

IF YOUR EMPLOYEE

BREAKS

THE LAW

**THIS IS THE EXTENT OF YOUR
CORPORATE RESPONSIBILITY
IF ONE OF YOUR EXPATS
GETS INTO TROUBLE**

BY HEATHER LARSON

A simple Google search yields many global rules or regulations that seem perfectly reasonable in one culture but are perceived by others as odd, outdated, or just plain crazy. If those search results are to be believed, in Denmark, you must name your newborn one of the 41,000 country-approved names; in Greece, wearing high heels at archaeological sites is banned; in Germany, you can be fined if your vehicle runs out of fuel on the Autobahn; and in Japan, some cold medicines are illegal.

"It is tempting to find practices and laws in other countries 'weird,'" says Lisbeth Claus, professor of management and global HR at Willamette University in Salem, Oregon. "I caution people to distinguish between a cultural practice and a law, as employers must ensure that their policies and practices are not only legal, but also culturally appropriate."

"Culture deals with values, beliefs, needs, and attitudes that are socially preferable and expected in communities of people—whether they are nations, communities, organizations, industries, or professions," says an excerpt from Claus' new book, *Be (Come) an AWESOME Manager*.

Employees and employers must remember, cautions Claus, that while travelers and expats can potentially be forgiven for a minor cultural faux pas, ignorance of the law is not an excuse for breaking it, and organizations and individuals must comply with the laws in the countries where they operate.

Whose responsibility is it, then, to educate new expat employees about laws and cultural mores in their host location?

WHO BEARS THE BURDEN OF RESPONSIBILITY?

There's no easy answer to this question.

"A lot depends on the circumstances—what law we're talking about; how different it is from home-country norms; whether the violation is likely to arise in the course of the job versus off-hours; and whether the employee is a business traveler, expatriate, or foreign-local," notes Donald Dowling, shareholder with Littler, an employment and labor law practice.

Dowling says there's almost never a hard-and-fast rule forcing an employer to give an internationally mobile employee training on host-country criminal law.

Bruce McIndoe, president of WorldAware, a firm offering risk management solutions, agrees. He also wants to go on record saying he's not a lawyer but is

drawing his conclusions from his work background over the past 20 years.

"While I'm not aware of any legal requirement to inform foreign nationals of the local laws, it would make good business sense to do so," says McIndoe. "Organizations spend significant time and money finding, recruiting, and placing talent in foreign assignments. Why would they want them to accidentally fall afoul of some local law and get tied up in the legal system, possibly expelled from the country, or worse, end up in a local jail?"

For example, companies should warn employees not to accept anything like a package or papers from someone, because it might be drugs or secret information. You don't want them entrapped and then accused of being a spy, cautions John Rendeiro, vice president, global security and intelligence, at International SOS.

Some countries partially or fully ban alcohol, some have different rules regarding the blades on pocket knives, and satellite phones are illegal in certain countries.

Assignees and extended business travelers also have an obligation to learn about laws, customs, and traditions in their host country. If that's not part of their training, they should ask their employer to fill them in before they arrive in-country. Barring that, they may have to educate themselves.


Rendeiro says the employer should anticipate anything that might happen that is out of an employee's comfort zone. He gives driving as an example. In any country where drivers are on the other side of the road from what the employee is used to, he says, the assignee or traveler should consider taking other options such as ride-share, taxi, or public transportation.

"It's too easy to revert to how you drive in [your home country] and cause an accident," Rendeiro says. "Employees should also stay away from any kind of political activity, no matter what the country. Even peaceful political rallies can change quickly, and the unpredictability of civil unrest means travelers should avoid it."

ON THE CLOCK

If the expat gets into trouble unintentionally during working hours, the employer should assist him or her.

According to Claus, employers have a greater moral than legal obligation when someone commits a crime. When an international assignee gets into



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trouble in a host country, it impacts the brand and corporate image of the employer in addition to affecting the employee.

"Being arrested for involvement in a car accident in a foreign country, whether innocent or guilty, is always riskier for the person and the company," says Claus. "Therefore, in my experience, companies assist their employee mostly through diplomatic and other channels they trust."

Using channels you trust is key. Then, when you get that call that your employee is in trouble with the law, don't automatically presume guilt, says Rendeiro.

"Your first obligation is to provide local legal assistance," Rendeiro says. "Try to help [your employee] work things out to prevent any further damage."

If this trouble lands the expat in jail, the employer should assist with communication with family and friends; engage a security provider, if available; and make sure medical help is on standby, if needed, explains Rendeiro. You should also get the local embassy or consulate involved. Hire an investigative firm, if warranted. In other words, tap all the resources you have that can help.

Should the employee need legal representation, McIndoe says that in his experience the employer covers those costs.

OFF-DUTY ISSUES

"Even if the employee encounters legal problems when he's not technically 'working' or 'on the clock,' the company is not off the hook. It's still the

employer's corporate responsibility to support their staff while on business travel. Many organizations are now providing duty-of-care services to employees while on personal travel," says Rendeiro.

"We do have to face the fact that there are many things an employer can't do, but employees want to work for organizations that look after them," he adds.

McIndoe says that in the only case he's aware of in which the expat was not working when he allegedly broke the law, the employer did provide legal referrals but did not get involved in the case, nor did it pay for legal services. But, he says, he's never seen this issue specifically covered in any policy.

"I'm not aware of any legal obligation, and it comes down to the particular employer and the specific situation," explains McIndoe.

ACCOUNTABILITY FOR GIG, CONTRACT, AND FULL-TIME WORKERS

Any responsibility should be spelled out in the gig or contract worker's contract, McIndoe says. Full-time employees may have some additional protection.

For example, full-time employees of a U.S.-based company or a foreign company that is controlled by a U.S. employer are afforded some extended U.S. employment law rights.

"These laws include the Family and Medical Leave Act, Age Discrimination, Title VII Civil Rights, Fair Labor Standards, and others," says McIndoe.

"However, in certain cases, companies can invoke the foreign laws defense. That defense argues that to

AT-RISK INDIVIDUALS

Willamette University's Lisbeth Claus notes that employers have a duty of care to inform, prepare, and train all employees about legal risks in other countries prior to their departure. And they must assess the risks of sending specific "at-risk" people to certain countries, which is especially the case for LGBTQ assignees. More than 70 countries criminalize homosexuality; those specific countries are listed on a map published by Human Dignity Trust.

For an employer to send an LGBTQ person to one of those countries, it must: 1) conduct a risk assessment; 2) make the employee aware of the risks through education and training; and 3) take measures to mitigate the risk and support the employee, says Claus.

An employer should also never assign a mobile employee to do a job task that flatly violates host-country law, says Dowling. In one famous case, a U.S. airline refused to let Christian American pilots fly routes over Mecca, because, according to the case report, Saudi law prohibits nonbelievers in Islam from entering or even flying over the holy city. Doing so is a capital offense, and the penalty is beheading.

Alcoholic beverages present another potential cultural and legal risk. Sixteen countries impose criminal laws against alcohol, and expats or business travelers who consume it in their home locations need to be made aware of what is and isn't allowed.

adhere to a U.S. law would violate a law of the host country of their workplace location."

The following is an example cited by Ruppert Manes Narahari, a Pittsburgh-based law firm, on its website:

"Ella, a U.S. citizen, works for an American contractor in Afghanistan as an assistant manager. When a supervisor position opens, she applies for it, but her employer tells her that she can't be promoted because Afghanistan has a law forbidding women from supervising men. In the United States, Ella would have a sex discrimination case, but in Afghanistan, her employer has a foreign laws defense."

Technically, corporate social responsibility (CSR) is not a legal matter, says Claus, although some of the people issues under CSR may be regulated by law. Since the CSR of a company is based on principles and values regarding the relationships with its stakeholders, it should not matter whether the person is a customer, employee, or contract worker.

CAN INSURANCE HELP?

In some cases, taking care of the employee accused of breaking the law may get expensive. And whether insurance can help depends on several factors, says Dowling.

In these scenarios, the employee "in trouble" is, by definition, a criminal, Dowling says. Some insurance products, such as kidnap-and-ransom insurance, are designed only to pay crime victims. Another type, director and officer (D&O) insurance, might pay out for certain financial law violations, possibly even an FCPA (foreign bribery) claim. Some traffic laws are criminal laws, but if you're speeding—thus committing a crime—and get into a car accident, usually auto insurance pays the claim, unless the insurance company can prove you were driving recklessly.

Some employers may choose to carry these types of insurance. If you don't, then let employees know which types of insurance they might need and why. Trusted Choice suggests coverages can include international life insurance, war and terrorism insurance, political violence and kidnapping insurance, or personal liability insurance.

The obligation of the employer concerning an expat assignment should be spelled out in the policy or in the expat's contract, says McIndoe. If assignees are concerned about the host legal system or its laws, they should explore buying legal insurance to provide them with assistance and financial protection, McIndoe says.

"When you prepare your expats appropriately—inform them about crime, political unrest, medical care, and threats in their host country—it's less likely that they'll run afoul of the law," says Rendeiro.

Then, if things change in the country in question, be sure to keep your employees notified of those changes, since educating them about security doesn't end when they get to their station. It has just begun. *M*

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