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Workforces Stranded Abroad Sample Questionnaire and Document Checklist

Recent employment changes caused by the COVID-19 pandemic and President Trump's proclamation prohibiting certain visa beneficiaries from entering the United States, may permanently change how U.S. employers engage non-U.S. nationals. In particular, employers may be considering remote engagements. Employers with U.S.-based employees requesting or requiring remote work arrangements abroad can use this questionnaire to evaluate risk and determine strategy.

- Is the employee already abroad?
- What is the reason that the employee is / will be abroad?
 - Is the reason related to immigration?
 - Is the employee subject to an entry restriction?
 - Is the employee currently ineligible for U.S. work authorization?
 - Is the employee experiencing a lapse or delay in U.S. work authorization, or delays in visa issuance at a U.S. consulate?
 - Is the employee applying for or does the employee have a U.S. green card?
 - Is the arrangement solely at the employee's request for personal reasons?
- What is the *maximum* anticipated length of remote or cross-border work?
 - Fewer than three months?
 - Fewer than six months?
 - Fewer than two years?
 - Is the anticipated duration uncertain or out of the employee's control?
 - If immigration-related, what is the estimated timeframe in which the company anticipates knowing more about the employee's ability to re-enter the United States / obtain work authorization?
- In which country or countries will the employee work? For each country:
 - Does the employee have citizenship or work authorization?
 - Will dependent family members accompany the employee? If yes, will they have authorization to enter the country / remain in the country / work in the country?
 - Does the company have a subsidiary, affiliate, or business partner in the country in which the employee will work?
 - Is there an income tax [treaty](#) in place?
 - Is there a [totalization agreement](#) in place?
 - Has the employee previously worked in that country over the past 12 months?
 - If so, how many days?
 - Are there any additional laws that may affect the risk? For example,
 - Foreign exchange controls (e.g., India's)
 - Unfair dismissal protections (such as those in Brazil)

- Local labor contract or wage payment requirements (such as those in China and the United Arab Emirates)
- Home office safety requirements (e.g., the European Union's)
- Pay-to-play restrictive covenants (e.g., Spain's)
- Data protection / transfer restrictions (such as those in Europe and Korea)
- Where will the employee work (home, hotel, client site, etc.)?
- What are the employee's job duties? Will he or she:
 - Generate revenue?
 - Create intellectual property?
 - Visit client sites? If so, will this involve cross-border travel?
- What, if any, company property (e.g., laptops) will the employee possess remotely?
- Will the employee remain eligible for employer-sponsored benefits (e.g., 401(k) plans and health insurance) while on assignment?
- Would the employee's benefits apply abroad? Will an employee's eligibility to participate in a 401(k) plan jeopardize the eligibility of the plan?

Document Checklist (As Applicable)

- Border documents
 - Invitation letter (if applicable)
- U.S. re-entry documents (if applicable—U.S. green card holders who remain outside the United States for more than 365 days continuously)
- Letter or agreement with the employee
 - If the employee remains an employee of the U.S. company and is paid through the U.S. payroll system: U.S. at-will employment
 - Offset of severance and other non-U.S. entitlements
 - Is the employee receiving duplicate benefits?
 - What is the expiration date of the agreement?
 - Limitation on the authority to conclude contracts and other tax protections
 - Is the employee receiving any special benefits? Are there limitations on benefits eligibility?
 - Cite relevant policies
 - Compliance representations regarding
 - local work authorization
 - suitability of remote work location
 - Foreign Corrupt Practices Act
 - tax
 - use of company equipment
 - Representation that the arrangement is for the employee's individual reasons
 - Consent to data collection, use, and transfer
- Nondisclosure agreement (may be included in a remote work agreement)
 - Confidential information protection
 - Intellectual property protection
 - Restrictive covenants (if applicable)
- Intercompany services agreement with local partner (if applicable)

If you have any questions about this form, please contact: Diana Nehro | New York/Boston | Telephone: 646-283-2037 | E-mail: diana.nehro@ogletree.com or Ceri Koski | Denver, CO | Telephone: 303-764-6823 | E-mail: ceridwen.koski@ogletree.com

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