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How to Make Global Employee Communications Comply with Overseas Translation Mandates

Employment and Labor

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Whether a multinational must translate employee communications overseas traditionally never got

asked very often. Decades ago, multinationals ran their international operations as siloed units. Headquarters exercised little day-to-day oversight over foreign personnel matters and transmitted few if any messages or documents directly to overseas rank-and-file workers.

In that era, a multinational's work orders to local laborers at a plant in, say, Montreal came from onsite Quebecois personnel administrators — in French. The written list of work rules for a sales office in Tokyo (work-rule lists are mandatory in Japan) came from local Japanese human resources — in Japanese. Profit-sharing documents for workers in Guadalajara (employee profit sharing is mandatory in Mexico) originated in-country, in Mexico — in Spanish. Written individual and collective employment contracts in every locale emerged locally, in the local language.

In many respects, this regime continues today. Multinationals' local HR teams around the world continue to generate routine employment contracts, local work rules, local HR policies, local benefits documents, and other local communications for local workforces in the local language.

What differs now is that *on top* of all the various local HR communications, headquarters often steps in and issues an ever-widening layer of international HR communications — company intranets, e-newsletters, all-hands emails, global HR policies, global handbooks, global codes of conduct/ethics, global whistleblower hotlines, global and regional bonus plans, international sales incentive plans, cross-border compensation, benefits and equity plans, expatriate programs, and on and on, down to routine all-hands news announcements.

These days, to streamline and speed up cross-border internal communications, multinationals increasingly communicate workplace messages and documents internationally in the original English version only. There are advantages and disadvantages to issuing untranslated English-language HR communications to staff around the world.

> English-only global HR communications sometimes antagonize organized labor.

The main advantage to issuing English-only workforce documents worldwide is that a single English communication is always faster, cheaper and more streamlined than generating and distributing multiple translated versions across various countries.

Also, the English-only approach eliminates the possibility of confusion and even legal exposure from *bad translations*. For example, the US NLRB once held an employer committed an unfair labor practice by issuing a "mistranslat[ed]" communication — even though the English-language original was legally worded.

Issuing English-only HR communications and documents to non-English-speaking workforces triggers three disadvantages: staff misunderstandings, labor strife, and legal compliance.

- **Staff misunderstandings:** Obviously, workers in non-English-speaking countries are prone to misunderstanding communications, particularly complex documents with legal ramifications, written in a language foreign to them.
- **Labor strife:** English-only global HR communications sometimes antagonize organized labor. In April 2011, for example, 185 employees at the Saint-Marcellin-en-Forez, France plant of a UK-based company walked off and on strike because "Anglo Saxon imperialist management" would "say 'hello' in French," but otherwise communicated only in English. In a separate situation in Saint-Just-Chaleyss, France, a union, a workplace safety committee and a works

council successfully sued their Paris-headquartered employer “for imposing an English-language computer program.”

- **Legal compliance:** As the French union lawsuit shows, failing to translate can give rise to legal liability. For example, one French appeals court decision fined a US multinational US$800,000 — halved on appeal from an initial fine of US$1.6 million — because headquarters had illegally issued English-language HR documents to French staff, in violation of a French-language mandate.

Even where laws do not prohibit foreign language staff communications, sometimes issuing a translation can insulate an employer against significant liability. For example, a monolingual Spanish-speaking worker once won a US$1.6 million jury verdict for retaliation, but the Texas Supreme Court later reversed and vacated that judgment in large part because the adverse employment action had been consistent with a provision in a company handbook that the employer had duly translated into Spanish. The court held there was no retaliation in part because the translation had put the plaintiff on notice of how the employer would respond to his actions.

Multinationals account for these advantages and disadvantages of issuing English-only international staff communications in different ways. Sometimes multinational headquarters issue internal messages only in English; other times headquarters promulgate translations.

Some multinationals translate almost everything that goes out globally; others translate almost nothing. Some multinationals are so reluctant to issue translations that they have formally declared English their “official company language.”

These organizations reason that, after all, English fluency is necessary in today’s globalized business world, and anyone who signs on to work for a US-headquartered company should understand English. In fact, there are multinationals headquartered outside the English-speaking world — France, Japan, Luxembourg, Scandinavia, for example — that have actually declared English their "official company language."

Our discussion here unpacks the legal and human resources ramifications of transmitting untranslated English-only employee communications across a multinational’s cross-border operations, whether or not under a formal English as “official company language” designation.

We analyze issues involving: (a) legal compliance and untranslated international staff communications; (b) four levels of workplace language laws/translation mandates; and (c) the human resources and diversity component.

Legal compliance and untranslated international staff communications

The threshold challenge to a multinational issuing cross-border communications and documents only in English (whether under a designation of English as “official company language” or not) is legal compliance.

Many multinationals issue English-only communications to overseas employees quite willing to accept the risks of staff misunderstandings and labor strife, asking only: *Will issuing this in English, without translating, violate some law somewhere?* That is: *Do foreign laws compel us to translate?*

This legal piece to cross-border English-only workplace communications is indeed vital. Multinationals cannot afford to get blindsided by foreign translation requirements, and designating

English as the “official company language” risks blinding an organization to its legal responsibilities.

Obviously, employers are powerless to opt out of legal mandates, and so at best, a company’s designation of English as its “official company language” is legally meaningless and merely symbolic. At worst, this designation could be argued to evidence prior intent to flout language mandates.

Distinguish English-only work rules

In addressing multinational headquarters designations of English as the “official company language,” distinguish the completely separate phenomenon of the “English-only rule.” An organization that designates English as its “official company language” announces that, going forward, management (headquarters and overseas local supervisors) around the world will promulgate internal staff communications and documents in English, presumably without translating them.

By contrast, a workplace “English-only rule” is an employer mandate requiring that *employees themselves* communicate only in English with co-workers, suppliers, and customers. A violator who breaches an English-only work rule by slipping into some other language faces discipline.

In the United States, English-only work rules can be held illegal for two distinct reasons under domestic labor and employment law. First, an English-only work rule might violate discrimination law to the extent it can “disadvantag[e] an individual’s employment opportunities on the basis of national origin.” Second, an English-only rule might violate collective labor law if it “restrict[s employees] from engaging in concerted [union] activity.”

However, English-only work rules raise legal challenges mostly under US domestic law; few other jurisdictions seem to impose specific legal doctrines regulating these particular rules. Because our discussion here addresses the cross-border context, we do not address the issue of English-only work rules under US domestic law.

Ensuring translations are thorough lowers the risk of exposure for a bad translation.

A multinational that prefers to issue English-language HR communications and documents across non-English-speaking jurisdictions without translating them, whether or not formally decreeing English its “official company language,” must account for overseas workplace translation mandates, or what we might call “workplace language laws.”

Even without parsing what, specifically, workplace language laws require, the easy compliance advice here is to recommend that multinationals thoroughly translate each cross-border workplace communication and document into every relevant local language, reserving the English version only for English-speaking countries.

The “translate everything” approach eliminates the other two disadvantages of English-only workplace communications (staff misunderstandings and labor strife), and it completely eliminates the legal compliance challenge as to workplace language laws. (Ensuring translations are thorough lowers the risk of exposure for a bad translation.)

In the real world, though, for a multinational to translate every message communicated to employees internationally is impractical, burdensome, expensive, and time-consuming. Hence the

question: *What, exactly, do workplace language laws require?* That is: *What precise legal constraints do laws outside the English- speaking world impose on employers promulgating English-language staff communications?* This question is more complex and more nuanced than it may at first appear.

Four levels of workplace language laws/translation mandates

When a multinational headquarters undertakes to comply with workplace language laws (translation mandates), the first step is finding out exactly what those laws require.

In doing that, a common mistake is to oversimplify this into a binary, yes-or-no question: *Where—that is, in which of our non-English-speaking overseas jurisdictions—must we translate this communication?* Or: *In which of our overseas locations would issuing the untranslated English version be illegal?* Framing this question this way yields unhelpful answers because the world's workplace language laws and translation mandates are more granular and nuanced.

> Conceptually, the strictest workplace language laws or translation mandates are the flat prohibitions.

These laws come in several different types, imposing several layers of rules. Framing this as a binary, yes- or-no question ("to translate or not translate?") pushes a local respondent — the hapless overseas lawyer or human resources expert trying to answer a local-language law query framed as a yes-or-no question — to oversimplify. A local respondent may be inclined to claim *"yes, our law requires a translation"* even where local law is not so draconian and offers more flexibility than that answer implies.

In researching workplace language laws and translation mandates across countries, distinguish strict, high-risk jurisdictions that make untranslated workplace communications flatly illegal or void from lower-risk jurisdictions in which translations are merely helpful or in which translations become legally relevant only later, if the employer needs to enter a document into evidence in court.

Distinguish among four tiers of workplace language laws around the world: (1) flat prohibitions; (2) voiding rules; (3) submission mandates; and (4) fraud, duress, and hostile reception in local proceedings.

Flat prohibitions

Conceptually, the strictest workplace language laws or translation mandates are the flat prohibitions — the absolute bans that prohibit an employer from issuing an employee a communication, document, or rule in some language (say, English) other than the local language. Examples:

- **France.** France sponsors an academy with the *raison d'etre* of upholding the integrity of the French language and imposes a statute called the *Loi Toubon* that in many contexts commands: Thou Shalt Communicate Exclusively in French. Enforcing the Loi Tubon in the workplace, the French labor code punishes employers that issue HR documents in languages other than in French. We already mentioned the 2006 French decision that imposed on a US multinational an *astreinte* (sanction) of US$800,000, reducing a trial court fine of US$1.6 million, where headquarters had issued global training and health/safety documents to French staff in English only. This said, in some intra-European contexts, EU law might rein in

enforcement of France's workplace language law, but not necessarily in the US-to-France context.

- **Belgium.** Belgium flatly prohibits giving employees HR documents in foreign languages. Belgium's HR language law grows out of the uniquely Belgian tension between Flemish Dutch and Walloon French, and so requires that employee communications be in the Belgian regional language. Where to draw regional lines sometimes gets disputed, but because English is not a regional Belgian language, untranslated English communications to staff will always violate this decree. Again, EU law limits enforcement in some intra-European contexts — but not necessarily in the US-to- Belgium context.
- **Quebec.** Quebec imposes a law that requires written employee communications in French, and Quebec employees are said to have a legal right to be addressed in French. Quebec may allow opt-outs — individual workers might sign waivers admitting they speak English and so accept English communications, although this practice may not strictly comply with this law. In any event, an employer in Quebec cannot simply hire English speakers and demand opt-outs, because Quebec forbids bosses from conditioning most jobs on English fluency. Quebec employers must also be careful about hiring non-French-speaking supervisors (or transferring in non-French-speaking expatriate supervisors) because of subordinates' right to be addressed in French.
- **Spain.** In some Spanish "Autonomous Communities" (regions), the sectorial collective bargaining agreements that bind all employers in certain industries require staff communications to be in both co-official languages — Spanish plus the local regional language, such as Catalan or Basque. English-only communications would not comply.
- **Mongolia and Turkey.** Mongolia requires that all employment documents be in Mongolian and violators are subject to fines. Turkey requires that human resources policies (but not necessarily other HR communications) be in Turkish, and violators are subject to "administrative fines."
- **Kuwait and Saudi Arabia.** Article 29 of the Kuwait Law of Labor in the Private Sector No. 6 20l0 requires that all employment contracts and employer-issued "correspondences [sic], publications, by laws and circulars" be "written in Arabic" (or dual-language format in which the Arabic text "shall prevail"). But Kuwait imposes no penalty for violations, so employers in breach generally need only translate the non-Arabic document. Saudi Arabia, though, imposes a fine of 5,000 riyals (about US$1,334) on employers that fail to issue Arabic-language employment agreements, HR policies, and personnel records.

Voiding rules

More common than fiat prohibitions restricting employers from issuing untranslated foreign-language staff communications are what we might call voiding rules. Countries including Chile, Macedonia, Poland, and Russia impose laws under which an employer can in theory issue foreign-language staff communications and documents without facing a fine — but its untranslated communications are per se void or unenforceable even against bilingual staff who understand the content perfectly.

In a jurisdiction with a voiding rule, a multinational inclined to communicate in English only might decide to issue non-binding HR documents (like company newsletters and routine new announcements) in English, while translating those staff communications and documents that have to be enforceable against employees (like employment contracts, work rules, codes of conduct, and compensation plans).

> While some jurisdictions' voiding rules invalidate all untranslated workplace documents, voiding rules in other jurisdictions merely invalidate some, but not all, HR communications.

Two cases from the French supreme court illustrate how voiding rules work. While the employers in these cases might have been fined under France's *Loi Toubon*, voiding the HR document happened to offer the plaintiffs a better remedy. In both cases, the French supreme court invalidated criteria in English-language bonus plans even though the bonus-eligible employees apparently spoke good English and understood the plans.

Both employees' performance fell short, rendering them ineligible for their full target bonus — but both argued that because the bonus criteria appeared in untranslated English-language plans, the performance metrics they had failed to reach were void. The supreme court agreed and awarded the employees their full target bonuses.

While some jurisdictions' voiding rules invalidate all untranslated workplace documents, voiding rules in other jurisdictions merely invalidate some, but not all, HR communications:

- **Untranslated work orders void:** Venezuela plus a number of Central American countries including Costa Rica, El Salvador, Guatemala, and Honduras impose laws that invalidate *work rules* or *work orders* not in Spanish (these laws are said to be a legacy of the era when American plantation bosses barked orders in English at banana workers and fired hapless uncomprehending locals). Because employment contracts, HR policies, staff handbooks, and codes of conduct inevitably contain rules to be enforceable in these countries, these documents must appear in Spanish.
- **Untranslated employment agreements and legal acts unenforceable:** Some countries require that employment contracts (alone among HR documents) be in the local language. For example, Egypt, Mali, Mozambique, Nicaragua, and Ukraine require that employment agreements and amendments be in the local language or at least in dual-language format. Slovakia requires that written "legal acts of employment relations"— presumably including both employment contracts and binding HR policies — be in Slovak.

Submission mandates

Laws in many countries require employers to submit certain HR documents to government agencies and submit drafts of certain other HR documents to worker representatives like unions, works councils, and health and safety committees.

While these document-submission mandates tend to be silent on language (and so are easy to miss when canvassing translation laws internationally), they amount to de facto translation requirements, because untranslated submissions likely do not comply.

Consider, for example, how this plays out in the United States. Imagine a hypothetical unionized Boston subsidiary of a Munich-headquartered company that tries to file a German-language qualified retirement plan with the US IRS and DOL, and also tries to submit a German medical insurance plan proposal to its Boston labor union local.

US statutory law does not require that employee communications be in English, but these particular submissions will not likely comply with ERISA filing requirements or National Labor Relations Act §8(a)(5) good-faith bargaining requirements. Because the German versions are unintelligible to a US agency and labor union, they are not compliant submissions, and the IRS, DOL, and NLRB could reject them.

The translation burdens of European Works Councils alone can be enormous.

Expect the same result in Haiti, Panama, Peru, Niger, Vietnam, and other countries that require employers file employment agreements with local agencies. Similarly, France and Germany require divulging draft HR policies, benefit plans, crisis plans, and plenty of other HR and financial documents to works councils and health and safety committees.

And almost every country requires submitting payroll data to government agencies. Submitting these documents in a foreign language like English likely violates local-law filing mandates. This said, though, there are some rare exceptions; in Scandinavia, for example, government agencies and even unions may accept certain English language documents.

Yes, employment document submission mandates act as de facto translation requirements only as to *those HR documents that get filed with government or submitted to employee representatives*. But this can capture lots of documents.

Countries can require submitting plenty of HR documents to government labor, tax, social security and data protection authorities, and can require employers to turn over reams of documents and proposals to employee representatives to meet bargaining obligations. The translation burdens of European Works Councils alone can be enormous.

Fraud, duress, and hostile reception in local proceedings

The workplace language and translation laws we have discussed are exceptional. Most jurisdictions, in most contexts, do not flatly prohibit issuing workplace communications or documents in a foreign language.

And so when a multinational asks whether it must translate a given cross-border HR communication or document, the answer often comes back “no.” But the legal analysis does not stop there, because everywhere on Earth, an employee can argue that a management communication in a foreign language the employee claims not to understand is presumptively unenforceable against him.

A California appeals court, for example, held English-language employment arbitration and confidentiality clauses void and even unconscionable as imposed on monolingual Spanish-speaking California staff. The court effectively required translations into Spanish even though the constitution declares “English is the official language of California.”

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