

# INTERNATIONAL EMPLOYMENT CONSIDERATIONS FOR THE NOT-SO “NATIONAL” SPORTS LEAGUES

Insights  
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The term “national” in three of the predominant American major league sports is an increasingly inaccurate term for entities strategically committed to international expansion. The current state of these leagues and their recent trends fully lean towards greater international growth to attract a larger fan base, acquire a wider player talent pool, and obtain new revenue sources. Recruiting and maintaining a workforce to keep pace with these trends requires synthesizing the employment laws across multiple international jurisdictions into a manageable employment playbook. What does your team or league need to know about cross-border activities and what steps should you be taking now to take advantage of the current state of affairs?

## Field Survey and Likely Next Plays

Given ever-increasing player salaries and owners’ desires for greater revenue streams, it should come as no surprise that American major leagues continue to look beyond our borders for international economic growth. Here are some examples:

- The NBA has broadcast games in China since the late 1980s. The league’s mega stars have made repeated trips to the country for decades. These steady efforts allow the NBA to boast a larger international fan base than here at home.
- Besides hosting at least one regular season game in England since 2007 and Mexico since 2016 – and planning on expanding this international footprint – the NFL is more

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recently planning to use its 32-member teams to further its global international expansion goals. The league intends to divvy up international markets to provide teams with specific cities or regions of commercial exclusivity.

- To truly capture the greatest economic benefit of their expansion efforts, leagues and teams have recently begun to employ their own business development and marketing talent rather than simply rely on contracting with third parties. To this end, every sports league now has at least one international office. The NFL, MLB and NBA each have offices in at least Europe, Asia, and Latin America. The NFL also recently hired the former World Rugby CEO to head up its UK and Europe operations from its London office.

Leagues are also showing their international commitment through significant investment in the development of facilities, training of prospects and playing games abroad. MLB has taken advantage of the long history of the league's prospects coming from the Dominican Republic. Each of the league's 30 teams maintains world class facilities in the country to attract top Latin American talent. During the current 2021 season, 29 of the 30 MLB teams fielded a minor league affiliate in the DR. Between bonus payments and academies, MLB has estimated their teams invest \$125 million a year into the local economy. Aside from players, each DR academy employs an average of 30 regular employees including trainers, coaches, tutors and food suppliers among others.

The NBA will need to retain similar employees for its recently opened training center developed through the league's Chinese arm. In recognition of the fact most of their fan base and several NBA stars have come from China, the league has found it time to bring NBA standard basketball training and development to China through world class facilities. The facilities come outfitted with gyms, training rooms, swimming pools, player apartments, player restaurants and a rehabilitation center.

A discussion of international expansion would not be complete without posturing when American sports leagues will shift from expansion of franchises to Las Vegas or Seattle to overseas. The NHL is composed of the most international players of the four major leagues. After Canada, European countries make up the remaining source of foreign talent. The league has steadily increased the

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number of preseason and regular season games played in the continent over the years. As the commissioner has recently acknowledged, future expansion into Europe certainly seems “inevitable.” The NFL has similarly discussed expanding with a franchise in Europe, specifically eyeing London given that it has already played host to 30 regular season games.

The latest international plays by American sports leagues call for increased boots on the ground. Aside from players, executives and professional employees are needed to run overseas commercial and marketing operations while additional employees are needed to operate overseas venues and facilities.

## **International Employment Law Issues Confronting Sports Leagues**

When sports leagues and teams expand internationally and hire local talents abroad, they are often confronted with a myriad of employment law issues unfamiliar to a U.S. employer. Here we discuss some common issues that tend to catch American employers off guard.

### ***No Employment-at-Will***

Employment-at-will is a unique American invention. In just about every country outside of the U.S., employment is protected to a certain degree. Many countries do not permit termination of employment unless there is just cause, such as redundancy on an economic ground and performance issues. Many Asian and European countries fall in this camp.

In other countries such as Canada and India where no-cause termination is possible, notice must be given and severance paid depending on an employee’s years of service, position, and age. Even after employees are legally terminated, they may still qualify for re-hiring priorities in countries like France, China, and Korea.

### ***PTO and Carry-Over***

Here again, most foreign jurisdictions are much more employee-friendly than the U.S. In most countries in Europe, for instance, employees are generally entitled to at least 20 days of paid vacation. Employers have an obligation to make sure that the vacation is indeed taken as carryover of

unused statutory minimum vacation to the next year is often restricted and payouts in lieu of vacation is not permitted except at the time of employment termination. Employers can be fined – and even held criminally liable – for violating the minimum vacation requirements.

American employers also sometimes tend to forget that vacation time in many other countries means that the employees do not expect to be contacted by their employers at all. This “right to disconnect” is even guaranteed by law in some jurisdictions. As the definition of overtime “exempt” employees tend to be much narrower in other countries, trying to reach employees during their vacation may also lead to wage and hour violations in many cases.

### ***Employee Data Privacy and Consent***

The General Data Protection Regulation (GDPR) applies to organizations with employees in Europe. Many Asian and Latin American countries have enacted domestic data privacy laws similar to the GDPR. This means that U.S. sports leagues must follow strict requirements as to the types of employee data they may collect, how they may use such data, the notice and disclosures they must make, and the remedial measures they must take in the event of a data breach.

American employers often want to rely on employees’ consent for their collection and processing of personal data. A number of countries (mostly in Europe) however have made it clear that consent in the context of employment is not true consent as it may not have been voluntarily given considering the power imbalance between the parties.

One example came up during the first return-to-office phase after the initial peaks of COVID-19 infections. Companies in the U.S. widely adopted safety measures such as health questionnaires and temperature checks based on employee consent. In countries like Germany, such measures could not be implemented as freely due to concerns that employees’ consent to have their health data collected by their employers could not be voluntarily given.

### ***Heightened Risks for Sports Industry Employers***

Some employment-related risks are heightened in the context of sports given the unique culture and social positioning of the sports industry. Sports organizations,

especially those with international operations, are more likely to run afoul of harassment and bribery laws.

The masculine culture in some sports organizations also make them prone to sexual harassment and power harassment risks. Sometimes the harassment may be unintended, but it nonetheless exposes the employer to legal liabilities. We have investigated complaints from female employees of sports organizations who were offended by the “boys’ locker room-style” talk and questions from their male colleagues. Hazing, while culturally acceptable or even welcome in some sports organizations, could amount to illegal conduct in some countries under their anti-power harassment or anti-workplace bullying laws.

Further, the close connectedness between sports and politics in some countries increases the risk of anti-bribery law violations. For instance, obtaining permission to air an American baseball game and to contract with a government-controlled broadcaster will require your local employees to interact with government officials. Such interactions are strictly regulated by laws such as the Foreign Corrupt Practices Act and the UK Bribery Act, which hold organizations liable for conduct of their employees as well as contractors. As local norms of what constitutes a bribe may vary vastly, sports organizations are exposed to significant risks unless clear policies and contractual provisions are implemented and employees and contractors are properly trained.

### **Practical Guidance to Calm International Workplace Waters**

Sports organizations with international operations should consider the following measures to reduce employment-related risks:

- You should not use U.S.-style offer letters and employee handbooks. What may pass muster domestically is not necessarily sufficient to satisfy international employment standards – and could lead to unintended legal liability.
- Prepare employee policies and employment and contractor agreements that are compliant with local law. It will be essential for you to conduct regular reviews and update such policies and agreements as necessary.
- Familiarize yourself with the data privacy laws and practices in the foreign jurisdictions where your

organization operates. Permissible conduct by an employer may be significantly different under such laws compared to the U.S.

- Keep solid and up-to-date harassment and anti-bribery policies for each international jurisdiction to ensure compliance with the latest changes in the law. You should train local managers and employees regularly on these policies to handle local workplace issues most effectively.

Keeping abreast of workplace developments in multiple jurisdictions in the U.S. can be challenging enough. The need to additionally monitor international developments can seem daunting. We will monitor developments related to this area and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Sports Industry Team](#) or [International Practice Team](#).