

Avoiding the perils of foreign assignments

Steps to follow for a successful relocation

BY STEPHEN CRYNE

Some organizations think sending a star candidate on a foreign assignment to take care of the latest project can be done with a minimum of planning. But, to be really effective, foreign assignments must be meticulously planned.

According to Statistics Canada there are about 68,000 Canadians working abroad at any given time and, with more companies active in the global marketplace, this number is expected to increase. A Canadian Employee Relocation Council (CERC) survey conducted in 2005 found 68 per cent of companies expected foreign assignments to remain steady or increase.

Costs are also on the rise. It's not unusual to see relocation packages in the millions of dollars as companies send top executives overseas to exploit global business opportunities.

While the vast majority of relocations proceed very well with only minor bumps, organizations need to have a contingency plan in place in case things turn sour. With a tight labour market competing for global talent, it's not uncommon to see a star performer sent overseas being scooped up by the competition.

Chris Zarkadoulas, director of HR for Sun Life Financial, says companies need to protect their interests.

"One can't be cavalier about the situation, but understand that people and circumstances do change," says Zarkadoulas. "People are heading into an unusual situation, so you need to give them a complete sense of what they can expect both from a work and personal perspective, as well as the company's expectations."

Assignment letters

That's why the letter of assignment is so important and a best practice among international leaders, says Diana Havers, senior manager with the HR division of PricewaterhouseCoopers.

"It's here where many companies fail to take full stock of the issue," she says.

She encourages companies to "clearly lay out all of the possible scenarios in advance in the assignment letter so that both the employee and the company know their rights and obligations."

The letter forms the expatriate assignment agreement between the employee and the company, and it's not unusual to see these agreements run upwards of 14 pages. The agreement will outline: all of the conditions of the assignment; effective date and termination; accompaniment of the family; services to be performed; and location.

The agreement should also spell out compensation and benefits — pension and taxation are particularly complex issues that often need the assistance of a tax professional. Housing, medical and health coverage and home visits are items that need to be covered off in advance. Relocation supports and benefits form part of the agreement including items such as maintenance of the existing home, shipping of personal goods and cost of living allowances.

CERC survey data suggests the number of companies using these types of agreements has doubled between 2003 and 2005.

"A good agreement will go beyond these provisions and clearly identify what happens in the event things don't work out as planned," says Zarkadoulas. "The best place to start with that is identifying the employment

laws that apply. In Sun Life's case that can mean the expat's home country jurisdiction, the host country or even a third country depending on each situation."

Havers agrees and adds: "Who is employing the employee needs to be clearly spelled out. If there is involuntary termination of employment partway through the assignment, then it's agreed upfront which employment laws are going to apply for things such as notice and severance."

There are many things that can, and do, occur during the term of an assignment. Workers may end the assignment early due to a family sickness or ailing parents. In those kinds of cases, says Havers, "the company will generally take a humanitarian view and repatriate the employee without cost or penalty." The challenge becomes finding suitable employment for the returning employee within the organization. Most companies will allow the employee a reasonable period of time to get affairs in order and secure a suitable role in the company.

Recouping costs when things sour

But what happens when an organization has spent several hundreds of thousands of dollars to get that multi-million-dollar earner to move from Vancouver to New York, only to see him nabbed by the competition? That's where a well-crafted assignment agreement can help. Clauses around non-compete provisions are often standard and "clawback" provisions should follow suit. These provisions stipulate that if the employee terminates employment within a specified time then all, or a portion, of the costs of the assignment are to be repaid. This should include housing, costs incurred in selling properties in the old location and spousal supports — any costs the

employer has incurred in posting the employee.

Common practice is to prorate some or all of these costs and ensure there is clear severing of ties between the parties. The company doesn't want to be on the hook for getting the employee home if the situation doesn't work out with the new employer.

Employers are paying greater attention to the costs involved. In a 2006 CERC survey, 85 per cent of employers that offered relocation assistance to new hires had a clawback provision depending on the length of service with the employer at the time of termination.

While issues around criminal offences are rare, they can occur and do frustrate the assignment contract. A good assignment letter will spell out that employees are expected to abide by the laws of the host country and failure to do so may result in termination. Many companies, and particularly financial institutions, employ a global code of conduct. If there's a violation against reputation or a compliance risk, then the worker is terminated immediately and left to his own devices. The company may, depending on the nature of the violation and on a case-by-case basis, return the employee and family, but sever all ties in doing so.

The best advice for employers considering sending employees on a foreign assignment is to plan ahead and ensure a comprehensive expatriate assignment agreement is in place between the parties.

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