



Top Three Tips: U. S. Companies Sending Expatriates To Macao and Singapore

Insights

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Multi-national companies interested in sending U.S. employees on expatriate assignments for casino- and other business-related reasons must ensure they are making the right decision in creating the specific expatriate assignment. They also must take prudent steps in preparing the terms and conditions of such assignments to limit legal liability. For example, many Asia-Pacific countries have opened their markets to foreign casino operators in the past decade. In 2000 Macao, a special administrative region of China, opened its gaming market to foreign firms. Since that time many multi-national companies have opened casinos successfully in Macao. However, it was recently reported that it is now difficult for foreign companies to open a casino in Macao, partially due to Macao's restriction on the use foreign workers. Also, since 2005, Singapore also has approved two casino projects, including one being built by the Las Vegas Sands.

The top three matters for U. S. companies to consider before creating an expatriate assignment, including in Macao and Singapore, are:

1. Employing foreign nationals. Companies should thoroughly research the laws of the countries in which they plan to do business to assess the long-term and immediate feasibility of assigning employees to work in a chosen location. Two of the local laws of interest are:

- **Macao.** On April 26, 2010, Macao's Law for the Employment of Non-residential Workers was enacted to protect local workers and limit the hiring of migrant workers. This law also restricts foreigners travelling to Macau on tourist visas from applying for work there. Multi-national companies doing business in Macao should also be aware of the recent labor laws passed there, including those requiring employers to pay their employees double-time for voluntary overtime, and five times the basic hourly rate for required overtime.
- **Singapore.** Singapore's "Employment of Foreign Manpower Act" prohibits employers from employing foreign workers unless the employee has a valid work pass. Under this law it is not a defense that an employer did not know an employee was a foreigner, unless the employer could prove it exercised due diligence to ascertain the employee's nationality. When a foreigner is found at any premises, the occupier of the premises shall be presumed, until the contrary is proven, to have employed the foreigner. This law also allows the police to arrest without warrant any person whom he believes has violated this law. Employer who violate this law could be liable for of \$30,000 or imprisonment up to two years.

2. Local Laws Regulating Business Operations. Multi-national companies and their business leaders, expatriate and local, must know the local laws for their specific businesses. For example, U. S. casino operators doing business in Singapore should ensure their business leaders are aware of the local laws that govern casinos, including:

- **Casino Control Act Advertising Regulations.** Singapore published regulations in February 2010 regulating all aspects of casino advertising, interviews and media releases, and the necessary approval of many such activities by the Singapore Tourism Board, with fines up to \$100,000 fines for violations. (Casino Control Advertising Regulations 2010)
- **Casino Money Laundering Laws.** Singapore published Casino Control Prevention of Money Laundering and Terrorism Financing Regulations in October 2009 requiring casino operators to ensure their employees (whether based in Singapore or elsewhere) comply with, and are regularly trained on, Singapore's laws relating to the prevention of money laundering and financing of terrorism, including: 1) customer due diligence measures; 2) detection and reporting significant cash and suspicious transactions; 3) prevailing techniques, methods and trends in money laundering and terrorism financing; and 4) the casino operator's obligation to create internal policies, procedures and controls governing the roles and responsibilities of its employees' compliance with this law. Casino operators can be liable for up to \$100,000 in fines upon being convicted of a violation of this law. (Singapore Law on Internal Policies and Training, under the Casino Control Act, Prevention of Money Laundering and Terrorism Financing)

2. Solidify the terms of the expatriate assignment – before the expatriate moves to the new location! Employers expect expatriate assignments to succeed, and for things to go smoothly, but that is not always the case. Some of the terms to “nail down” are expatriate's benefits such as: vacation and sick leave; family, birth, and adoption leave; pension; severance; completion and other bonuses; and post-employment non-competition and non-solicitation obligations. Some specific benefits, employment, and post-employment matters which need finalized in clear and documented terms prior to the beginning of an expatriate assignment are:

- **Does your U.S. pension plan carve out time when the employee is working abroad?** Is the employee going to be a participant in the pension plan of the international location? Will the employee remain on the U. S. pension plan? When this is not spelled out it not only can cause legal actions, but time and money for international actuaries, benefits consultants and lawyers to work out these difficult matters.
- **Which country's laws, if any, cover benefits for an expatriate employee?** For example, the U. S. Family and Medical Leave Act is one of the U.S. laws that does not extend to U.S. employees in other countries, while the family and medical leave provisions of the countries may not apply to the employee either. Therefore, when an event occurs, such as an illness for the person, his or her family member, or a pregnancy or adoption, employers will find it difficult trying to decide what to do with that employee or your policy.

- **Benefits disclaimers.** Benefits disclaimers regularly used by U. S. employers for expatriate assignment letters and benefit plan summaries may not be enforceable at all in other countries, depending upon what law governs a specific benefit. Multi-national employers should always ensure that they are not creating documents that inadvertently cause promises or contracts to occur.
- **Termination of employment.** What happens if due to an expatriate's job performance or business conditions, the expatriate's job is eliminated or terminated? General Advice. Prior to conducting performance management or job actions such as separation, multi-national companies must seek legal advice. In many countries, violation of employment laws carry not only civil penalties, but criminal ones as well. Further, U. S. employers that have published severance plans should "carve out" any possible severance to which an expatriate could be entitled to avoid multiple severance entitlements. Also, where there is a restructure causing an expatriate's job to be eliminated, it is best to return employee back to U.S. if an assignment or position exists to which an expatriate can be transferred. This step could help ensure that U. S. law governs any employment actions.
- **Non-competition and non-solicitation clauses.** Non-competition and non-solicitation clauses which are legal and enforceable in the U.S. are often not enforceable outside of the United States. Multi-national companies must seek legal advice before drafting or presenting such clauses to expatriate employees.
- **Requests for promises.** Avoid promises, whether oral or written, to employees prior to their expatriate assignment without the input of management and legal counsel. If an employee tries to obtain a promise of a job or benefits when he or she returns, then management must document its response to the employee, including if the response is that there are no promises or guarantees.
- **Completion of Assignment.** What happens when an expatriate completes an assignment? Multi-national companies must carefully and clearly prepare the terms and conditions of completion bonus policies and communications to avoid a dispute or uncertainty at the end of an expatriate's assignment.