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English Is *Not* Your Exclusive Company Language

International Employee Communications and Mandatory Translations

Challenge:

US multinationals frequently issue all-hands global employee communications in English. Some designate English their "official company language." But untranslated workplace communications can violate language laws abroad.

Translating human resources policies and employee communications can be a million-dollar issue. The Texas Supreme Court once overturned a US$1.6 million jury verdict for worker compensation retaliation in large part because the allegedly retaliatory act was consistent with a provision in a company handbook that the employer had communicated in Spanish to the monolingual Spanish-speaking worker plaintiff—the company had even had the worker sign a handbook acknowledgement "written in Spanish." *Haggar Clothing v. Hernandez*, 164 S.W. 3d 386, 387 (2005). Whatever the cost to translate that particular handbook and acknowledgement was well worth US$1.6 million.

The *Haggar Clothing* employer was unusual in that it translated documents for domestic American staff. Many multinationals take the completely opposite approach and avoid translating even HR communications for their non-English-speaking jurisdictions abroad. This strategy, while streamlined and frugal, risks violating foreign workplace *language laws*. Before issuing any English-only international employee communication, investigate and comply with applicable translation mandates.

In the old days (say, 20 or more years ago), multinationals ran global HR as siloed operations, with little day-to-day coordination from headquarters HR. In that bygone era, almost all a multinational employer's communications to local workers at its plant, in say, Montreal, came from onsite Québécois personnel administrators—in French. Work rules for its office, in say, Tokyo, came from onsite Japanese management—in Japanese. Benefit plans for its employees in São Paulo were drafted by local Brazilians—in Portuguese. Employment contracts in every country were in the local language, or at least in two-column, dual-language format.

Pointer:

Designating English as "official company language" is at best symbolic, not compliant. Account for translation mandates before issuing, internationally, English-language employee communications, policies, codes of conduct or benefits documents.

Each monthly issue of *Global HR Hot Topic* focuses on a specific challenge to globalizing HR and offers state-of-the-art ideas for ensuring best practices in international HR management and compliance. White & Case's International Labor and Employment Law practice helps multinationals globalize business operations, monitor employment law compliance across borders and resolve international labor and employment issues.

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In many respects this regime continues even today. Multinationals' foreign local HR teams constantly generate routine local employment contracts, policies, benefits documents and HR communications for local workforces in the local language. The difference is that, on top of local communications, headquarters now steps in with intranets, e-newsletters, all-hands emails and global policy/plan distributions, transmitting a new layer of global and regional HR documents to affiliate employees worldwide—often in English. These documents might be anything from internal news bulletins to routine email announcements to global HR policies/handbooks/codes of conduct/whistleblower hotline communications to global/regional bonus plans, sales incentive plans, compensation plans, benefits plans, equity plans—and more.

Issuing headquarters HR documents in English cuts down on translation delays, translation costs, the risk of a message getting "lost in translation" and eliminates the problem of issuing inconsistent, competing versions of the same document. Many American multinationals issue global HR communications in English because, they reason, fluency is necessary in today's globalized business world and anyone who comes to work for a US-based company probably should understand English anyway. For that matter, even some multinationals headquartered in parts of the non-English-speaking world, such as Luxembourg and Scandinavia, are now starting to designate English as their "official" language.

But a designation of English as "official company language" is for the most part symbolic; it offers no defense to an accusation of breaching a workplace language law. Indeed, an "official English" designation might itself be argued to evidence a prior intent to flout local language laws. Multinationals are powerless to exempt themselves from these laws. English-speaking countries tend not to impose language mandates, so multinationals often miss the legal issue here entirely, getting blindsided by foreign translation requirements.

An English-only stance can also spark unfair labor practices and labor disputes. In April 2011, 185 employees at the Saint-Marcellin-en-Forez, France plant of UK-based Morgan Thermal Ceramics went on strike because their "Anglo Saxon imperialist management" would "say 'hello' in French," but otherwise communicated only in English (*The Telegraph*, UK, 4/20/11).

The easy legal advice here is to tell every multinational to translate every cross-border workplace communication into every relevant language. But that approach is too burdensome, expensive and time-consuming to be practical. Multinationals headquartered in the English-speaking world inevitably issue certain cross-border employee communications in English. The question, therefore: *What are the precise legal constraints?*

Ascertaining overseas workplace language laws is trickier than it might seem. The world's workplace language laws impose very different types of mandates. The problem is that advisors tend to report, unhelpfully, that in their jurisdiction local translations are "necessary" or "required," or "must" or "should" be issued. This advice fails to distinguish high-risk countries where untranslated workplace communications are themselves flatly illegal from low-risk countries where translations are only theoretically "necessary" or "required" later, if the employer some day needs to enter a document as evidence in a local court.

We can categorize the world's workplace language laws into four tiers: (1) flat prohibitions (2) enforceability prohibitions (3) *de facto* language requirements and (4) hostile reception in local proceedings. Then, beyond legal compliance comes the problem that untranslated employee communications raise human resources and business issues. Here, we first discuss the four levels of workplace language laws and then we offer some thoughts on the HR and business issues.

Four Levels of Workplace Language Laws

Flat prohibitions

The world's toughest workplace language laws are the flat prohibitions, the absolute bans that punish employers for the act of issuing written communications to employees other than in the local language. Examples:

- *France*, which sponsors an academy with the *raison d'être* of upholding the integrity of the French language, imposes a statute called the *Loi Toubon* that in effect commands "Thou Shalt Communicate with Thy Local Employees Exclusively in French." The French labor code (at arts. R.1323-1, L.1321-6, R.5334-1, L.5331-4) imposes fines for issuing employment documents other than in French. In 2006, a US *Fortune* 10 multinational got sanctioned *(astreinte)* US$800,000 (halved on appeal from an initial sanction of US$1.6 million) because US headquarters had issued English-language training and health/safety documents to subsidiary employees in France. (*GE Medical Systems v. Works Council*, Versailles Ct. App., Mar. 2, 2006.)

- *Belgium* also flatly prohibits issuing documents to employees in foreign languages. Belgium's law grows out of the uniquely Belgian tension between Flemish Dutch and Walloon French, and so requires employee communications in the regional language. Where to draw regional lines sometimes gets disputed.

- *Quebec* imposes a law that requires written employee communications in French (Charter of French Lang., bill 101, at arts. 4, 46). Quebec allows opt-outs—individual employees can sign waivers declaring they speak English and accept English communications. But an employer cannot simply hire English speakers and demand opt-outs, because Quebec courts forbid employers from conditioning most jobs on fluency in English (*cf. Pouliot c. Quality Inn*, 2011 QCCRT 214 (CanLII)).

- In *Spain*, in some regions ("Autonomous Communities"), sectoral collective bargaining agreements bind all employers in certain industries, and require employee communications be in both co-official languages (Spanish plus the regional language, such as Catalan or Basque).
- *Mongolia* requires that all employment documents be in Mongolian; violators are subject to fines (Mongolia Law on Official Language of the State, art. 5.4).
- *Turkey* requires that human resources policies, if not all HR communications, be in Turkish; violators are subject to "administrative fines."

Enforceability Prohibitions

Only relatively few jurisdictions impose these flat prohibitions that punish employers just for issuing untranslated communications. More common are countries like Chile, Macedonia, Poland and Russia with laws that invalidate untranslated employee communications, rendering them void even as to affected employees fluent in the document's language. Under these laws, for example, a multinational that issues an untranslated work rule or code of conduct is estopped from disciplining an employee for violating it. In one recent case, the French Supreme Court invalidated an employer's bonus term sheet because it was written in English (*Cass. Soc.* 09-67492, June 29, 2011). The terminated employee—who apparently had understood the term sheet perfectly well—won his full target bonus. The criteria by which his bonus should have been reduced had not appeared in French and so were unenforceable. (Under France's *Loi Toubon*, that employer might also have been sanctioned.)

- **Untranslated work orders unenforceable:** Venezuela plus a number of Central American countries including Costa Rica, El Salvador, Guatemala and Honduras impose laws that invalidate work rules not in Spanish. These laws are said to be a legacy of the era when American plantation bosses barked English-language orders at banana workers, firing hapless uncomprehending locals. Because HR policies, handbooks and codes of conduct invariably contain "work rules," to be enforceable these must appear in Spanish.
- **Untranslated employment agreements unenforceable:** A number of countries including Egypt, Mali, Mozambique, Nicaragua and Ukraine affirmatively require that, to be enforceable, employment agreements be in the local language (or dual-language format). Slovakia requires that written "legal acts of employment relations" (presumably employment contracts and binding HR policies) be in Slovak. Non-compliant documents are unenforceable (Slovak Act No. 270/1995 Col.).

***De facto* language requirements**

Many countries require, by law, that employers submit certain documents to government agencies and certain other documents to workers or their representatives. These laws tend to be silent on language, but untranslated submissions will not usually comply. For example, imagine a hypothetical unionized Boston subsidiary of a German-headquartered company that tries to file a German-language qualified retirement plan with the US IRS and DOL, and that then tries to submit a German-language benefits proposal to its Boston labor union local. These submissions do not likely comply with ERISA filing requirements and the National Labor Relations Act § 8(a)(5).

It works the same way abroad. Countries from Haiti and Panama to Peru, Niger, Vietnam and beyond require employers to file employment agreements with local agencies. Almost every country requires submitting at least payroll data to government agencies, as well as, in many cases, other HR data filed with government labor, tax, social security and data protection authorities. Also, most countries require employers to turn over certain documents and proposals to employee representatives. France and Germany, for example, require giving draft HR polices, benefit plans and crisis plans to works councils and health and safety committees.

Submitting these documents in a foreign language rarely complies. The translation burdens of European Works Councils alone are enormous. In essence, the laws that require these submissions are *de facto* translation mandates as to the specific documents submitted. For this reason, a multinational trying to launch a global code of conduct, a global whistleblower hotline or a global pandemic policy can find itself under a *de facto* duty to translate in many jurisdictions. (But there are exceptions; in Scandinavia, for example, government agencies and even trade unions might accept certain English documents.)

Hostile reception in local proceedings

These workplace language laws, although important, are exceptional. Most jurisdictions impose no language law or translation mandate as to most routine HR communications. In non-English-speaking countries, issuing English-language HR communications is often legal, in that untranslated documents do not usually violate specific mandates. But everywhere on Earth, employees can argue that HR communications in foreign languages are presumptively unenforceable, especially as to staff not proficient in the language.

To understand the dynamic here, take an American example. Think of Toyota's auto plant in Georgetown, Kentucky (*cf.* www.toyotageorgetown.com). Imagine, hypothetically, if Toyota's Aichi, Japan headquarters were to issue to its Kentucky staff a global code of conduct and a global equity plan in its native language—Japanese. Imagine that Toyota's management then disciplined a Kentucky autoworker for violating some provision in the code. Also imagine that management invoked some term in the equity plan to cut off share-vesting rights of a terminating

Kentucky executive. If the autoworker's obligation to follow the code of conduct and the terminated executive's rights under the equity plan became issues in local litigation, no judge in Kentucky is likely to hold these locals responsible for complying with, or understanding, Japanese-language texts. Remember, the Texas Supreme Court reversed a US$1.6 million jury award in the *Haggar Clothing* case in part because the employer had translated its policy for the plaintiff.

It works the same way abroad. Multinationals often need to establish in overseas labor courts that local employees were bound to follow (or were on notice of) some HR policy or offering. Expect to have a tough time meeting that burden when the policy or offering had been issued in a foreign language—even if it issued in the "global language" of English, and even if the document later gets translated, after-the-fact, to be admitted in evidence in the local court. The multinational might argue that the employee in question himself speaks English, but a monolingual local judge may show sympathy for an employee claiming otherwise.

Human Resources and Business Issues

Any multinational can designate English as its "official company language." And many multinationals do. Official-English designations are meant to streamline and speed employee communications and also to reduce costs. Indeed, in this age of constant, fluid HR communications—intranets, emails, global Human Resources Information Systems—having to stop and translate every routine HR communication into every possibly relevant language is, if not impossible, at least cumbersome, expensive, slow and impractical.

We have discussed four levels of workplace language laws—flat prohibition, enforceability prohibition, *de facto* language requirement and hostile reception in local proceedings.

But because these mandates are the exception (again, most employee communications in most jurisdictions do not have to be translated), the question often shifts from whether a multinational employer *can* issue English-language global HR communications to whether it *makes business sense* to issue English documents in non-native-English-speaking countries. Whether to translate more often raises business and human resources issues than strictly legal analysis.

Even where legal, distributing untranslated HR documents to non-English-speaking workforces does not always make business sense and can be bad HR. English is not quite the *lingua franca* of international business that Americans think it is. Much of the world, and many key executives, do not speak fluent English. Even a book titled "*English as a Global Language*" concedes that "English-monolingual companies are increasingly encountering [communication] difficulties as they try to expand in those areas of the world thought to have the greatest prospects of growth, such as East Asia, South America and Eastern Europe—areas where English has traditionally had a relatively low presence" (by David Crystal, Cambridge Univ. Press, 2d ed. 2003, p. 19).

Translating key employee communications is usually a good HR practice and often makes good business sense. The purpose of any employee communication, after all, is to get a message across to staff. We all understand messages best in our native tongues. And translating respects ethnic diversity. American employees working stateside for multinationals based overseas well understand the frustration and exclusion of conversations and documents in headquarters language.

Of course, English is, in some respects, unique because it is a *lingua franca* and a common denominator among many. The fact remains, though, that most people on Earth do not speak it.