than US$30 billion in cross-border deals, among them mergers, acquisitions, divestitures, restructurings and integrations. He has led over a hundred international expansion and structuring projects for companies across a wide spectrum of industries and jurisdictions from emerging enterprises to Fortune 500 multinationals. Representative industries include high tech, financial services, pharmaceuticals, consumer products, life sciences, energy, media, manufacturing and distribution.