

To Write or not to Write? International Laws on Employment Agreements

By Celia Joseph

July 25, 2011

Employers in the United States, with the exception of a few jurisdictions, are accustomed to the concept of “employment at will”, which means that employees can be dismissed at any time and for any reason or no reason without notice or severance pay, unless there is a statute, contract or public policy legal tenet that provides otherwise. Further, U. S. employers also generally conduct business in a framework that allows them to decide whether or not to reduce an employment relationship to writing. However, managers, human resources professionals, recruiters and others who conduct business globally must be aware that the “employment at will” doctrine does not usually exist outside of the United States, and that many countries have specific laws requiring employment contracts. Employers who are not aware of these laws risk facing significant monetary consequences.

Numerous countries in regions throughout the world have specific statutes mandating the creation of written employment contracts. These statutes generally set forth requirements on a number of topics, including: the information that must be included in employment contracts; the duration of such contracts; limitations on fixed-term employment contracts; and regulations on job responsibilities that are not included in the initial written employment contract. The following is information on two countries that require the execution of written employment contracts:

- **People’s Republic of China.** The People’s Republic of China’s Employment Contract Law, which became effective on January 1, 2008, provided sweeping changes to an employer’s responsibilities in that country regarding the creation and nature of written employment contracts. For example, under this law an employer must provide a written employment contract to an employee within thirty days of his or her start date. If the employer does not comply with this requirement, the employee will be entitled to double salary. Further, if an employer and employee do not enter into a written agreement within twelve months of the employee’s start date, the employment relationship will be considered open-ended, with termination allowed only under certain limited circumstances. The law in China also sets limits on the ability of an employer to require fixed-term employment contracts. There are also local regulations throughout China that set forth more specific requirements on employment contracts.

- **Lithuania.** Lithuania's Labour Code requires that employment contracts be prepared in writing and in compliance with a form set forth in the statute. Employees must begin work the next day following the signing of the contract, unless the parties agree otherwise. If an employee begins work without a written contract, then a written contract must be executed subsequently between the parties. Lithuanian law provides a number of terms that must be included in the written agreement, including the location of work, a description of the job functions, and the employee's compensation. As with China, there are also restrictions on the execution of fixed-term employment agreements. Also, an employer may not require an employee to perform work unless a description of that work is included in the written contract. Therefore, an employer who wishes to add further responsibilities not mentioned in the written contract must prepare another employment contract and provide it to the employee for signature covering the additional work requirements. Employers also have recordkeeping responsibilities regarding employment contracts and addenda.

General Advice for Multi-National Employers. Multi-national employers who currently employ workers outside of the United States, or are considering doing so, should ensure they are familiar with the laws of those countries regarding employment contracts. Many countries have strict penalties for failing to comply with statutes governing employment contracts. This information is of special importance to companies that are just beginning to consider hiring employees outside of the United States, as the timing of the hiring process and commencement of business operations could depend upon the respective country's laws on employment contracts.