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The top of the slide features a graphic illustration with a blue and white color scheme. On the left, the Squire Sanders logo is displayed in a serif font, with the words 'SQUIRE SANDERS' stacked vertically. To the right of the logo, the text 'LEGAL COUNSEL WORLDWIDE' is written in a smaller, sans-serif font, separated by a vertical line. The background of the illustration shows silhouettes of four people in a meeting around a table, and a globe with yellow orbital lines on the right side. The overall background is a gradient of light blue and white with wavy lines.

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# **What Every American Business Needs to Know About Having Employees in the UK**



## How do I set up the employment relationship?

- Employees must have the right to live and work in the UK
- Legal minimum requirements: Employees who have been employed for one month or more are entitled to a written statement of particulars of employment within two months of starting
- Contract of employment
  - Express terms
  - Implied terms
  - Recommended terms e.g. protecting the business – confidentiality/restrictive covenants

## **What common mistakes are made by American companies?**

- Assuming they can just hire and fire – specific procedures must be followed when dismissing employees and dealing with grievances
- Assuming employment rights do not apply until an employee has 1 year's service – no qualifying service required to bring a discrimination claim
- Lack of awareness of collective consultation obligations in redundancy situations and information and consultation obligations in business transfer/outsourcing situations





## Can I use “contract” employees or “temporary workers” to do the work?

- Yes – can provide employer with more flexibility
- 1 October 2011 – new rights for agency workers
- After a 12-week qualifying period agency workers will be entitled to the same basic employment and working conditions as if they had been employed direct by the hirer



## Hot topics

- The Agency Workers Regulations 2010 – already highlighted
- New employer pension duties – auto-enrolment
- Age discrimination – dealing with the implications of the abolition of the statutory Default Retirement Age



## How do I terminate an employee?

- Termination by dismissal
- Termination by resignation or agreement
- Statutory minimum notice requirements:
  - 1 week if employed for less than 2 years
  - 1 week per year of service up to a maximum of 12 weeks if employed for 2 years or more



## What are the penalties for wrongful termination?

- Claim for wrongful dismissal – damages are for the notice period
- Claim for unfair dismissal - compensation includes a basic award (calculated in the same way as a statutory redundancy payment) and a compensatory award (based on an employee's financial losses) which is currently capped at £68,400





## **Are there any key cultural differences that a U.S. employer should be aware of?**

- “England and America are two countries separated by a common language” – George Bernard Shaw
- Differences in communication styles – UK tends to be more formal and less direct
- Conflicting work styles
- Don’t assume there are no differences – highest number of failed international assignments involve Americans in the UK

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# **What Every American Business Needs to Know About Having Employees in Germany**



## How do I set up the employment relationship?

- Employees must have the right to live and work in Germany
- Legal minimum requirements: Employees are entitled to a written statement of particulars of employment within one month of starting
- Contract of employment
  - Content required by law:
    - Commencement date of the employment relationship, also length in the case of a fixed term of employment,
    - Job title,
    - Working place and working hours,
    - Remuneration/bonus/commission,
    - Vacation entitlement und dismissal notice periods
    - Reference to applicable collective bargaining agreements and works agreements
  - Recommended terms: Confidentiality/restrictive covenants/consent to the processing of personal data/return of property



## What common mistakes are made by American companies?

- Assuming a more flexible disposition of employees – a high level of protection against dismissal exists, special requirements must be met
- Assuming policies used in the U.S. can be transferred directly – they have to be carefully revised to ensure their conformity with German law
- In case a works council exists: Not considering and not observing collective rights with regard to restructurings, dismissals, hiring, transfers, social matters





## Can I use “contract” employees or “temporary workers” to do the work?

- Yes, but temporary workers are entitled to the same working conditions as the hirer’s employees and workers (“*principle of equal treatment*”)
- Hirer is obligated to inform temporary workers of job vacancies
- Fine:
  - Up to EUR 500,000 in case of a violation of existing law

## Hot topics

- Minimum salary in the labour leasing industries and other industries
- New amendments to the German Data Protection Act – strengthening the rights of the employees
- Court rulings in regard to the German Anti-Discrimination Act – especially with regards to discrimination due to age and, for example, holiday entitlements and default retirement



## How do I terminate an employment relationship?

- Termination: By dismissal or resignation or termination agreement
- Statutory minimum notice periods:
  - Probationary period of 6 months at the most : 14-day notice period
  - Basic notice period: 4 weeks to the 15<sup>th</sup> or the end of a calendar month
  - Depends on amount of seniority: Increases in steps up to 7 months if employee has been employed for 20 years or more
- Reasons for the termination:

If more than 10 employees are employed in the operation and the employee has been employed for more than 6 months, a reason for the termination is required:

Operational reasons, conduct-related reasons, or person-related reasons
- If a works council exists: No dismissal without prior information of the works council



## What are the penalties for wrongful termination?

- Employee has to be reemployed in his or her former position after winning the lawsuit
- Employer has to pay all outstanding salaries up to the date of reemployment
- In general: Labour court cannot set up a severance payment
- Please note: Lawsuits regularly end with a settlement





## **Are there any key cultural differences that a U.S. employer should be aware of?**

- German employees file lawsuits more often
- Personal data of employees and their living conditions are only disclosed to a very limited extent
- Works councils are an important part of the German working world

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# **What Every American Business Needs to Know About Having Employees in China**

## How do I set up the employment relationship?

- WFOE and employees
- Rep office, service companies and seconded employees
- Written Labor Service Contract
- Supplemental agreement
- Dual contract
- Employment and residence permits, as applicable



## What common mistakes are made by American companies?

- Late appreciation of tax and employment law benefits of seconding from Hong Kong subsidiary
- Incorrect classification of “expats”
- Incomplete Labor Service Contracts
- Think they can just use US employment template
- Under-contributions for social insurance
- Failure to withhold for IIT liability
- Misunderstanding of enforceability of restrictive covenants
- Excessive probationary period





## Can I use “contract” employees or “temporary workers” to do the work?

- Fixed-term contracts – can only use for 2 consecutive terms before turns into open-term contract
- Part-time allowed, must be less than 30 hours per week and less than 5 hours per day

## Hot topics

- China's New Social Insurance Law
- Trade Union Fee Collection

## How do I terminate an employee?

- Employee resignation with 30 days' prior notice, and without notice in special cases
- Termination by mutual agreement
- Expiry of contract
- Unilateral termination by employer



## What are the penalties for wrongful termination?

- Reinstatement + 125% of missing wages
- Non-reinstatement, but with 200% of missing wages



## **Are there any key cultural differences that a U.S. employer should be aware of?**

- Overly helpful employees and FCPA risks
- Hukou – household registration system
- All China Labor Union and the CCP
- Contracts to be registered have to be in Chinese
- Labor disputes