

US Employment Law Summary for New or Emerging Businesses and Foreign Entrants to US Employment

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Foreign companies hiring employees in the US frequently overlook some of the fundamental US employment law requirements surrounding the employment relationship. Here you will find a general guide to some of the key US employment laws that foreign entrants into the US employment space will need to navigate.

Both federal law and many state laws prohibit discrimination in employment or employment practices (hiring, firing, rates of pay, promotions, terminations, etc.) based, under federal law, on race, color, religion, national origin, sex (including pregnancy, sexual orientation or gender identity), age, disability, genetic information (including family medical history), citizenship and veteran status – and on other categories on a state-by-state, or even local, basis. These laws also prohibit sexual harassment (as well as harassment based on race, religion and other protected characteristics) defined somewhat more broadly than many foreign investors may anticipate. These laws are enforced by federal and state agencies, as well as by private actions brought by persons alleging they are victims of discrimination.

The National Labor Relations Act (NLRA) governs the relationship between employers and unions. The NLRA permits employees to organize and bargain collectively with their employer. In general, employees may form labor unions, bargain as a unit with their employer and engage in collective activity designed to aid their collective bargaining or to organize their workplace for the first time. Each employer must permit its employees to engage in these activities and must bargain in good faith with any union that lawfully represents its employees.

The federal Fair Labor Standards Act (FLSA) and state laws regulate the payment of wages, including minimum wages, overtime compensation, when wages are paid and what deductions from wages are permitted. State laws vary widely on overtime and minimum wage exemptions, overtime eligibility rules and penalties for noncompliance with wage and hour regulations.

In the absence of an agreement or law to the contrary, employees in most US states are employed “at will,” which means that either the employer or the employee may terminate the employment relationship at any time for any reason or no reason (without any advance notice). There are numerous exceptions to the “at will” rule, so employers must check and comply with federal and state laws when terminating an employee.

New employers in the US must register with the federal Internal Revenue Service to obtain a federal employer identification number (EIN), which is used to report tax withholdings (income taxes, social security and Medicare) for employees. A new employer also must register with each state in which it has employees (including remote employees) to obtain a state employer number for state tax withholding and unemployment compensation contributions. Employee benefit plans, such as health and retirement plans, also are regulated by the IRS and are subject to significant legal requirements.

Injuries and illnesses arising out of and in the course of work are compensated through state “workers’ compensation” programs. Most employers obtain insurance to cover this responsibility. The federal Family and Medical Leave Act (FMLA) provides job protection and other benefits for employees taking leave for reasons covered by the act. Some states and individual municipalities have leave laws that provide benefits in addition to those provided by the FMLA (e.g., parental leave, sick leave, family and medical leave, voting leave and jury duty leave). The Uniformed Services Employment and Reemployment Rights Act (USERRA) extends certain job protections to employees who serve in the military, as well as reemployment protections for returning veterans.

The federal Worker Adjustment and Retraining Notification Act (WARN) requires 60 days’ notice to employees of covered “mass layoffs” or “plant closings,” and several states also have enacted similar laws.

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