



# Fine Print

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## Seven Tips for Highly Effective Exports

By Vinita Bahri-Mehra and Katja Garvey

Exporting is not easy or quickly mastered. In addition to the planning and preparations required before the first product can be exported to a foreign market, businesses must establish reliable relationships and adapt strategies to local developments. To be successful when exporting, businesses should follow these seven steps:

### 1) Develop a Long-Term Strategic Plan

Develop a long-term, detailed plan, including a realistic timeline and budget. The plan should also include a strategy for how to contact reliable local partners or agents, and how to establish long-lasting relationships.

### 2) Focus on Due Diligence

First consider the foreign country's receptiveness to American products, and then analyze the foreign market from all possible angles. This due diligence analysis should take into account not only the number of documents required for exporting, transportation cost and time, custom duties and tariffs, export license and labelling requirements, tax implications or storage costs, but also the coun-

try's political or social stability, infrastructure, quality of work force, language, timelines of custom procedures, and contract enforcement and collection procedures.

### 3) Think Global, Act Local

Keep local needs and preferences in mind and adapt accordingly. It is easy to focus on exporting the product globally while forgetting that seemingly minor cultural differences (between cities, districts, counties or states, for example)



have a major impact on a business's success. Strategies that work well in one area do not necessarily transfer to another, and must be reevaluated and adjusted according to each location's business climate.

### 4) Pay Attention to Geographic Diversity

Since it is almost impossible for a U.S. business representative to learn about and respond to cultural differences, choose a local partner whose

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## EEOC Issues Pregnancy Discrimination Enforcement Guidance for Employers

By Patricia F. Weisberg

On July 14, 2014, the Equal Employment Opportunity Commission (EEOC) released new enforcement guidance addressing pregnancy discrimination in the workplace. While this guidance does not have the force of law, courts often defer to the EEOC's interpretation of the law when deciding cases. In addition, until courts rule on these issues, the guidance reflects how the EEOC will handle pregnancy discrimination complaints. Employers should be aware of the new obligations imposed on them by the July 14 EEOC guidance.

Here are a few of the items addressed in the EEOC's recent guidance:

- Employers must offer light duty to pregnant employees if they make light duty available to non-pregnant employees whose ability or inability to work is similar. For example, if an employer has a policy that allows employees

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familiarity with the desired area adds credibility, commitment and trustworthiness to a U.S. business appearance. Constant communication and involvement of the local partner are key.

### **5) Be Patient and Commit Long-Term**

Send one or more representative(s) to the foreign market to show commitment and create personal relationships among the business partners. Success requires the exporter to be mindful of cultural differences and to provide consistent follow-up. Behavior that deviates from the American business culture is not necessarily a negative sign, but a cultural nuance that may require business model adjustments.

### **6) Ensure Compliance**

Be aware of internationally applicable agreements like the Foreign Corrupt Practices Act (FCPA), which prohibits bribery of (foreign) government officials and requires the exporter to keep accurate financial books and records. The FCPA can impose significant fines and even jail time for guilty individuals. It applies to U.S. countries, citizens, foreign subsidiaries, officers, directors, and agents of a U.S. company. Its scope is not restricted to U.S. territorial boundaries.

### **7) Rely on Experienced Global Business Legal Counsel and Advisors**

Engage legal counsel and other advisors with deep understanding of the necessary global business requirements as well as the requisite experience with the desired market. Competent advisors can save money and time by structuring entities in a tax-focused way from the beginning of the operations. It is also important to cooperate with local counsel in order to

understand the local labor market and avoid non-compliance with specific local regulations regarding repatriation of funds.

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*Vinita Bahri-Mehri, director and team leader for Asia-Pacific*

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who have been injured on the job to work light duty, the EEOC says that the policy must also offer light-duty work to pregnant employees who are unable to perform their jobs. Until the U.S. Supreme Court addresses this issue during its next term, employers will have to decide whether to comply with the new guidance or risk possible EEOC prosecution and enforcement.

■ The guidance also cites examples of conditions that may qualify as pregnancy-related disabilities, such as pelvic inflammation, which may substantially limit the ability to walk; pregnancy-related carpal tunnel syndrome affecting the ability to lift or to perform manual tasks; disorders of the uterus or cervix that may necessitate certain physical restrictions to enable a full-term pregnancy or that may require limitations following childbirth; pregnancy-related sciatica limiting musculoskeletal functions; gestational diabetes limiting endocrine functions; and preeclampsia, which causes high blood pressure affecting cardiovascular and circulatory functions.

As a practical matter, almost any condition related to a pregnancy will be considered a disability under the Americans with Disabilities Act Amendments Act (ADAAA).

*markets at Kegler Brown Hill + Ritter LPA, focuses on global business law. Katja Garvey, a Kegler Brown associate, focuses her global business practice on European markets.*

Employers must reasonably accommodate employees with disabilities. As such, the EEOC guidance effectively mandates that employers reasonably accommodate most pregnant employees who have job restrictions.

■ The guidance also states that the Pregnancy Discrimination Act protection extends to differential treatment based on an employee's fertility or child-bearing capacity. Employers are therefore prohibited from discriminating against employees on the basis that they have stated they intend to become pregnant or on the basis that they are undergoing fertility treatments.

Pregnancy-related issues in the workplace are becoming extremely complex to manage.

Employers must not only keep in mind the federal law, but also any state or local laws that regulate these issues. Accordingly, employers who have any concerns about how to manage issues relating to pregnant employees in the workplace should consult with competent employment law counsel before taking any action that may impact the pregnant employee's job.

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*Patricia F. Weisberg is a partner in the Cleveland-based firm, Walter | Haverfield LLP.*

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