Agenda

- Global redundancies, corporate restructurings and other cost-cutting measures
- Pitfalls in entering new jurisdictions
- Growth through acquisitions
- Mobile employees and expatriate assignments
- Global social media issues
- Increased regulation of temporary workers, independent contractors and other alternative workers
- Increased focus on wage and hour compliance
- Emerging data privacy laws
- Unions and works councils trends
- Global compliance challenges
Global redundancies, corporate restructurings and other cost-cutting measures

- Companies still (or again) looking to cut headcount
  - Not always “across the board”
  - Selected geographies/business lines
- Companies have less patience for bad performers
- Other cost-cutting measures are also being considered
  - Salary & bonus reductions
  - Temporary shutdowns
  - Vacation and other benefit cuts
Global redundancies cheat-sheet

☑ Understand reason for the termination; document where necessary

☑ Obtain necessary information, including:
  - headcount per jurisdiction and state where relevant
  - anticipated impact per jurisdiction
  - information on any works councils or employee representatives
  - applicable CBAs
  - type of employee where relevant (e.g., India workmen vs. nonworkmen, Singapore EA employee vs. non-EA employee)
  - copies of employment contracts
  - copies of policies & procedures addressing termination requirements
  - information on previous termination practices
Global redundancies cheat-sheet (cont’d)

- Engage in selection of employees, following statutory selection criteria where relevant
- Confirm no protected employees
- Determine statutory and contractual (i) notice; (ii) severance; (iii) other payouts (vacation, non-compete, 13 months’ pay, etc.)
- Develop steplist and timeline for the implementation
- Draft necessary termination documentation (including consultation letters, termination letters, releases, etc.) and customize per employee
- Implement redundancies

**NB**: Avoid global announcements until consultations have been completed.
Pitfalls in entering new jurisdictions

- Global expansion continues
- Popular jurisdictions: Brazil, China, India, Eastern Europe, Middle East
- Common pitfalls:
  - “wrong” type of engagement
  - failure to consider exit strategy
Global expansion cheat-sheet

- Determine business plans and projections
- Determine corporate / doing business requirements
- Analyze permanent establishment tax exposure
- Analyze engagement options:
  - employee of local corporate presence
  - employee of foreign corporate presence
  - independent contractor
  - third party services employee
  - PEO employee
Growth through acquisitions

- Companies still looking at more “immediate” growth through acquisitions
- Some statistics indicate a failure rate of up to 70% of cross-border acquisitions, with 45% being attributed to “unexpected post-deal people problems”
- Lots of pitfalls throughout the process; get in the deal room early on!
Determine type of acquisition (share deal vs. asset deal)

Conduct a thorough due diligence (at least of big ticket exposure items)

Make sure employment input is provided on the terms of the deal agreement

Determine and work through pre-closing employment actions
  - contingent offers
  - key employment agreements
  - works council / union consultations
  - redundancies
- governmental / third party approvals
- employee transfer steps (understand distinctions between asset sale & share sale!)

NB: Anticipate long lead times

☑ Work through employee communications

NB: No gun jumping!

☑ Celebrate … and get ready for the post-acquisition integration!
Mobile employees and expatriate assignments

- Increased focus on compliance
- Companies review/update international assignment policies
- Global employment companies or GECs increasing in popularity
Mobile employees cheat-sheet

- Determine employment structure (termination & rehire, secondment, dual employment)
- Analyze permanent establishment / tax exposure (consider intercompany agreements)
- Analyze individual income tax impact (withholdings in home and host jurisdictions? tax treaty? tax equalization?)
- Analyze impact on social charges (withholdings & contributions in home and host jurisdictions, totalization agreement?)
- Analyze impact on benefits and global equity / stock grants
- Analyze immigration requirements
Global social media issues

- Global social media on the rise, including more regulation and case law
- Right to use social media in hiring limited internationally (data privacy, employment law)
- Right to use social media use in firing limited
- Companies need policies & procedures to address social media use during the employment relationship
Increased regulation of alternative workers

- Cash-strapped governments increasingly taking action
- Recent legal changes include new restrictions and limitations:
  - EU Agency Worker Directive implementation
  - China
  - Japan
  - Korea
Alternative workers cheat-sheet

☑️ Temporary Workers
  - permissible?
  - limitations on time or type?
  - ongoing obligations

☑️ Independent Contractors
  - what quacks like a duck is a duck
  - withholding obligations (VAT, GST)?
  - registration obligations (for contractor / for company)
Fixed-term employees

- are employees and need to comply with all applicable employment laws, including payroll like an employee

- permissible (limitations on duration? Limitations on number of renewals? reasons required for fixed-term?)
Increased focus on wage and hour compliance

- More cash-strapped governments seeking enforcement
- Class actions still uncommon, but recognized in some jurisdictions (Brazil, Canada)
- Overtime claims on the rise in some APAC jurisdictions (China, Taiwan, etc.)
- Exempt/non-exempt distinction often does not translate
Emerging data privacy laws

- The sleeping monster?
- EU Data Privacy Directive still not revised; increased and ongoing enforcement in the EU
- Emerging data privacy laws in APAC (e.g., India, Malaysia, Singapore, Taiwan) and Latin American (e.g., Colombia, Mexico, Peru, Uruguay)
Global compliance challenges

- Global codes & whistleblower hotlines still on the battlefield
- Dodd Frank claims from abroad on the rise
- FCPA & UK Bribery Act, and other global compliance challenges
Unions and works councils trends

- Power of unions increasing in some jurisdictions (e.g., Brazil, China)
- Mandatory works councils and increased employee awareness
- Global campaigns
QUESTIONS?
Maria Rodriguez–Labor and Employment, US

Maria Rodriguez is an Employment partner in the firm's Los Angeles office.

Ms. Rodriguez counsels domestic and foreign corporations in all areas of employment law compliance. She has extensive litigation defense experience, but ultimately prides herself on helping clients resolve disputes through proactive planning.

Understanding the needs of clients and the complexities involved in doing business in California, across the United States and with formalizing policies across jurisdictions that are manageable, compliant and consistent, she has worked with companies based in the UK, Sweden, Norway, France, Spain, Italy, Argentina, Chile, China, Taiwan, Japan and Korea, in compliance efforts and in the defense of litigation.

Ms. Rodriguez's litigation practice consists predominately of employment class action defense, including wage-hour, discrimination, WARN and seating class actions and multiple plaintiff cases. She has defeated class certification in numerous cases, including defeating appeals at the California Court of Appeals.

Ms. Rodriguez also defends employers in proceedings before the Department of Fair Employment and Housing, the Equal Opportunity Employment Commission, the California Labor Commissioner, the US Department of Labor, the Department of Justice and city and state government agencies that enforce employment laws.

Ms. Rodriguez works with companies on I9 compliance and company-wide changeovers to e-verify, and defends employers in document abuse cases under the Immigration Reform and Control Act.

Although Ms. Rodriguez works with employers across all industries, she has particularly extensive experience with clients in the media, technology, sports and entertainment, food and restaurant, airline, transportation and distribution, health care, and fashion industries. Being fluent in Spanish also allows her to provide additional service to clients based or doing business in Spanish-speaking countries.
Ute Krudewagen is a partner in DLA Piper's Labor and Employment group. Based in Silicon Valley, Ms. Krudewagen focuses on providing multinational companies with solutions to the challenges presented in managing a global workforce. In addition, she counsels companies on employment issues triggered by cross-border transactions.

Ms. Krudewagen advises international and cross-border clients on a broad range of complex labor and employment matters, including background checks, employment agreements, discrimination and harassment claims, social media issues, global policies and procedures, non-compete and proprietary information agreements, works council and union issues, codes of social responsibility, workplace privacy, employee assignments and global mobility programs, global reductions in force, and severance and retention plans.

She also counsels global companies on employment issues associated with transactions, including cross-border mergers and acquisitions, outsourcing transactions, post-acquisition integrations and tax restructurings. Her experience includes successfully addressing employment issues in transactions with workforces in more than 60 jurisdictions, with deal values ranging from US$2 million to more than US$8 billion, including negotiation and drafting of the deal agreement, employee transfers, consultations with unions and works councils, benefits harmonization, interim operating models and acquisition-related downsizings.

A frequent author, Ms. Krudewagen has been published in Workspan, The Daily Journal, Association of Corporate Counsel Newsstand, The Recorder, California Employment Law Magazine and Worldwide Financier, among others. She has also presented on international labor and employment topics at leading industry events, including the Women in International Trade, SHRM and National Trade Counsel conferences.

The Daily Journal named her as one of the 100 top women attorneys in California. Legal 500 has named her a recommended lawyer for workplace and employment counseling. She is recognized as a Rising Star by Super Lawyers of Northern California.