

Monday, October 19 11:00 am-12:30 pm

302 Managing a Global Workforce: HR and Employment Law Challenges

James Beyer Director-Employment Law

Accenture

Ellen Rice

Senior Employment Counsel **EMC** Corporation

Ken Sprang

Attorney

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Faculty Biographies

James Beyer

James R. Beyer is director of employment law at Accenture, in Chicago, where he leads the group. Accenture is a global management consulting, technology services, and outsourcing company, currently with approximately 180,000 people serving clients in over 120 countries.

Previously Mr. Beyer was a senior employment law attorney with International Business Machines Corporation. He was also previously counsel to then Gardner, Carton & Douglas in Chicago and an associate with the Chicago office of Seyfarth, Shaw. He was also a law clerk in the U.S. District Court for the Northern District of Illinois.

Mr. Beyer is an adjunct professor of law at IIT Chicago-Kent College of Law, where he teaches privacy in employment law and international employment law. Mr. Beyer was elected as a fellow to the College of Labor and Employment Lawyers. He is also active in many pro bono activities. He created and chairs the Accenture legal group's pro bono and corporate citizenship program. Mr. Beyer is a frequent speaker and writer in the employment law area both in the US and internationally. He is the program co-chair of ACC's Employment and Labor Law Committee and was previously the co-chair of the Web cast committee.

Mr. Beyer has a BA from DePauw University and received his JD with highest honors from the IIT Chicago-Kent College of Law, where was an editor of the *Law Review*.

Ellen Rice

Ellen Rice is senior employment counsel at EMC Corporation, in Hopkinton, MA, the world leader in information infrastructure solutions. Ms. Rice counsels senior management and human resources personnel on a broad range of employment law issues. In addition, she handles commercial and employment litigation and provides counsel on internal investigations. She also advises and improves on business processes related to privacy, information security, records and information management

Prior to joining EMC, she worked in the Washington D.C. Metropolitan area. She served as assistant general counsel in the United States Department of Justice's Executive Office for United States Attorneys, associate general counsel at a nationwide food distribution company, and as a labor and employment law associate at the law firm Paul, Hastings.

She has presented numerous speeches to ACC, ABA, and other legal related programs.

Ms. Rice received a BA from Tulane University and is a graduate of Harvard Law School.

Kenneth Sprang

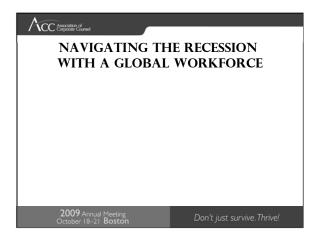
Kenneth A. Sprang is the former senior vice-president, general counsel, and secretary of OnIt Digital, Inc., a start-up international interactive advertising company. He is also an adjunct professor at the Catholic University Columbus School of Law in Washington, DC. His responsibilities for Onit included serving as HR Director, mergers and acquisitions, corporate governance, and completing numerous transactions.

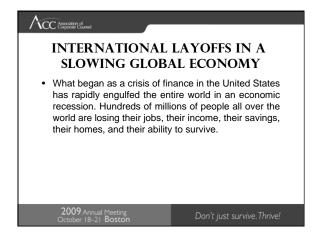
Before joining Onit, Mr. Sprang was general counsel to the Psychiatric Institute of Washington in Washington, DC, where he provided counsel in labor relations and employment, healthcare, and other regulatory matters. Over the course of his career, Mr. Sprang has founded legal departments for several start-up companies, as well as working in the legal departments of Calgon Corporation, a former subsidiary of Merck & Co., Inc., and Cyclops Corporation. He also spent several years as a full-time law professor

Mr. Sprang is a member of ACC's Washington Metropolitan Area Chapter; ABA, and its labor section's committee on the development of the law under the NLRA; and the DC and Maryland Bar Associations. He serves as pro bono general counsel to Boys To Men International and as a member of the board of directors of Kidsave International.

Mr. Sprang received his BS from the Ohio State University and an MA from the University of Michigan. He earned his JD at Case Western Reserve University School of Law, where he was an associate editor of the law review and a member of the Order of the Coif.







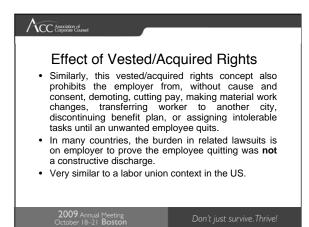
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Most International Employees Have "Vested/Acquired" Rights

- Outside the US the operative legal rule is "indefinite" employment, not "employment atwill."
- Indefinite-employment systems restrict employment terminations; fired employees have cause of action for unfair dismissal.

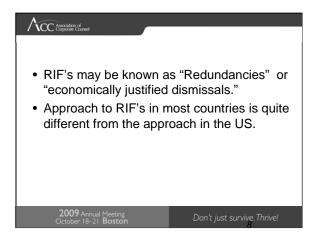
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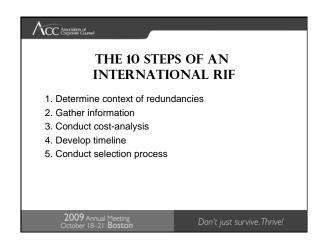
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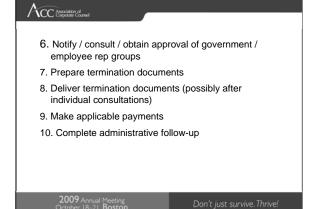


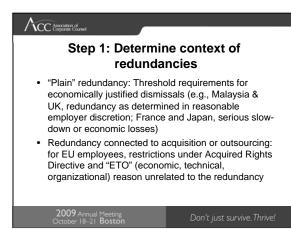


Accelerate Compared	
 RIFS HYPOTHETICAL Your employer is a U.S. manufacturer of automobile parts with subsidiaries in various countries around the world. The company has more than 50,000 employees across the world in all major countries. It has 10,000 employees in Europe, including 1000 in France, Germany, Italy and the Netherlands. Your CEO has advised you that he wants to reduce the workforce the workforce across the globe by 10% and he wants this done within 60 days. Can you lawfully implement an across the board RIF like this? What are the hurdles you will face in doing so? 	
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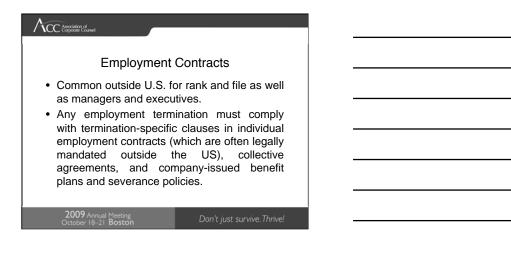


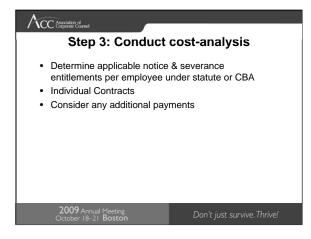


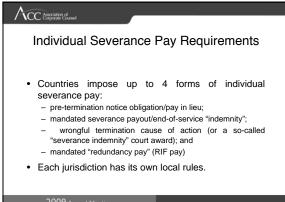
Step 2: Gather Information

- Gather by jurisdiction:
 - Total headcount
 - Affected headcount
 - Works councils, unions, employee representative groups
 - Applicable CBAs, severance policies or practices, work / retirement rules
 - Sample or individual employment agreements (for contractual obligations)
- NB: Data privacy obligations

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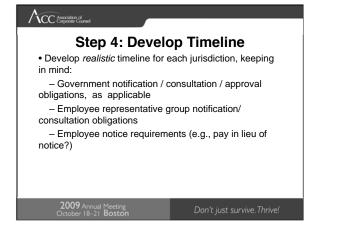






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Step 5: Conduct Selection Process Determine if any protected employees, e.g., Pregnant employees, employee representatives, etc. Consider legally-mandated selection criteria Social factors (e.g., China, France, Germany, Italy) "Last in, first out" (e.g., Malaysia – recommended, Netherlands within each age group) If none, determine fair, non-discriminatory selection criteria, e.g., performance, seniority, etc. Requirement to offer alternative positions.

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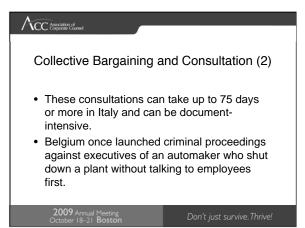
Step 6: Notify/Consult/Obtain Approval of Government/ Employee Representative Groups

Government notification/consultation and/or approval requirements, - e.g., Netherlands (**prior** approval for unilateral terminations)

- Employee representative groups, e.g.,
 - Works' Councils
- Unions

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Collective Bargaining and Consultation On the subscription of the







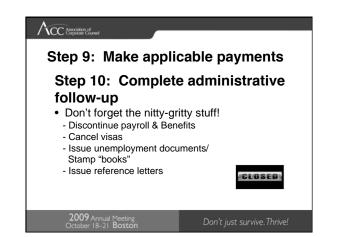
Step 7: Prepare Termination Documents Where unilateral terminations are not permissible/ recommended, prepare mutual termination and/or resignation agreement (e.g., China, India, Japan, Korea) In other jurisdictions, prepare termination letters and releases Don't forget to address non-local equity

Don't forget to address non-local equit
 NB: Translation requirements

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Country-Specific Local Procedures and Rules Governing RIF's

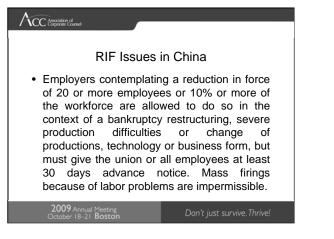
- France Multinational must demonstrate "real and serious" economic need at two levels: the French affiliate and the parent and subsidiaries in the same line of business.
- Japan Layoffs are extremely difficult. Employer's reasons are subject to strict scrutiny and must demonstrate real financial necessity and show cost-cutting steps already taken.

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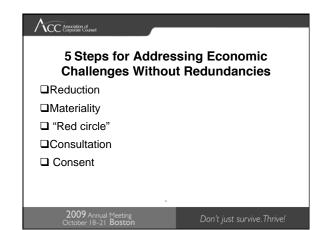
European Union RIF Standards

- When in consultation with employee representatives for RIF discussions, the following information is required to be disclosed: economic reasons of the reductions in force, number of employees to be dismissed, number of employees normally employed, an outline of the procedure by which the projected dismissals have to be effected, the criteria proposed for the selection of the workers to be made redundant, and the method to be used for calculating any severance payments.
- There is a legal requirement that due consideration be given to balanced economic and social development within the European community.









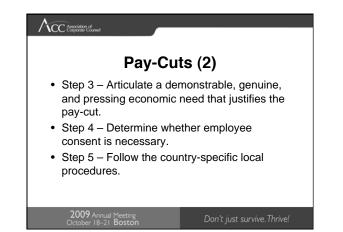
	ACC Appointer Comment		
	No. 1 Reduction		
	 Employers generally cannot unilaterally reduce material terms/conditions of employment, e.g., alter the workforce, cut in hours/benefits/compensation, change in job titles where change amounts to a demotion. 	_	
	 Employers are generally permitted to grant employees a benefit, e.g., a pay raise or other improvement, though some jurisdictions like Chile prohibit such unilateral action 	_	
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- Pay-cuts involve unique complexities and require a s step analysis.
- Step 1 Verify that pay-cuts are not illegal (as in Italy and Panama) or contrary to public policy (as in Brazil).
- Step 2 Comply with minimum wage laws, statutory benefit mandates, and employment contracts. Cannot cut below minimum wage law or break collective employment agreements (unless renegotiated).

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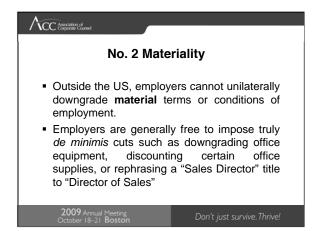
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Country-Specific Local Procedures and Rules Governing Pay Cuts

- Spain Collective agreements commonly set minimum wages for specific positions higher than the statutory minimum wage; a pay-cut cannot dip below the contractual rate.
- Italy Flatly prohibits reducing pay, even with consent of the employee or trade union. Paycuts are considered impossible.

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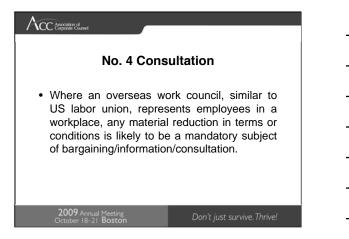
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No. 3 Red Circle

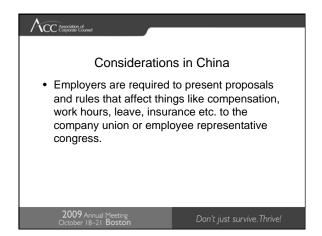
- Alternative to unilaterally-imposed pay-cuts or demotions is to "red circle" employees, freezing pay and withholding future raises.
- Red-circling often lawful in indefinite-employment countries unless
 - It amounts to unilateral discontinuance of existing compensation/review practice of regular raises, or
 - Statute or individual or collective agreement requires regular raises or good-faith merit increase reviews.

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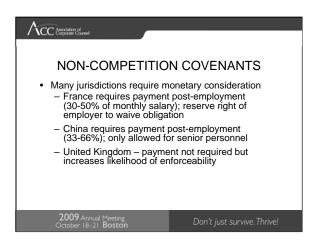


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Additional Co Vested Rights			_
 Some jurisdictions are concer with onerous vested rights oblig or outsource to transfer the obligations. Many jurisdictions impose "tra where employees' vested righ purchaser or outsource servi rights are said to become an employer. 	gations might sell out assets, bir vested employee rights unsfer of undertakings" rules its transfer over to an asset ice provider. These vested		
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NON-COMPETITIO • For after employment, need agreement with reasonable geographic area which varie jurisdiction – China, Germany, and Sp – Italy has a five-year cap cap for other workers	l a valid non-compete scope (duties), time, and es depending on pain have two-year caps
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AWARENESS OF CULTURAL DIFFERENCES					
Dorothy, this isn't Kansas!					
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Acce Association of Composite Courses			
Be Cognizant of the culture, this can be as important as the legal issuesEssential business culture_guides for the international traveler			
<u>http://www.executiveplanet.com/</u> <u>index.php?</u> <u>title=Main_Page#Related_Links</u>			
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ACC Extras

Supplemental resources available on www.acc.com

European Briefings ACC Docket. May 2008 http://www.acc.com/legalresources/resource.cfm?show=14327

310 Navigating Global Compliance: Establishing Rules for Taking the High Road in the Borderless Corporation. Program Material. February 2007 http://www.acc.com/legalresources/resource.cfm?show=20132

Managing the Global Legal Department. ACC Docket. July/August 2009 http://www.acc.com/legalresources/resource.cfm?show=422427