
Listserv Summary: Recruiting Agents and Labor Laws

July 13, 2016

An inquiry was made to the AIEA Listserv asking for insight regarding recruiting agents and labor laws. Specific questions include:

1. Did your institution ever run into problems/issue with local labor laws in your engagement of agents?
2. Did your General Counsel or CFO raise concerns with you on unintended consequences of local labor laws in your engagement with agents?
3. Did your institution ever engage an external consultant (KPMG or similar) or local in-country counsel to assess potential risks linked to local labor laws in the engagement of agents?

Summary of responses:

There were five responses to this inquiry.

Two indicated that similar concerns had been raised within their institution but neither pursued outside consultants or counsel.

Three answers emphatically indicated that the concerns are misplaced, all for the same main reason: the US institution does not employ the agency staff. It enters into a contractual service agreement with an entity who is then responsible to adhere to local labor legislation. If anything, US institutions may want to add contractual language around the US Foreign Corrupt Practices act, in case agencies rely on the help of country officials.

The most comprehensive response is included below:

I am responding as someone who has implemented large scale agency operations at several different institutions. I have also advised a multitude of US institutions on implementing agency recruitment.

I believe your internal stakeholders have misplaced concerns. Your institution will be entering into contractual relationships with foreign companies who employ people locally – these companies have local labor law obligations, but not you. You will be paying those companies commission for students recruited; you will not be paying for any specific quantum of labor, or

the effort of specific individuals. Your institution, therefore, has no exposure relative to local labor laws.

I will go a step further: Even if you paid an agency for a dedicated staff member to focus exclusively on recruitment to your institution, so long as the staff member remained on the foreign company's payroll and the foreign company was paying its local obligation vis-à-vis health insurance, retirement, etc., then you would still be insulated from local labor laws – in much the same way that if you took out an office at a Regis Office Suites in Beijing, and also paid Regis for local office support, you would have no local exposure.

In all my years in the field, this is actually the first time I have heard the question asked in relation to student recruitment agencies. I hope that this response helps.