



International HR – Offer Letters and Employment Contracts

Insights

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When a US company decides to hire an employee in another country the question of whether to send the applicant an offer letter inevitably arises. Sending an offer letter prior to the final contract is normal practice in the US. But this is not the case in other jurisdictions, and for good reason.

In foreign jurisdictions where the concept of employment “at will” does not exist, employment relationships are governed by the employment contract. The employment contract is typically (and advisably) in writing, but in some countries an oral contract is a legal and enforceable. Thus, it is important to consider how an offer is articulated: an offer letter sent to an individual outside of the U.S. will very often be considered by the recipient as the final contract of employment. When that new hire receives the employers’ complete set of terms and conditions laid out in the employment contract, they may refuse to sign it and insist that the terms laid out in the initial offer letter form the employment contract. To avoid a potential dispute with a new hire over the actual terms and conditions of employment, it is wise to prepare a contract of employment for the open position and send this to the new hire in the first instance.

Timing is another factor which will determine how a dispute over which document will govern the employment relationship, the initial offer letter or subsequent employment contract. Consider the scenario in which a new hire who has commenced employment with the employer after receiving an offer letter, receives another document from their employer which is stated to be the employment contract, replete with additional terms and conditions of which the employee had no prior notice. The employee could argue that the offer letter was his initial employment contract, and that was terminated without cause by the employer upon the issuance of the new terms of employment. In this case, the employer may be liable to pay certain penalties arising from the termination of the initial contract described in the offer letter.

To lower the risk of dispute at either the commencement or end of an employment relationship outside of the U.S., it is key to understand the labor and employment laws and regulations of the country and locality where the position is located. These may require employment contracts to be in writing, or to be in a particular language; they may require the incorporation of certain terms, or require the employer to give the new hire a written statement of the particulars of employment; they may define what act would give rise to a legal termination “for cause”. Further, they may dictate when during the hiring process an employment contract needs to be presented.

The best practice is to understand the employment and labor laws in the country where you are hiring before you start the recruiting process. Do not be tempted to send an offer letter (or seek legal advice before doing so), but have a contract drawn up for the position for which you are hiring and personalize it to the individual you want to hire. Understand that in the event of dispute, you will in some part rely upon the terms of the employment contract, so it is important to prepare your contracts with care.