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BUSINESS TRAVEL PLANNING FOR EMPLOYERS

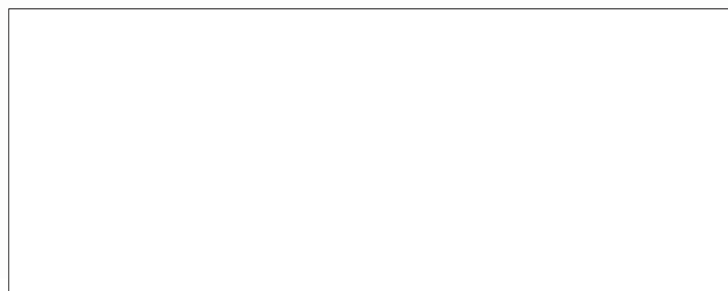
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BUSINESS TRAVEL PLANNING FOR EMPLOYERS

THREE CRITICAL TIPS FOR VISA AND IMMIGRATION SUCCESS

By Michael D. Ray, CRP, SPHR



Let's suppose your job is to run the global human resources department for your company. Your employee Michael Lee manages several functions for your company, and you've decided to move some of those functions to your shared-services team in India. You work out a project plan and timeline for the transition, and one critical part of the plan includes Michael traveling to India to train the new team.

As the transition proceeds, your schedule for this critical step gets pushed out a week, then several weeks, then months. Alarmed at having your new team in India sit idle, and with your project's success at risk, you schedule a meeting with Michael. He gives you even more shocking news: He will not be able to travel to India to train the new team due to immigration issues. A linchpin in the success of your project is pulled, and now you've got to make other plans completely. How could this happen?

Unfortunately, visa and immigration issues associated with business travel can cause situations just like this, and worse. Many Americans are shocked to learn that a visa is required for travel to India, and the same is true for people of many other nationalities. Further, even a basic business visa can take from a few days to nearly two weeks to obtain, depending on the circumstances and the jurisdiction. And the application process requires an extensive list of documents, including invitation letters from the host country. In the scenario above, for example, it might take days or weeks for Michael to obtain a business visa for India.

This points to a very basic requirement when planning international business travel, and to our first recommendation:

1 BE SURE TO PLAN AHEAD AND INVESTIGATE THE VISA AND IMMIGRATION REQUIREMENTS FOR EMPLOYEE TRAVEL.

Unfortunately, for this scenario, a business visa would not have been sufficient for Michael to take his trip to India. Rather, a work permit would have been required. Why? Many countries have special (and sometimes surprising) requirements that determine when a work permit is needed. Most people assume that the distinction between business visa and work permit requirements is based on the length of the travel. In fact, while that is often a consideration, the most significant factor can be what activities will be carried out on the trip.

“Always be prepared to show a copy of your return or onward-bound ticket.”

In many countries, attending meetings is considered business travel; however, in this case Michael was also carrying out training, which would have required a work permit in India. Sometimes these activities involve very subtle shading. For example, also in India, if “training” means sitting and observing a function and then providing feedback or analysis after the traveler returns to the home country, a business visa may be sufficient. But if he or she intends to interact with the team during this observation period and provide guidance, a work permit would be necessary.

In order to determine whether a business visa or work permit is required, many other factors come into play. What is the traveler’s nationality? The requirements can vary tremendously based on this consideration. For example, U.S. passport holders are eligible for entry into the Philippines with a 21-day

visa upon arrival at the airport, whereas travelers of many other nationalities are not and will need to secure their visas before arrival.

In some cases, even the nationality of employee relatives, including nontraveling family members, can impact the visa status. In our scenario, for example, let’s imagine Michael’s parents hold Chinese passports. Obtaining a work permit can take from five to 10 working days for typical U.S. passport holders to more than six to eight months for those who are of, or have family of, Chinese or Pakistani nationalities. In some cases, work permits may be refused outright.

In addition to these considerations, it’s important to think about how long the employee will travel. In some countries, such as China, unless the travel is for more than 90 days, the authorities will not issue work permits, and so a business visa is typically sufficient. What is the frequency of travel? Repetitive trips can be treated very differently than a single trip, for tax purposes as well as for visa issues.

Other factors may include where the employee is being paid and who the employer is. In one example of which I am aware, a company was attempting to obtain a work permit for an employee on extended travel in China. The application was held up at the stage of obtaining a residence permit because the Public Security Bureau needed to investigate possible tax concerns related to the employer in China.

All of this complexity leads to the next recommendation for planning international business travel:

2 BE SURE TO CONSULT QUALIFIED COUNSEL IN DEVELOPING YOUR TRAVEL POLICIES AND PLANNING FOR INDIVIDUAL TRAVEL.

Why does any of this matter? Maybe you’ve traveled internationally or know coworkers who have, and you have spent more time thinking about your assigned seat on the airplane than what the business visa or work permit requirements are for your destination. It all works out, doesn’t it?

The unfortunate answer is, no, it doesn’t. In today’s security-conscious environment, more scrutiny than ever is being given to business travelers. As a result, more entries are being delayed (and denied)

than ever before. It is not uncommon for travelers to make it all the way to their destination only to be denied entry. This is definitely disrupting, probably embarrassing, certainly wasteful, and almost always preventable with proper planning.

Traveling with improper immigration status and conducting activities that are not permitted under business visas can result in fines for the employer and/or employee and potentially incarceration and deportation for the employee. While the latter event is rare, anyone ever detained and questioned by authorities while traveling can attest that these are risks not to be taken lightly.

Abuse of the system can also affect the employer's reputation with immigration authorities. Employers have been put on official and unofficial "watch lists" because of perceptions that the company is violating the country's business travel rules. The result has been slow approval on actual work permits, audits of the company's practices, and other investigative and punitive actions.

Do not wait for a violation to begin to address these kinds of potential outcomes. This brings us to our final recommendation:

3

BE SURE TO PROACTIVELY ADDRESS THESE RISKS THROUGH A COMPREHENSIVE TRAVEL POLICY THAT DIRECTLY ADDRESSES HOW BUSINESS VISA AND WORK PERMIT REQUIREMENTS WILL BE HANDLED.

In many jurisdictions under normal circumstances, the immigration requirements for business travel can be relatively straightforward. The challenge, of course, is to know when they are straightforward and when much more focus and effort are needed. By following these simple recommendations, employers can successfully navigate these challenges and avoid surprising and unpleasant outcomes. *M*

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7 TIPS FOR BUSINESS TRAVELERS

The following are some general tips for international business travel. In many cases, specific country requirements may be more extensive.

1. Be sure you've investigated and vetted the requirements for the business visa or work permit for your destination with qualified counsel well in advance of your trip.
2. If there are no specific requirements, always travel with a letter from your employer confirming that you are an employee of the company and detailing the scope of your activities in the destination. This will help smooth the way through questions by authorities.
3. Always have a passport with at least six months' remaining validity. In many countries this is a requirement.
4. Always be prepared to show a copy of your return or onward-bound ticket.
5. Be prepared to show a source of support and funds. In some countries, such as Thailand, this can be a requirement.
6. Always monitor your stay in the destination country from date of arrival so as to ensure you do not overstay your entry visa or the time specified in the rules for business travel. Be aware that in some countries an extension is not possible.
7. If you are traveling repeatedly, be sure to bring this to the attention of both immigration and tax counsel, as this can result in increased scrutiny at the point of entry, potentially unintended tax consequences, or both.