

Issue 40: April 2022

Aberdeen huddle

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Benchmarking outputs

Hello

The Expat Academy Round-Up (“EAR”) gives you a handy summary of all that we’ve heard through our members and events this week.

Round-Up

Great to be back on the road, this time meeting the Aberdeen Network face to face. Key topics were the changing landscape of business travellers, remote working, Environmental, Social and Governance (ESG) and the latest AIRINC survey data. Hear what the Energy sector had to say.

Additionally, in response to a debate had by the Global Heads Network on the legality of clawback clauses, we have some excellent legal advice from Adele Martins at Magrath Sheldrick to share with you all!

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Intro

This update gives you real-time intel on what’s occurring this week in super-charged Global Mobility circles. It’s purpose is to help inform your decision making on technical issues and to open your mind to wider Network concerns. Leave it unread and you’ll be left in the dark.

Current Challenges

As a result of our regular member conversations, we wanted to relay some of the latest challenges and opportunities that were voiced. Some will provide familiarity and a degree of reassurance that you are not alone, whilst others provide an important insight into cross-regional and industry issues. In no particular order:

-APAC – The region (bar China and HK) is really starting to open up with restrictions being lifted in Singapore. We are starting to see more companies building a pan APAC GM strategy ensuring GM in APAC take responsibility over the region as a whole. We are also seeing a surge in moves in the region, with companies needing people with experience on the ground. Many RMC’s are also looking to have a presence in

Singapore for this reason.

-There continues to be a focus on policy review and many are benchmarking across industries to understand what is deemed best practice, taking into consideration diversity of policies and DE&I stipulations.

-Immigration is a constant challenge based on regulations and requirements changing all the time. Germany are apparently now accepting GHIC.

-A number of member companies are currently looking at European driving licences and have a number of open questions: - do people need to exchange their driving licences and what is needed to register as a resident in Europe, what are the local requirements to get a local licence? (if you have the answers [let us know](#) so we can share as a network!)

-Work is taking place on formalising remote worker policy (20 days+ for some).

-We heard from more organisations who are in the midst of implementing an Assignment Management tool within Workday.

-Many struggling with “Business Visitors”!

Aberdeen Huddle

A warm and hospitable Aberdeen Huddle took place this week, where we met a sheep farmer, a Scottish touch rugby international, a karate black belt and a Scottish football trialist!

Kindly hosted by PwC and attended by a number of members from oil and gas organisations, we discussed a number of issues, the details of which we are happy to share. For the full event blog including key takeaways from AIRINC's 2022 Mobility Outlook Survey, click [HERE](#).

EAR for Yourself

Come and boost your technical knowledge through one of our Network Huddles and put forward questions of your own. Sign up here:

[US Network Virtual Huddle](#)

– 11 May

[European Super Huddle](#) –

23 May



Changing Business Traveller Landscape

With business travel becoming more closely linked to Global Mobility, many companies are introducing policies and processes that reflect their business strategy, risk profile and geographical spread. Typically, European headquartered companies will be more focused on managing risk upfront, due to the Posted Workers Directive and the potential of heavy fines. Whereas US companies are more focused on post-travel analysis. Managing the process and analysing the data can help organisations get a much better understanding of their global travel patterns which can help:

-Negotiate better pricing with travel providers

-Reduce unnecessary travel

-Identify business travel groups who could access preferential immigration options – e.g. Frontier Work Permits

Many companies have done little to manage the risks of business travel and should as a minimum review old travel data

to get an understanding of travel patterns and potential risk countries. Focusing on the high-risk locations is clearly a good starting point and engaging with key stakeholders upfront is crucial to get their buy-in.

Remote Working

Many have introduced a framework to manage this population but only one company has a formal policy and some do not allow remote working at all. This was supported by survey data from AIRINC in their 2022 Mobility Outlook Survey, which found that 32% of organisations do not allow international remote working, and 45% allow it on a case-by-case basis.

Environmental, Social and Governance (ESG)

We discussed the ESG aspects of managing a global workforce, with a focus on how organisations can use technology and data:

-Environmental: A small

number of companies are using data to identify cost saving opportunities and reduce carbon emissions by challenging the need for business travel in certain situations.

-Social: again using data, companies can get a better understanding of their Global Mobility programmes and gauge how, for example, females who have been on assignment are progressing their careers post assignment.

-Governance: using data to diagnose governance, so for example, identify those countries with a higher risk profile, based on fines received historically.

From the discussion it is clear that Environmental and Social are not generally on the radar for Global Mobility, whereas for Governance there is a lot of data readily available, with many countries' tax authorities publishing data on fines they are imposing.



Clawback Clauses

Anyone considering the imposition of a clawback of relocation costs would need to take specific in country advice as it is not clear cut. General headlines:

In quite a few countries there certainly seems to be an increasing trend towards clawbacks but most notably in relation to incentive or variable compensation schemes, rather than what would perhaps more properly be described as “recruitment costs”.

Clawbacks that are enforceable are often governed by law / regulation applicable to specific sectors. However, even then the enforceability of such clauses of will depend on usual variables such as drafting, consideration, jurisdiction, case law and significantly whether the provision is a penalty or punitive.

Many EU countries in particular take a very employee friendly approach. It is likely that clawbacks clauses such as Immigration fees/relocation costs would be even more likely to be regarded as punitive.

General themes appear to be :

-UK: In short “clawback” clauses are enforceable if they are properly drafted, specific, reasonable and do not amount to an unlawful penalty

-Germany: outside of the financial services sector and then specifically in relation to variable compensation awards – Germany tends to regard clawback clauses as invalid

-Switzerland: clawback clauses have become more widespread in some sectors (pharma / financial services) but again primarily in relation to variable comp, and even then the validity and enforceability of such clauses may be limited.

-France: French law prohibits pecuniary sanctions (reduction or cancellation of remuneration where an employee has committed a fault) – suggesting a general prohibition in principle in relation to clawing back from employees. Although recently in some specific sectors (financial services, insurance etc) and in relation to some employees (management etc). this prohibition seems to be

being relaxed. It is probable that such relaxation will be very limited.

- Italy: seems a little more amenable to clawback if specifically agreed at the outset but again it is likely that this would primarily apply to elements of variable comp rather than costs incurred by the employer during the recruitment process.

-Spain: tends to take a pro employee approach and clawback clauses can face enforceability issues as a result.

-USA: clawback clauses are more common and likely to be enforced.

Ultimately whether a clawback is enforceable will depend on the regulations & legislation in the country in question. Most employers tend to use them (certainly in the UK) as a deterrent to discourage early departure and / or to give a bargaining chip in terms of waiver the event of a negotiated exit.

Benchmarking Outputs

-Relocation support for interns differs by industry. The majority of organisations do not offer to interns, although there are cases of scaled down versions of support to the tune of 50% of the usual housing budget but no temp accommodation.

- Car and driver benefits in India and China: Where provided, this can be for personal and professional needs, sometimes exceeding 40 hours pw.

-Lockdown aid for foreign nationals based in Shanghai: (currently with very stringent lockdown) include employee assistance and wellbeing programmes, support from local HR, food boxes, Expat WeChats groups.

Author



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