

# **EXPANDING INTO THE USA: LEGAL RISK MANAGEMENT**

**Sari Laitinen**  **US Legal Counsel**

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- **Sari Laitinen, US Legal Counsel, 2006 →**
  - Lecturer at Helsinki and Lapland University Law Schools
  - Book: *Doing Business in the USA* (Talentum 2007)
- **Lived in the USA for 17 years (dual citizen):**
  - Partner @*Robins Kaplan* LLP (Los Angeles & Minneapolis)
  - *Lindquist & Vennum* (Minneapolis)
  - *King & Spalding* (Atlanta)
  - 1993, Juris Doctor

# **14TH ANNUAL LITIGATION TRENDS SURVEY BY NORTON ROSE FULBRIGHT (2018)**

- **MOST DISPUTES FOR TECHNOLOGY & INNOVATION COMPANIES:**
  - Labor/employment (47%)
  - Contracts (40%)
  - IP (30%)
- **OTHER BIGGER AREAS OF CONCERN:**
  - Regulation, cybersecurity & data protection

→ **What is your company's RISK PROFILE?**

## **TOPICS COVERED:**

- **We want to expand to the USA.**
- **We want to hire employees in the USA.**
- **We want to engage a contractor in the USA.**
- **We want to do a contract in the USA.**

## **WE WANT TO EXPAND TO THE USA.**

- **Sell direct to the USA from Finland?**
- **US distributor or licensee?**
- **US subsidiary?**
- **US parent company structure ("flip")?**

→ Each option has its own legal considerations. Start with taxes.

# **WE WANT TO HIRE EMPLOYEES IN THE USA.**

- **BEWARE OF STATE AND CITY VARIATION:**

- **US federal, state and city employment laws are mandatory**
- **Your New York employment agreement will not work in California.**
- **Your San Francisco employment agreement will not work in Los Angeles.**
- **Vacation, paid/unpaid sick leave, minimum wages, enforceability of restrictive covenants (like non-competes), exempt vs non-exempt status, etc.**

- **PRO-EMPLOYEE TREND CONTINUES:**

- **Non-competes are being limited.**
- **Labor laws at state and CITY level are increasing.**
- **Independent contractors are more difficult to engage.**

# **WE WANT TO HIRE EMPLOYEES IN THE USA.**

- **OPTION PROGRAMS.**

- **Highly regulated in the USA!**
- **Draconian tax consequences if not complied with (income + penalty taxes every time the option VESTS - up to 85% in California).**

## **WE WANT TO ENGAGE A CONTRACTOR IN THE USA.**

- **More difficult to engage independent contractors**
  - **Cost of Employees: Tax withholdings, FICA, FUTA, State UI & other fees, workers' comp insurance, state registration & income tax returns, wage (and other) reporting, health insurance, 401(k), vacation accruals, other benefits, costs of compliance and reporting.**
    - **1.3 – 1.5 x salary?**
  - **Independent Contractors – Near zero compliance (1099).**
  - **Some states are now making it more difficult to classify a person as an independent contractor.**



## **WE WANT TO ENGAGE A CONTRACTOR IN THE USA.**

- **The general ABC Test (CA and MA):**

→ To classify a worker as an independent contractor, the business must prove all three of the following things:

**(A)** that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

**(B)** that the worker performs work that is outside the usual course of the hiring entity's business; and

**(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.**

# **WE WANT TO DO A CONTRACT IN THE USA.**

- **CHECK THESE:**

- **Mandatory state law?**
- **Product/user manuals/web site.**
- **Warranty.**
- **Terms of use.**
- **Privacy policy.**
- **Forms of contracts (limitations of liability, IPR provisions and such).**

**“AMERICANIZE”**

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