

# Welcome

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## Our Presentation

### Will Begin at 12pm

- All viewers are muted. Audience cameras cannot be turned on.
- Who's with us today? Feel free to share your nonprofit's name in the chat box.

# Going Global: Legal Guidance for Nonprofits Operating Overseas

Practical & Strategic  
Considerations



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# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# PBPA Learning Center for Georgia Nonprofits

[www.pbpatl.org/resources](http://www.pbpatl.org/resources)

**ARTICLES**

**WORKSHOPS**



**WEBCASTS**

**PODCASTS**

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.
- Employ at least one paid staff person.

Visit our website at [www.pbpatl.org](http://www.pbpatl.org) to apply.

# Legal Information

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This webcast presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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# Agenda

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- Introduction and Initial Considerations
- Staffing International Projects
  - US Employees
  - Independent Contractors
  - Secondment
  - PEO/Employer of Record
  - Non-US Citizens and Third-Party Nationals

# Introduction

## Global Work Can Be Challenging

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- International work can involve sending US employees or contractors to volunteer or work in another country or hiring employees in country.
- International work can involve issues that domestic projects may not:
  - Cultural differences
  - Long-distance travel
  - Travel to less developed regions
  - Region-specific health considerations
  - Political volatility
  - Natural disasters
  - Immigration and visa issues
  - Foreign laws and regulations



# Options & Practical Considerations

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- Sending US Employees or Contractors to Another Country
- Citizens or Third-Party Nationals
  - Independent Contractors
  - Secondment
  - PEO/Employer of Record
  - Employment

# Initial Considerations

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➤ **In-country and US laws regarding, for example:**

- Employment laws
- Taxation and Social Security
- Visas and immigration
- “Permanent Establishment”

➤ **Which, in turn, can depend on:**

- Length of proposed in-country activity
- Complexity and nature of job
- Citizenship of person(s) to be hired
- Existing activity/presence in the country
- Funding source
- Other variables, which can change over time

# Permanent Establishment

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➤ A Permanent Establishment may create tax liability for an organization based on its employees' activities or time spent in country. This means that an entity may be taxed in the country on its income **even if it is tax-exempt in the United States.**

➤ What creates a Permanent Establishment?

- Having a fixed place of business in country – an office; OR
- Activities by a “dependent agent” in country related to revenue creation

*Providing services in country*

*Executing contracts on behalf of an organization*

*Control and direction of agent/employees' activities by the organization*

# Sending US Employees to Another Country

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## ➤ Visas

➤ Do you have to register or form an entity? (Forming an entity may seem like the next most logical step; however, if you are not hiring in-country employees, there may be better options)

## ➤ Employee Tax & Social Security Considerations

- Income Tax
- Social Security Payments

## ➤ Permanent Establishment

**Contact a local lawyer/the laws of every country can be different**

# Independent Contractors

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- Determine if the person is truly an employee or an independent contractor
  - [Webcast: Proper Worker Classification in the Nonprofit Workplace](#)
  - The person is not an independent contractor simply because they will be working for a limited period of time for you
- Review: training, instruction, control, payment, services, and equipment provided
- Visas, Registration, Withholding, Permanent Establishment

**Contact a local lawyer/the laws of every country can be different**

# Secondment

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- What is a Secondment?
  - Temporary assignment to another entity
- Do you have a good relationship with an NGO in country?
- Contract with the NGO – describe payment and services
- Pros
  - The NGO hires the employee and handles payroll and any social security payments
  - The NGO handles visas
  - No registration for the US entity
  - No Permanent Establishment concerns
- Cons
  - May not have the control you would have if hire directly
  - Potential IP issues

# Contracting with an International Entity

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## Important Provisions to Consider

- Governing Law
- Arbitration
- OFAC
- Export Controls
- Insurance
- FCPA & UK Anti Bribery
- Intellectual Property
- Privacy Laws – China, GDPR, South Africa, etc.

# PEO/Employer of Record

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- What is a PEO? Employer of Record?
  - Professional Employer Organization
- The PEO hires the employee and handles payroll and benefits
- Pros
  - Handles payroll, benefits and all employment requirements
  - Possibly more control than in a secondment
  - The PEO handles visas
  - No registration for the US entity
  - No Permanent Establishment concerns
- Cons
  - Costs may be higher
  - May not be feasible depending on the nature of the activities
  - May not be available in the specific country



# Forming an Entity In Country to Hire Citizens or Third-Party Nationals

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- Identify Counsel
- Select Type of Entity
- Potentially Identify Funding Source
- Be Prepared to Wait
- Identify Accountant and Payroll Company
- Be Prepared to Pay More than You Planned

**Contact a local lawyer/the laws of every country can be different**

Questions?