



Is my international team compliant?

A how-to guide to building compliance in
cross-border workforces for HR and global
people leads

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Compliance in today's marketplace



In today's increasingly dynamic global business landscape, expanding into foreign markets and creating multinational teams can give organisations the competitive edge they need to thrive in their sector internationally.

However, managing a workforce spread across multiple jurisdictions and maintaining full compliance in each location comes with challenges.

Ensuring compliance in each region is crucial to the ongoing success of your business, as falling foul of compliance regulations can carry significant consequences, from fines and more serious legal proceedings to reputational damage. In March of 2024, customer service company Arise were ordered to pay \$2 million after being found to have misclassified workers as independent contractors,¹ while sportswear giant Nike faced fines of \$350 million in a misclassification case brought against it in 2023.² At the time of writing, US financial services company Discover is being sued by investors over its compliance procedures, with Discover executives admitting that the organisation is 'paying the price' for underinvesting in compliance.³

Discover's admission is an honest and astute one, and their situation is not unique; in the cut and thrust of business growth, compliance can often be relegated to the backburner. However, with increasing clampdowns on non-compliance, it has never been more important to keep compliance from becoming an afterthought.

Key compliance challenges

Compliance can present a number of challenges for HR leaders, especially those managing cross-border workforces.

For example, a UK construction company, Company A, conducts the appropriate fieldwork and deduces that Japan is the best market into which it should expand, while maintaining the operation they are already running in the UK. Before beginning their expansion, the HR leaders within the company will need to consider the following key areas in which challenges may arise:



Making sure that your business is tax compliant is key to securing its future and ongoing success. When operating in more than one country – whether running registered businesses in-country, or employing talent in multiple locations – it is crucial to ensure a comprehensive understanding of local tax laws, in order to ensure compliance.

The State of Tax Justice 2023 report revealed that \$480 billion was lost to tax noncompliance, of which \$311 billion was lost to corporate tax abuse.⁴ Regulators take a dim view of organisations found to be non-compliant, and so it is in the interest of all business leaders to ensure 100% tax compliance no matter where in the world they are in operation.

Key compliance challenges

WORKER MISCLASSIFICATION



Misclassifying fulltime workers as independent contractors is a relatively common offence, and one in which employers often engage with a view to cutting costs. When a fulltime employee is misclassified as an independent contractor, the employer avoids costs such as employee tax, and the payment of benefits, bonuses, healthcare, etc.

However, in doing so, they risk serious repercussions. There have been a great number of significant misclassification cases in recent years, involving industry giants such as Nike, GrubHub, Amazon, and FedEx.⁵ In 2024, FedEx settled a misclassification case for \$228 million, the biggest misclassification lawsuit to date.⁶

While there are many cases of high-profile companies facing prosecution for misclassification, this can easily happen to businesses of any kind who fail to comply with regulations, and the impact of a large fine is much greater for smaller organisations than for large corporations.

Key compliance challenges



In the wake of the pandemic, the rise in remote working increased the risk of fraud as it became increasingly difficult for companies to retain control over their day-to-day dealings. According to The Association of Certified Fraud Examiners 2022, businesses in the United States stood to lose an average of 5% of their gross revenues to fraud that year, while small businesses had a median loss of \$150,000.⁷ In the UK, fraud costs organisations £158 billion annually, while PWC found that 46% of the world's businesses experienced fraud or other financial crime between 2020 and 2022.⁸

As financial crime rates continue to rise, governments around the world are implementing additional regulations, many of which apply to businesses in relation to their handling of finances and transactions, and their data protection processes.

It is crucial for HR leaders to remain abreast of any and all updates to legislation in their countries of business. For example, the UK has recently introduced the offence of “failure to prevent fraud”, as part of its Economic Crime and Corporate Transparency Act.⁹

Phase 1: Planning and defining the project's scope

From the beginning, defining and establishing the scope of your project is key to ensuring compliance, as this will allow you to identify every element of your endeavour which may pose a compliance risk.

Company A will need to consider a number of key factors before embarking on their new global project. These include:

Goals and objectives



Identify what you want to achieve through this project, outline specific aims and outcomes, and how you plan to make these happen.

Timeframes



Taking into account your timelines for this project, it is important to know approximately how long you have to complete a compliance assessment.

Key contacts



Keeping track of all your internal stakeholders, external partners and experts, and employee contacts is key to ensuring full compliance. Team members will need to be trained on compliance, and compliance regulations pertaining to all stakeholders, both internal and external, will need to be followed.

Resources

Take inventory of the resources you have, and the ones you need to gain access to in order to proceed with your global journey.



When expanding abroad, it is crucial that organisations have a clear vision of what they wish to achieve, as well as an accurate and realistic understanding of the tools and resources necessary for success. When seeking to expand into Japan, for example, Country A will need to be sure of what exactly they are seeking to achieve by expanding into this market, how long it will take to complete their compliance assessment and ensure complete compliance – based on local Japanese legislation – as well as how best to interact with and ensure compliance in relation to all stakeholders.

Phase 2: Discovery and internal field work

In order get to where you need to be, you need to assess where you are. Carrying out an audit of your existing scenario is the vital first step to assessing your current position and the steps needed to ensure full and ongoing compliance.

Company A will need to complete the following steps in preparation for their expansion:

Information gathering

A certain amount of key information will need to be gathered in order to complete a comprehensive compliance assessment. You will need to know the number of employees working in each country, as well as to collate all relevant documentation and records, such as contracts, performance reviews, registration information, and any other pertinent information.

In addition, you will need to assemble all policies and procedures that may impact the areas of compliance being addressed.



Phase 2: Discovery and internal field work

Identify areas of risk

When preparing for a compliance assessment, it's important to identify the particular areas which may present risks. Some areas to consider include:

Employment

Ensuring compliance with all local labour laws pertaining to aspects such as contracts, performance, and termination is essential.

Immigration

Supporting your workers who are being deployed in-country to follow all correct and legal pathways to compliant immigration by ensuring all visa and immigration processes are meticulously followed.

Payroll and taxation

Ensuring that all employees are registered correctly in the appropriate location. Relevant legislation will vary from country to country.

Benefits

Regulations around employee benefits and remuneration packages will also vary, and so it is key to be aware of this when employing workers in multiple jurisdictions.

Health and safety

Health and safety regulations, as well as laws relating to occupational health, and work from home considerations will vary between locations.

Identify areas of risk

Organisational risks

Being aware of permanent establishment risks in the countries in which you're intending to operate is crucial.

Permanent establishment

Permanent establishment is a type of business presence in a 'host' country (i.e.: one foreign to the enterprise's residence, or 'home' country which generates income, or VAT liability in the host jurisdiction).

PE is a way for tax authorities to assess which foreign businesses operating in their area fall under their jurisdiction – and should therefore be taxed – and which are exempt.¹⁰

Business entity type

Another important consideration is your business entity type in that country. The way you are registered locally can create a number of obligations; for example, your local tax burden will be contingent on the entity type, as well as the local personal liability of its shareholders. Determining whether you have an LLC, a corporation, a partnership, or an overseas entity registration is an early step towards clarifying the associated compliance risk.

Map the global scenario

The best way to prepare for the assessing your project's compliance in various locations is to map out the current global scenario, either in the form of a report, paper, or discovery meeting with your senior management.

When assessing a move into the Japanese market, Company A will need to be aware of all of the above factors, and act accordingly. For example, under Japan's domestic tax law, the scope of foreign corporation's taxable income sourced in Japan depends on the type of taxable presence that the organisation has in-country. Company A is a construction company, meaning that if they are generating income in Japan for one year or more, they will trigger permanent establishment.¹¹

Phase 3: Benchmark and analyse

When planning to hire staff in a new country, you need to assess the current state of employment standards in that country, and benchmark them against your intended employment packages.

Company A must therefore ensure that they:

Understand local law



In order to do this, it is important to get acquainted with local legislation in relation to your focus areas, for example, employment or tax regulations. Learn about the laws which govern this area of compliance. Learn about the laws which govern that area of compliance.

Obtain templates



It can be very helpful also to obtain templates for resources like contracts, offer letters, and health and safety assessments, which comply with all regional compliance laws.

Consult experts



At this stage, you may wish to consult expert partners and avail of their experience and local knowledge in order to ensure no potential area of risk is overlooked.

Utilise technology



There are many technological HR tools available to support HR leaders on their compliance journey. Platforms and resource hubs such as XpertHR, Immiguru, Lexology are all examples of technologies that can be utilised.

In the case of Company A, the local tax, business, and employment laws in Japan will differ greatly from those in the UK. Experts will be able to advise on the exact differences and compliance risks – for example, they can advise on Japan's primary piece of employment legislation, the Labour Standards Act, which relates to wages, working time, rest, annual leave, maternity and pregnancy rights, employment contract, discrimination and termination of employment.¹²

Phase 4: Find the gaps and analyse impact

In this phase, HR professionals compare their internal fieldwork with their research into local law, systematically identifying the gaps and evaluating the potential effects on the organisation. This phase is crucial for understanding the full scope of compliance issues and preparing targeted strategies to address them.

So when planning their expansion into Japan, Company A should:

Identify Gaps

Use the data collected from internal fieldwork to pinpoint specific compliance deficiencies across various jurisdictions.

Analyse Impact

Assess the potential risks and consequences of each identified gap; consider factors like legal penalties, financial losses, and reputational damage. Determine how these gaps might affect your employees, operations, and overall business strategy in each country.

Develop Mitigation Strategies

Create a prioritised action plan to address and close compliance gaps. You will need to simultaneously calculate the resource implication of your plan, including budget, timeframe, internal personnel, and external partnerships, and assign responsibilities to relevant teams to ensure timely implementation.

By thoroughly identifying compliance gaps and analysing their impacts, HR professionals can proactively manage risks and strengthen the organisation's global compliance framework, paving the way for smoother international operations and enhanced legal security.

Phase 5: Implementation

Once you have gathered all the relevant information, carried out an audit, and assessed the gaps, it is time to implement your compliance framework, which will help to ensure compliance across your global teams.

Implementing your compliance framework is no mean feat – there are many steps to achieving full compliance in multiple jurisdictions.

Company A's HR team are now faced with the task of operating compliantly across two vastly different sets of regulations, and so a clear compliance framework is crucial.

Communicating with Stakeholders



Ensure relevant stakeholders are aware of your findings, including senior leadership. Compliance frameworks need buy-in from the top down to be effective. Plus, whistleblowing instances of non-compliance sets the organisation on the right path towards resolving them.

Internal policies



Developing policies based on the regulatory frameworks of the jurisdictions in which your teams are operating will allow your employees to work in line with all local laws and ensure compliance. These policies can pertain to employment processes and classification, to the handling of data protection, and tax.

AI and technology



Automating some systems in order to eliminate the risk of human error in your compliance systems can be useful when striving for 100% compliance across global teams. The ability to avail of real time insights and improved accuracy can support your compliance processes.

Reporting procedures



Establish procedures to ensure that all activities engaged in by your organisation in the various countries are meticulously recorded to ensure compliance. One way to ensure that all processes are being followed is to conduct regular audits.

Compliance leadership



Appointing a designated employee or team of employees to oversee and ensure compliance throughout your global businesses means that all updates to regulations will be adhered to, all internal compliance standards maintained. This individual or team may also organise internal compliance training for staff to keep your teams up to date with all compliance requirements.

External audits



Engaging a HR solutions provider to conduct external audits of your organisation and assess any gaps will mean you can take immediate action if gaps are identified.

Achieving full compliance

Achieving full compliance across international teams can be a challenge for HR and global people leads. Enlisting the services of a global HR and employment solutions provider to provide a full compliance assessment can be the easiest and most secure way to identify compliance gaps, ensure up to date compliance with all regulatory requirements, and avoid severe penalties and associated difficulties if found to be noncompliant.

A global HR and employment solutions provider will provide high level expertise in the field of compliance. Availing of their knowledge regarding employment law, tax regulations, and best practices will mean you avoid costly mistakes and mitigate compliance risks, wage disputes, and violations.

This team of experts will conduct the compliance assessment effectively and efficiently, ensuring all areas of compliance are examined. A comprehensive report will then be produced, highlighting areas of concern and suggesting solutions. When operating abroad, it is incredibly important to avail of local expertise, as compliance regulations can vary so greatly between jurisdictions.

While hiring a team of experts does incur a cost, it ensures long-term savings by allowing your organisation to avoid expensive fines and legal fees if found to be noncompliant.

By utilising a global HR and employment solutions provider to conduct comprehensive compliance assessments, your organisation is investing in the future, guaranteeing that all legal requirements are adhered to, risks minimised, and nurturing a compliant and productive workplace.



References

References

1. Elliott, J. and Armstrong, K. (2024) Customer Service Company arise to pay \$2 million to workers to settle lawsuit, ProPublica. Available at: <https://www.propublica.org/article/arise-work-at-home-customer-service-settle-lawsuit> (Accessed: 4 June 2024).
2. Rushe, D. (2023) Nike could be fined over \$530m for misclassifying thousands of workers, The Guardian. Available at: <https://www.theguardian.com/business/2023/may/18/nike-tax-fines-temporary-workers> (Accessed: 4 June 2024).
3. Dale, J. (2023) Discover sued by investors over LAX compliance procedures, Compliance Week. Available at: <https://www.complianceweek.com/risk-management/discover-sued-by-investors-over-lax-compliance-procedures/33502.article#toggle> (Accessed: 04 June 2024).
4. (2023) State of Tax Justice 2023. Available at: <https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State of Tax Justice 2023 - Tax Justice Network - English.pdf> (Accessed: 4 June 2024).
5. Bauer, S. (2024) Wisconsin Supreme Court lets ruling stand that declared Amazon drivers to be employees, AP News. Available at: <https://apnews.com/article/amazon-wisconsin-delivery-drivers-fafa8b40f053545159252e747b2e176b> (Accessed: 4 June 2024).
6. Wood, R.W. (2015) Fedex settles independent contractor mislabeling case for \$228 million, Forbes. Available at: <https://www.forbes.com/sites/robertwood/2015/06/16/fedex-settles-driver-mislabeling-case-for-228-million/?sh=4186ac13c22e> (Accessed: 4 June 2024).
7. Fraud statistics - business fraud prevention (2023) The Fraud Resource Center, Inc. Available at: <https://businessfraudprevention.org/fraud-statistics/> (Accessed: 04 June 2024).
8. PricewaterhouseCoopers (2022) PWC's Global Economic Crime and Fraud Survey 2022, PwC. Available at: <https://www.pwc.com/gx/en/services/forensics/economic-crime-survey.html> (Accessed: 4 June 2024).
9. UK failure to prevent fraud offence: What do you need to do now? (2024) Global law firm | Norton Rose Fulbright. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/1997870f/uk-failure-to-prevent-fraud-offence-what-do-you-need-to-do-now> (Accessed: 4 June 2024).
10. Katsapaos, K. (2024) What is permanent establishment?, Mauve Group. Available at: <https://mauvegroup.com/innovation-hub/blog/what-is-permanent-establishment>. (Accessed: 6 June 2024).
11. Japan - Worldwide Tax Summaries (2021) Corporate - Corporate residence. Available at: [https://taxsummaries.pwc.com/japan/corporate/corporate-residence#:~:text=Permanent%20establishment%20\(PE\),that%20it%20has%20in%20Japan](https://taxsummaries.pwc.com/japan/corporate/corporate-residence#:~:text=Permanent%20establishment%20(PE),that%20it%20has%20in%20Japan). (Accessed: 11th June 2024).
12. (No date) Employment law in Japan | CIPD HR-inform. Available at: <https://www.hr-inform.co.uk/employment-law/employment-law-in-japan> (Accessed: 11th June 2024).