

## HIRING ABROAD AS A U.S. INSTITUTION

Employment laws in foreign countries are often complex, and they are typically designed to protect the employee, not the employer. Extreme care should be taken when hiring local employees outside the home country. An employment contract in the language of the home country may be required. Complying with local social health insurance, disability insurance, pension and other regulations must also be considered. Hiring professional legal experts who are well versed in employment laws of the host country is essential when employing host-country residents or equivalents abroad.

**Hiring Classifications:** These are provided to define the nature of employment relationships with individuals in foreign countries.

**Local-hire employees** are citizens or permanent residents of the country where the position is based. Local-hire staff fall into one of the following categories:

- Full time: an employee who works a standard work week (40 hours a week) on a regular basis in accordance with local standards or local labor laws.
- Part time: an employee who works less than a standard work week on a regular or irregular basis.

Employee benefits may apply on a pro-rated basis or depending on the service time and mutual agreement at the time of employment.

**Expatriates and third-country nationals (TCNs)** are generally hired and paid out of the home country and are assigned to work at a foreign location. For U. S. institutions, expatriates refer to American citizens and permanent residents working for a period of time outside the United States. Third-country nationals are defined as employees who are not a citizen of the home or host country. Expatriates and TCNs are typically governed by human resources policies of the home country.

**Temporary employees** (also known as casual employees) are individuals hired for a specific and limited period, often on an as-needed basis. They may be either home-country hires or local hires. These individuals are typically not entitled to all the benefits provided to regular staff. Whatever benefits are provided to them must be stated explicitly in the individuals' hire letters. Temporary employees are often hired for one of the following reasons:

- To replace an employee who is on vacation, leave or another short-term absence.
- To assist during peak work periods or with special projects.
- To fill a regular staff vacancy while recruiting a replacement permanent hire.

**Casual employees** are distinct from consultants in that they do not necessarily provide specialized services, and they may fill defined staff positions and supervise other staff members. Schools should provide the employee with a temporary employment letter that clearly specifies the nature of his or her employment, including his or her status and length of assignment. In the case of locally hired temporary employees, a school should review local labor law to determine the length of employment before the casual employee becomes a regular employee and entitled to all benefits.

**A consultant or independent contractor** is an individual retained by a project or activity for his or her specialized technical, program, or administrative expertise to work on a fee-for-service basis. Consultants are hired on a daily basis for a specific task and specific duration. For legal reasons they must not be confused with staff—for example, they must not be charged with performing duties within an established job classification, and they may not supervise staff. The terms of the consultancy should be defined in a consulting agreement in accordance with the guidelines established by the local country. Consultants are not entitled to benefits.

### **Important Considerations:**

- Determine the existing level of activity by University employees in a given jurisdiction.
- Given the level of university activity (number of employees and length of time) in a given jurisdiction, work with legal counsel to determine the options for locally compliant employment contracts for all potential host-country employees.
- Keep in mind that hiring foreign nationals in country can trigger complex compliance issues. Is the hiring of host-country employees mission critical? Will it require the University to establish a legal presence in the country? What are the associated costs?
- Discuss compliance issues at the project development stage (pre-proposal).
- Ensure local hiring is in compliance with local laws governing appropriate interview questions (e.g., prohibitions against questions concerning an individual's race, religion, tribal affiliation, or age).
- Know that it is often good practice to perform reference or background checks on candidates.
- Local salaries and benefits should be determined based on local market conditions, benefits regulation, and socially expected norms. Offering salaries and benefits of the home country to locally hired employees can cost the institution and project significantly more, and it may not be a compliant practice.
- Offers to local hires are typically made in the local currency of the host country. Establish a mutually acceptable currency conversion policy (e.g. a timetable with dedicated dates for conversion; or a fixed conversion rate).
- Local labor law may require payment of overtime in certain circumstances or for certain positions. All overtime should be accurately recorded and considered taxable income.
- Some countries also do not differentiate between part-time and full-time employees for certain benefits.
- It may be necessary to engage a local employment firm to assist in the recruiting process by advising on the most appropriate local publications to advertise job openings, identifying and screening candidates, and performing local employment services.
- Each country/jurisdiction has its own laws that govern the employment of foreign nationals, tax liability (income, VAT...), and the threshold of activity that triggers the “permanent establishment” which in turn compels the University to establish a formal business entity in the country.

Primary source: *International Projects Start-Up Guide*, University of Washington, 2016.

Accessed online at <http://finance.uw.edu/globalsupport/home>