



# The International Employment Lawyer

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Dear Committee Members,

We are glad to present the 12th issue of the International Employment Lawyer.

This issue marks 3 years since the newsletter was introduced. We want to thank all the contributors for making this publication such a big success.

This issue is perhaps one of the most global to date, including articles from four continents of the world.

We look forward to seeing you all in Washington D.C. for the Section's Spring Meeting, where the Committee will be co-sponsoring three fantastic programs.

Even more, we hope to see many of you for the first stand-alone conference ever in the Committee's history, the ABA-AIJA conference 19-20 June in Hamburg.

For more information please visit:  
<http://www.aija.org/modules/events/index.php?id=252>

Best regards,  
Anders Etgen Reitz  
Editor in Chief



## France

### New French Law Reduces Litigation Risk in Terminating Employees

**By Roselyn S. Sands**

Ernst & Young Société d'Avocats

**A new French law passed this summer simplifies termination procedures and significantly reduces litigation exposure in terminating employees.**

Prior to the enactment of this law, basically two ways existed for employment to terminate: either 1) employee resignation; or 2) dismissal of the employee by the employer. In the former case, the employee received no payment from the employer. In the latter case, the employee was entitled to payment of a dismissal indemnity in accordance with the terms of the applicable collective bargaining agreement. In addition, an employer would be exposed to litigation risk if the dismissed employee sought damages for unfair dismissal as a dismissal needs to be justified.

Under the new law, the parties may terminate employment by mutual consent. Subject to certain procedural safeguards, the employee and the employer agree to the end of the employment relationship. The employee is still entitled to receive a termination payment (of an amount equivalent to that of the existing dismissal indemnity) and unemployment benefits. Moreover, the employee may well attempt to negotiate additional monies. However, there is no litigation risk for unfair termination.

That being said, the procedural safeguards are strict: a discussion meeting, the signature of an agreement, and approval from the Labor Inspector. Specific waiting periods need be complied with during which either party can rescind the agreement. Employees would still be able to bring claims for violations of the procedure or for vitiated consent.

Mutual termination of employee with special protections, such as works council members or union representatives, is more complicated as prior written authorization of the Labor Inspector is required.

It will be interesting to observe whether this new method becomes the predominant way for employee termination in France.



# Peru

## Last changes in Peruvian Labor legislation 2008

By **Luis Ore**, ORASI Consulting Group, Inc  
and **Miguel Lopez**, TOP Tributarios SAC

**Peru recently signed a free trade agreement with United States (FTA). Consequently, Peruvian laws had to undergo fundamental changes in order to comply with the FTA and to enable Peruvians to optimally benefit from the flow of good, services and foreign investment as of January 2009.**

As a consequence of the FTA, labor legislation was changed. The private sector hopes the changes will not result in raising costs. Thereby, it is important to note that in countries like Peru there is a high degree of economic informality (about 70% of businesses are informal) because being "formal" in Peru is very costly. It is no secret that most companies found ways to legally circumvent the law to optimize profits.

For instance, by the law an employee must be on the payroll of employer, and if the employee keeps working for one year, the employer has to make deposits to a financial institution twice a year, which will pay out such deposits to the employee upon termination. Further, the employer has to pay additional bonuses under the Bonus Act in July and December. Consequently, many companies avoid having employees on their payroll and rather prefer to out-

source the workforce to service providers which are, very obviously, not compliant with the applicable laws and regulations. Very often, the companies even set of special purpose vehicles (SPV) employing the employees and provide the respective services in order to optimize labor costs and reduce potential legal risks.

Although such SPVs in fact act as mere recruiting agencies that lend employees to companies, such arrangements do not qualify as prohibited outsourcing because under the respective law only the provision of employees without equipment qualifies as prohibited outsourcing and the parties obviously set up the service agreements including the provision of equipment.

Under the new law, the respective "equipment clause" was removed and the Labor Management Authority is empowered to order that workers in such SPVs are immediately transferred onto payroll of the company benefitting from the services. The new law also implements a joint liability between the using company and the SPV for the payment of wages and social benefits of the employees. Consequently, there is the benefitting company may not avoid labor costs by, for instance, letting the SPV going into bankruptcy.

There is much more to assess and analyze, and there is a lot of work to do and improvement to make in the Peruvian labor legislation. In general, lawyers, consultants and advisors hope that the law changes will not substantially increase the cost for businesses.



## United States

### Non-competes are dead-on arrival in California

By Anthony J. Oncidi and Jeremy Mittman

Proskauer Rose LLP

**In a significant new opinion with far-reaching implications, the California Supreme Court in *Edwards v. Arthur Andersen LLP*, has expressly parted company with the overwhelming majority of jurisdictions – both in the United States and throughout the world – ruling that noncompetition agreements are invalid in all but a few limited exceptions. Further, California’s high court determined that an employer’s use of even an unenforceable non-compete may hand an employee a tort claim that can be asserted against the employer for its attempted interference with the employee’s prospective economic advantage.**

As a condition of his employment with Arthur Andersen (the now defunct “big five” accounting firm), Edwards was required to execute a noncompetition agreement that prohibited his working for any Andersen client for 18 months post-termination as well as his soliciting Andersen clients and employees. When HSBC purchased Edwards’s work unit, he was asked to sign another agreement requiring him to resign voluntarily from Andersen and to release the firm from “any and all” claims in exchange for its agreement to forgo enforcement of the original noncompetition agreement. Edwards refused to sign the agreement and was terminated as a result.

In Edwards’ subsequent lawsuit against Andersen and HSBC, the lower court ruled in favor of defendants, finding the agreement to be enforceable under the so-called “narrow restraint” exception to the broad statutory prohibition against non-competes under California law. The trial judge reasoned that because Andersen only sought to prevent Edwards from working on or soliciting the particular accounts he had serviced or been exposed during his final 18 months at Andersen, the restraint did not significantly hamper his freedom of mobility or opportunities for reemployment – hence, it was simply a “narrow restraint.”

Edwards appealed, arguing that even the partial restraint Andersen sought to impose was incompatible with the plain language and spirit of California’s noncompete statute, which provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” The court of appeal agreed with Edwards, holding that the so-called “narrow restraint” exception was irreconcilable with precedent and a distortion of the statute itself. In affirming this part of the court of appeal’s judgment, the Supreme Court noted that California courts have historically read the noncompete statute as expressing a fundamental public policy favoring employee mobility and enterprise over a former employer’s economic security.



## United States

### Non-competes are dead-on arrival in California - Continued

Edwards is very good news for California employers that find themselves hiring more key employees than they lose because non-competes and customer non-solicitation provisions will presumably be treated as a nullity by any state or federal court applying California law. Indeed, simply including such provisions in an employment agreement may give an employee leverage to assert that the employer has tortiously interfered with his or her prospective economic advantage.

Multinational employers with operations outside of California should take heed of Edwards as well because California courts are reluctant to apply choice-of-law and forum-selection provisions that might adversely affect a California employee's substantive rights. When an employer loses an employee who has signed a non-compete or non-solicitation agreement to a California employer, there is a fairly good chance the new employer will file a declaratory relief action in California, relying on Edwards and seeking to invalidate the agreement. In such cases, the former employer should consider initiating litigation in its home jurisdiction, seeking to enforce the provision.

One thing is certain – that is that the California Supreme Court's new opinion in Edwards affects all employers with employees located in or destined for California (a state in which nearly one in every six U.S. employees lives and works) and should be considered carefully when hiring or shedding employees.



# Russia

## The Financial Crisis's Effect on the Labor Market

By Maxim Likholetov

Magnusson law firm

**The world financial crisis that we face nowadays exerts substantial influence not only on the Russian business in general but directly affects many Russian employees and poses a risk for them to lose their jobs in the near future due to staff reduction in many Russian companies and organizations.**

Among those sectors of business and economy in Russia that suffer most from consequences of the financial crisis are companies in the development and construction industry, production industry, banking and financial sectors. Some companies from these sectors due to the significant drop in turnover (in some cases for 50-70%) have to reduce their staff by more than 50%.

According to the estimates of some experts, the financial crisis can cause two to three million Russian employees to lose their jobs. The Russian labor legislation protects employees in the event of their discharge in connection with the reduction of staff of the company or organization. In accordance with the general rule established by the Russian Labor Code, employees shall be warned by an employer about impending discharge in connection with a reduction of the staff of a company/organization at least two months prior to such discharge.

Besides, according to the general rule after the termination of an employment contract because of a reduction of staff of a company or organization, an employee being discharged shall retain the average monthly earnings for a period of two months from the date of the discharge or until he finds a new job, whichever occurs first, but in any case he will not get less than an amount equal to one month's average earnings.

At the end of 2008, some major Russian companies proposed to amend the Russian labor legislation in order to simplify the dismissal procedure on the grounds of a reduction of staff of a company or organization and decrease the period of warning of the employee of an impending discharge, and cut the corresponding payments due to an employee.

In practice, Russian employers do not always observe the interests of their employees and often force employees to terminate their em-



## Russia

### The Financial Crisis's Effect on the Labor Market - Continued

employment contracts "at employee's initiative". As a result, the employee loses his job within two weeks and ceases to be entitled to any average monthly earnings.

Recently, the group of members of the Russian Parliament has introduced the draft of an amendment to the Act of the Russian Federation "On Employment in the Russian Federation" No. 1032-1 dated April 19, 1991. This draft proposes to establish equal rights for those former employees who have been discharged due to the reduction of staff of a company or organization and for those who have terminated their employment contracts "at their own initiative". According to the existing legislative provisions, starting from January 1, 2009, a former employee who has been discharged "at his own initiative" shall be entitled to unemployment compensation in the maximum amount of 1,275 rubles (approx. 46 US dollars) per month for a maximum period of six months.

This draft amendment extends this period up to a maximum of one year and sets equal rights with regard to unemployment compensation for the former workers mentioned above. The amount of compensation is proposed to be 75% of their salary but not more than 4,900 rubles (approx. 176 US dollars) per month (average salary in Russia as of the end of 2008 was 18,000 rubles – approx. 650 US dollars).

In addition to that, the Russian Government has prepared a plan of activities targeted at the recovery of the financial sector and other sectors of the economy, which includes measures for social support of employees and personal employment market in Russia.



## Canada

### Is it work? Or isn't it?

By Sergio Karas

Karas & Associates

**The Immigration and Refugee Protection Act ("IRPA"), and its Regulations have been in effect since June 28, 2002, and provide more flexibility to hire foreign workers than previous immigration legislation. However, employers should plan carefully when considering international relocations, to avoid the pitfalls that plague the system, including misunderstanding as to who can work in Canada and for how long, delays at visa processing posts overseas and compliance with Service Canada requirements for obtaining Labour Market Opinions ("LMOs").**

#### Definition of "work"

A foreign worker may be authorized to work in Canada without a permit or may be required to obtain one. The first step in determining whether a Work Permit is needed, is to consider the nature of the activities to be performed by the foreign worker. "Work" is defined in Section 2 of the IRPA Regulations as an activity for which wages or commission are earned, or which competes directly with Canadian citizens or permanent residents in the labour market.

If a foreign worker performs an activity that will result in receiving remuneration, he or

she will be engaging in "work". This includes salary or wages, commissions, receipts for fulfilling a service contract, or any other situation where foreign nationals receive payment for the performance of services. Even if the foreign worker does not receive remuneration, the activities performed may still constitute "work" if there appears to be an element of competition with the local labour force. To determine which activities could be considered "work", ask yourself the following questions:

- Will the foreign worker be doing something that a Canadian or permanent resident should really have the opportunity to do?
- Will the foreign worker be engaging in a business activity that is competitive in the marketplace?

The answers to these questions are not always obvious. In a recent case, the Federal Court had to decide what is the scope of the term "work" as defined in the IRPA Regulations. In *Juneja v. Canada*, the court was faced with an interesting fact situation: Mr. Juneja entered Canada with a Study Permit, which prohibited his employment unless authorized by Citizenship and Immigration Canada, a standard requirement. During the course of an investigation, Mr. Juneja was observed to be working at a local automobile dealership in Edmonton. He was arrested for working without authorization, contrary to Section 30(1) of the IRPA. An admissibility hearing was then convoked where Mr. Juneja was declared to be inadmissible to Canada and issued an Exclusion Order requiring him to leave the country. Mr. Juneja did not dispute the fact that he was not in possession of a Work Permit; however, he contended that his activity did not constitute "work" as defined in the IRPA Regulations.

Mr. Juneja argued that he was not being paid, and that he was only keeping track of his time in case he received the authorization to work in Canada. Although there was some dispute about the factual context, it was clear from the evidence that the employer had agreed to pay him \$8 an hour retroactively for the time he had spent



## Canada

### Is it work? Or isn't it? - Continued

performing his services at the dealership, should he receive his Work Permit. At the admissibility hearing, it was determined that this "contingent" arrangement entered upon between Mr. Juneja and the dealership owner was an agreement to bank Mr. Juneja's hours and to pay him a wage, albeit conditionally, and, therefore it was either an activity for which wages are paid or reasonably expected, or which is otherwise in direct competition with the employment activities of Canadians or permanent residents. Therefore, the tribunal concluded that, despite the fact that Mr. Juneja was not being paid immediately, his activities constituted "work" as defined in the IRPA Regulations.

Upon judicial review, the Federal Court entertained the question of whether a contingent arrangement to pay a wage for work performed meets the legal definition of "work" as set out in the IRPA Regulations. The question was answered in the affirmative. The Court held that Mr. Juneja had an expectation of future payment and the dealership had at least a conditional, and perhaps an absolute, legal obligation to pay for the work that he performed. This activity was of a character for which wages are paid or anticipated.

The Court further held that, even if Mr. Juneja was correct in arguing that the definition of "work" sets an absolute standard which is not fulfilled by a conditional arrangement for payment, his conduct was still caught by the second part of the definition, that is, the performance of an activity in direct competition with the activities of Canadians and permanent residents in the Canadian labour market: his employment directly competed with others who were legally entitled to work in Canada, and this was so whether a wage was paid or not. The Court rejected the contention that the second part of the definition of "work" only applied to self-employed persons, and held that the definition contains no such qualification. The Federal Court had already found in *Georges v. Canada*, dealing with previous immigration legislation, that the essential concern was to protect employment opportunities for Canadians whether wages were paid or not. The Court reasoned that neither *Georges* nor the later case of *Bernardez v. Canada* on the same subject could support a finding that Mr. Juneja was not working whether under the prior or current definition of "work".

In light of this recent Federal Court decision, it is important that individuals not be engaged to perform any services, either paid or where a reasonable expectation of earnings exists, without first obtaining a Work Permit for a specific employer and activity, in accordance with the IRPA Regulations.



# China

## Employee Rights and EEO Protections

By **K. Lesli Ligorner**

Paul, Hastings, Janofsky & Walker LLP

**In 2007, the People's Republic of China ("PRC") made great strides toward establishing a more comprehensive labor and employment law regime by promulgating a landmark number of national and local employment-related laws, regulations and rules. This evolving regime includes an unprecedented evolution of employees' rights and equal employment opportunity ("EEO") protections.**

**Most notably, for employees' rights, on January 1, 2008 the PRC Employment Contracts Law ("ECL") took effect. The ECL aims to, inter alia, increase the power of the individual employee vis-à-vis management in the workplace. Concomitantly, the ECL increases and emphasizes the power and involvement of trade unions in the workplace.**

**Also on January 1, 2008 the PRC Employment Promotion Law ("EPL") became effective. The EPL seeks to increase employment opportunities for more individuals, thereby seeking to achieve greater social stability.**

### **1. STRENGTHENING OF EMPLOYEE RIGHTS**

#### **(a) Employment Contracts Law – Development of Individual Employee Rights**

The Labor Law of the People's Republic of China ("PRC Labor Law") provided a solid foundation of employee and employer rights and responsibilities in the PRC since it became effective on January 1, 1995. The transformation of the economy since 1995 provided the catalyst for the PRC government to develop greater employee protections through the newly promulgated ECL. The primary goals of the ECL are threefold: extending employment relationships, increasing the leverage and rights of the individual employee in the workplace, and increasing the authority and prevalence of trade unions in the workplace.

#### **(i) Open-ended Employment Contracts Favored**

As a starting point, the ECL seeks to extend the length of the employment relationship between employees and employers by making fixed-term contracts less desirable to employers and curtailing their viability. Previously, employers were afforded considerable flexibility by employing workers on consecutive, short-term, fixed-term employment contracts. Employers had the option of renewing them annually or choosing not to renew them, generally without incurring any financial liability. That same degree of flexibility has disappeared with the ECL. Now, for example, employers must enter into open-ended contracts with employees upon the second consecutive renewal after January 1, 2008 of a fixed-term employment contract, unless legal justification exists for terminating the employment relationship or if an employee has ten or more years of service, upon the employee's contract renewal.

#### **(ii) Termination of an Employment Contract**

An employer or employee may not arbitrarily terminate an employment relationship. Rather, employers must have cause, as specifically provided under PRC law, and employers and employees alike



# China

## Employee Rights and EEO Protections - Continued

must generally provide notice of termination, unless PRC law provides otherwise.

Enhancing the rights of employees, the ECL expands upon the types of legally permissible grounds under which an employee may summarily quit the company. In addition to the grounds previously set out in the PRC Labor Law, the ECL allows an employee to terminate an employment contract without notice and with severance where the employer, for example, fails to pay the employee timely and in full, provides working conditions that contradict those set forth in the employment contract or has rules and regulations that violate laws or regulations and harm the employee's rights and interests. These new grounds provide employees with significant new rights in the event that an employer does not perform its obligations with respect to pay, safety and social insurance.

Further, the expiration of a fixed-term employment contract that an employer does not renew generally now requires the payment of severance.

### **(iii) Overtime**

Although the ECL does not provide any new regulations with respect to the payment of overtime, it reiterates the obligation for employers to comply with existing overtime obligations. The ECL restates that an employer may not compel employees, directly or indirectly, to work overtime and that employers must pay overtime compensation in accordance with existing laws and regulations. The ECL further emphasizes the employer's obligation to pay "wages", which includes overtime payments, in full and on time. The ECL provides for increased fines and penalties for employers who fail to pay overtime compensation properly.

### **(b) Annual Leave**

As of January 1, 2008, employees in the PRC have new rights with respect to paid annual leave. The Rules on Employees' Annual Leave ("Annual Leave Rules") provide annual leave entitlements to employees who have worked for at least twelve months, based on their total number of years in the workforce. Further, the Annual Leave Rules provide that if an employer cannot provide the statutorily required annual leave to the employee, upon the employee's consent, the employer must pay the employee compensation at the rate of 300% of the employee's regular salary in lieu of any statutorily required leave not taken.



# China

## Employee Rights and EEO Protections - Continued

### (c) Data Privacy

The strengthening of individual employee rights extends to data privacy as well. The ECL provides that the employer may only require an employee to provide basic information directly related to the employee's employment contract. Under the Employment Service and Employment Administration Regulations, effective as of January 1, 2008, an employer must keep its employees' personal data confidential and must obtain an employee's written consent before it may make the employee's personal data public. Nonetheless, the regulations contain no guidance as to what constitutes "personal data." Hence, while these provisions promote the protection of data privacy, the question of what data is protected remains.

### 2. STRENGTHENING OF THE TRADE UNION

In order to preserve harmony in the workplace and give employees greater rights in privately-owned enterprises, the PRC government is using trade unions as one means to establish greater co-determination by employees in the workplace. Indeed, the ECL increases the pressure on companies to establish a trade union. The plain language of the new law assumes that a trade union already exists in every company.

The ECL grants trade unions increased authority in the operations of companies, particularly through Article 4. Article 4 provides that employers must formulate rules and regulations that govern the workplace and must develop these internal rules with the involvement of the trade union. Further, Article 4 places an obligation on employers to consult with the trade union, listen to its opinions and negotiate with it on the formulation or implementation of the employer's policies that have a direct bearing on the "immediate interests" of the employees. Topics that fall under the category of "immediate interests" include compensation, benefits, working hours, job safety, social insurance, training, and discipline. Thus, Article 4 suggests that in order to bind employees with a new or amended policy that falls under Article 4's wide umbrella, a company must satisfy the consultation requirement.

Further, the ECL encourages the negotiation of collective contracts, providing that industry-wide collective contracts and area-wide collective contracts, limited geographically only by county lines, may be concluded. Hence, competitors within certain industries, such as mining, catering services and construction (industries which the ECL specifically mentions), may join each other at the negotiation table and apply the same collective contract to all of their employees. Similarly, unrelated companies in wholly unrelated industries may find them-



# China

## Employee Rights and EEO Protections - Continued

selves sitting together at a bargaining table simply because they are located within the same industrial park or office building. The Shanghai Collective Contract Regulations, which became effective on January 1, 2008, supplement the collective contract provisions found in the ECL and provide detailed procedures for conducting negotiations, the logistical aspects of negotiations and implementation of a collective contract.

### 3. STRENGTHENING OF EMPLOYEE EQUAL OPPORTUNITY RIGHTS

The EPL aims to improve and increase employment opportunities by curtailing discrimination in employment practices, including hiring and recruitment. It declares that all “workers shall be entitled to the right of equal employment.” Essentially, it seeks to protect applicants and employees against discrimination on the basis of “ethnicity, race, sex, religion, etc.” The ECL further identifies other protected categories that include women, disabled persons, infectious disease carriers, and rural workers. Based on the EPL, employers may not vary employment conditions or impose hiring restrictions based on any protected category, save for certain types of jobs which the government regulates (i.e., prohibition of women from working in underground mines or lifting heavy items).

The EPL’s prohibition against discrimination of infectious disease carriers, which includes Hepatitis B carriers, signifies the PRC government’s acknowledgement that Hepatitis B carriers who are otherwise healthy and able to work need specific protection. According to some reports, there are currently 120 million Hepatitis B carriers in China – nearly 10% of the population. It has been quite common in the PRC for employers to ask potential hires about their medical history or administer medical check-ups to determine if candidates are carriers of Hepatitis B and make hiring decisions based on the results. Article 30 of the EPL codifies the prohibition against an employer rejecting a qualified candidate on the basis of his/her status as a carrier of an infectious disease.

With respect to gender discrimination, the EPL provides that “women are entitled to equal labor rights as men” and may not be refused employment based on their gender. Restrictions on female employees in relation to marriage and childbirth are expressly prohibited by the EPL. For example, in the past some companies penalized female employees who had a baby (which entitled them to paid maternity and nursing leave) during the first few years of their employment. The EPL expressly prohibits such practices. To the extent that a company does continue to maintain such restrictions on its female employees, presumably the ECL’s provi-



# China

## Employee Rights and EEO Protections - Continued

sion permitting an employee to resign without notice and with severance if an employer's rules violate the law and harm the employee's rights and interests would apply.

The EPL also prohibits discrimination against migrant workers by seeking to eliminate discrimination based on a worker's origin. In recent years the large number of workers who migrated from rural areas to urban areas in search of jobs has exacerbated the occurrence of discrimination on the basis of worker origin.

Disabled persons are also afforded greater rights and protections under the EPL. The EPL encourages enterprises to create new positions, supports the employment of unemployed and disabled persons, and grants preferential tax treatment to enterprises that employ a specified ratio (which has not yet been released) of disabled persons.

2007 also saw the passage of implementing regulations in a number of municipalities and provinces across the country in connection with the August 2005 amendment of the Law for the Protection of Women's Rights and Interests ("Women's Protection Law"). The new local implementing regulations further strengthen the rights of female employees, inter alia, to be free from sexual harassment in the workplace by defining what conduct constitutes sexual harassment and explicitly linking protections from sexual harassment under the Women's Protection Law to employers.

#### **4. ENFORCEMENT OF EMPLOYMENT LAW DEVELOPMENTS**

The amount of change in the PRC employment law regime in 2007 was unprecedented. Undoubtedly, the establishment of myriad, new national and local employment laws in 2008 strengthened employee rights in the workplace. Enforcement and compliance will likely be a gradual, evolving process as these new laws and regulations leave significant room for interpretation. Thus, the degree of enforcement and compliance throughout the PRC will remain cloudy, as there are numerous variables that still need definition.



## United States

### English as “Company Language” ?

By Donald C. Dowling, j.nr.

White & Case LLP

**These days, multinational headquarters proactively use intranets, e-mail and all-employee distributions to issue global employee communications to employees worldwide, often in English. For example, multinational headquarters post English-language global HR policies, codes of conduct and whistleblower hotline communications on company intranets, and distribute compensation/benefits documents in English.**

**To facilitate headquarters-issued global employee communications, some multinationals even some headquartered in non-English-speaking countries go so far as to designate English their “official company language.” After all, English fluency is vital in today’s globalized business world.**

Unfortunately a multinational’s designation of English (or some other language) as “official company language” is for the most part legally meaningless. Employers must comply with language laws everywhere they operate. Even if English were a viable lingua franca for business (and in many respects it is not; most people worldwide, including many business leaders, do not speak fluent English), there are three legal doctrines blocking worldwide English-language employee communications: (1) flat prohibitions (2) enforceability barriers (3) local courts.

1. Flat prohibitions: France, which sponsors an academy upholding the integrity of the French language, has a statute called Loi Toubon that in effect commands French employers “Thou Shalt Communicate with Thy Local Employees Exclusively in French.” In 2006 a US Fortune 10 multinational got fined US\$800,000 (halved on appeal from US\$1.6 million) for a violation, after its headquarters had issued English benefits documents to France employees.

Quebec and Belgium have similar laws. Belgium’s grows out of the uniquely Belgian tension between Flemish/Dutch and Walloon/French; Quebec’s permits some employee opt-outs. In Spain, “Autonomous Communities” require certain communications in the local co-official language (such as Catalan or Basque).

2. Enforceability barriers: But most countries do not actually fine employers for issuing communications in a foreign language. More common is a second tier of countries imposing rules that render foreign-language communications void. In these countries (e.g., Chile, Poland, Russia, Vietnam), English-language employment documents could be per se unenforceable.

Further, Costa Rica, El Salvador, Guatemala and Honduras impose laws that invalidate work rules not in Spanish. Other countries (e.g.,



## United States

### English as “Company Language” ? - Continued

Mali, Mozambique, Nicaragua, Ukraine) affirmatively require that employment agreements be in local- or dual-language format.

3. Local courts: In countries not in the previous two categories, local statutes tend not to regulate the language of employee communications. But outside the English-speaking world English-language communications, even where not per se illegal, are not readily enforceable in local proceedings.

To understand the dynamic here, imagine the reverse. Think of Toyota’s auto plant in Georgetown Kentucky. If Toyota headquarters in Japan issues a global code of conduct in its language - Japanese - and later disciplines a Kentucky worker for violating the code, no Kentucky judge would hold the Kentucky worker responsible for reading Japanese.

Outside the U.S. this issue arises even before a dispute gets to court. Certain employer policies/plans must be notified to local agencies or local employee representatives (trade unions, works councils, health/safety committees). In Haiti, Panama, Peru, Niger and elsewhere, laws require employment agreements be filed with local agencies - in the local language. To get filed, policies and plans in English will usually need to be translated.



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Committee Leadership 2008 / 2009

- Co - Chair** **Thomas Griebe**  
Taylor Wessing  
t.griebe@taylorwessing.com  
(New Members Officer)
- Co - Chair** **Anders Etgen Reitz**  
Magnusson  
anders.etgen.reitz@magnussonlaw.com  
(Newsletter Editor)
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despres@gide.com  
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jan.swinnen@lafili-law.be  
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## Calendar of events

**April 14 - 18, 2009**  
**Spring Meeting 2009**  
**Washington, DC**

**June 19 - 20, 2009**  
**ABA - AIJA Meeting**  
**Hamburg, Germany**

For more information please contact  
Anders Etgen Reitz  
[anders.etgen.reitz@magnussonlaw.com](mailto:anders.etgen.reitz@magnussonlaw.com)

### Editorial

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International Law.

Please submit contributions to:

Anders Etgen Reitz Editor-in-Chief Magnusson Ny Kongensgade 10, 2 1472 Copenhagen Denmark <a href="mailto:anders.etgen.reitz@magnussonlaw.com">anders.etgen.reitz@magnussonlaw.com</a>	Ueli Sommer Co-editor Walder Wyss & Partners Seefeldstrasse 123 8008 Zurich Switzerland <a href="mailto:usommer@wwp.ch">usommer@wwp.ch</a>
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