



Your Checklist Going into 2022

And we thought 2020 was a doozy! In terms of continuing challenges, unprecedented questions and shifting legal landscapes, 2021 delivered. Between maintaining business continuity and keeping your workforce safe, we know there's been little time to track the rapid changes for employers with workforces in Illinois, across the US, and around the world. Here's a quick checklist to help you prepare for some of the most important developments in 2022.



Compensation and Benefits

› Restrictive Covenants and Equity Awards

- Minimize the involvement of the local employer in the award administration
- Consider including any restrictive covenants in employment agreements or side agreements like a PIIA at the time of employment and keep those agreements with the local employer, not the parent company
- As an alternative, consider incorporating a separate restrictive covenant agreement later as an amendment to the employment agreement, making the next grant of award conditional upon the employee signing the agreement
- Make sure any restrictive covenants are enforceable under applicable local law
- If the applicable jurisdiction requires consideration at the time the restrictive covenant is entered into, pay the consideration required (such as reasonable / nominal consideration, etc.) Don't make the award itself consideration

› Global Share Plan Updates

Australia-Proposed Changes to Tax Treatment and Securities Exemptions

- There are no immediate steps to take to prepare for the proposed changes to tax treatment and securities exemptions, as they would be applicable to grants at the earliest in July 2022.

Canada-Cap on Stock Option Deduction

- Determine whether the new limitation for the cap on stock option deductions applies to your company (i.e. whether your company is considered a “large corporation”), and if so, whether the option grants exceed the annual cap.
- Notify employees and adjust your tax withholding / reporting exercise accordingly.

Canada-Application of Salary Deferral Rules to RSUs

- Ensure that your award agreements provide for settlement of RSUs in shares only to meet the CRA’s March 2021 technical interpretation regarding the application of salary deferral rules to RSUs (but keep in mind this may not be sufficient to prevent application of SDA rules).
- As an alternative, take a more conservative approach by ensuring the award is paid out within three years from the end of the year in which services were rendered to which the award relates.

Canada-Flag termination provisions for employees

- Review and update form grant agreements and employment agreements to draw close attention to termination provisions in incentive plans.
 - Consider providing a memo / email summary of termination provisions to employees attaching the plan.
 - Require employees to sign an express acknowledgement that they have received and read the plan, including specified termination provisions, as a condition of receiving the award.

Canada-New Methodology for Sourcing RSU Income

- Start withholding/reporting on RSU income for mobile employees based on the CRA’s new Hybrid Methodology for sourcing RSU benefits (unless facts strongly support that the income is not for prior year services).

China-SAFE Updates

- If you’re a newly public company, consider registration of pre-IPO plans with SAFE
- If you’re a private company, consider whether to grant awards pre-IPO
- Check specifics that may apply depending on the jurisdiction in which you’re receiving approval
- Stay tuned on recharge payments

› Global Share Plan Trends

- Keep on top of trends regarding global share plans (including trends surrounding the future of work and equity awards, increased use of PEOs and EoRs, and the renewed interest in restrictive covenants as part of equity grants)



Global Immigration and Mobility

› Business Travel for Employees

- Plan employee travel in advance
- Research rules in the jurisdictions of your employees' arrival and departure, and take steps to ensure compliance
- Frequently check the different health and safety requirements of each jurisdiction, since requirements change rapidly
- Consider whether to use vaccine passports. They may make travel easier for employees, but many countries (and some US states) only allow employers to recommend, not require, vaccine passports.

› Immigration Considerations for Remote / Hybrid Work

Form I-9 Flexibility Requirements

- Maintain a separate list of employees onboarded during the pandemic for whom original documents were not inspected. Add any new hires before reopening
- Plan across work sites and employee populations to set aside dedicated time and space during the first three days of office reopening / returns to ensure I-9 compliance is met.
- Let members of your team responsible for I-9 compliance that this will be a time consuming but necessary project occurring as soon as the office reopen.
- Notify each employee (with multiple messages) of the affected employee population of the requirement / timing leading up to office reopening.
- Categorize this employee population by (1) worksite, (2) business unit and (3) office reintegration date
- Keep in mind that once I-9 flexible guidance expires, a historical original review will be required, even for remote workers

Employees with H-1B Status

- Given the popularity of remote work, consider including both the employer's worksite and the employee's home address for future H1-B sponsorships

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- Consider prevailing wage rate issues before making decisions on worksite location changes for H1 - B workers
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- To minimize claims of discrimination, consider limiting remote work arrangements to the same geographic area or within the same state where the company may have an office

Digital Nomads: Working from Anywhere

- Be clear with company messaging to employees that compliance with local laws and regulations is expected and required
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- Make the employee responsible for any additional obligations stemming from remote work or working from anywhere, including tax obligations and licensing requirements (to the extent possible)
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Best wishes for a healthy and prosperous 2022

Your Baker McKenzie Compensation and Benefits Team



Narendra Acharya
Partner
Chicago
narendra.acharya@
bakermckenzie.com



Christopher G. Guldberg
Partner
Chicago
christopher.guldberg@
bakermckenzie.com



Tulsi Karamchandani
Staff Attorney
Chicago
tulsi.karamchandani
@bakermckenzie.com



Lennox Mark
Associate
Chicago
lennox.mark@
bakermckenzie.com



Maura Ann McBreen
Partner
Chicago
mauraann.mcbreen
@bakermckenzie.com



Thomas (Scott) McMillen
Associate
Chicago
scott.mcmillen@
bakermckenzie.com



Alexia Noble
Associate
Chicago
alexia.noble@
bakermckenzie.com



Michael J. Poland
Counsel
Chicago
michael.poland@
bakermckenzie.com



Angélique Poret-Kahn
Associate
Chicago
angelique.poret-kahn@
bakermckenzie.com



Aimee Soodan
Partner
Chicago
aimee.soodan@
bakermckenzie.com



Brian K. Wydajewski
Principal
Chicago
brian.wydajewski@
bakermckenzie.com

Your Baker McKenzie Global Immigration and Mobility Team



Melissa Allchin
Partner
Chicago
melissa.allchin@
bakermckenzie.com



John Foerster
Associate
Chicago
john.foerster@
bakermckenzie.com



Matthew Gorman
Associate
Washington, DC
matthew.gorman@
bakermckenzie.com



Betsy Morgan
Partner
Chicago
betsy.morgan@
bakermckenzie.com



Ginger Partee
Partner
Chicago
ginger.partee@
bakermckenzie.com



David Serwer
Partner
Chicago
david.serwer@
bakermckenzie.com

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