SAFEGUARD GLOBAL

United States

Global expansion: Entering the U.S. market

So you want to expand into the United States

For nearly 150 years, the U.S. has maintained the world's largest GDP, representing nearly a quarter of the total global economy.[1] Although China is nipping at its heels, the U.S. still represents a prime expansion opportunity for foreign companies—an opportunity that grows every year.

1 https://www.investopedia.com/insights/worlds-top-economies/

The combination of an established infrastructure and proliferation of natural resources, as well as the income-generating innovation engine of Silicon Valley, means that foreign expansion into the U.S. won't be slowing down anytime soon.

There's a lot to consider as you plan an expansion strategy. This guide will help you get familiar with many of the complexities you'll face in order to get your U.S. operations up and running.

The U.S. market

$21.44 T

Size of the U.S. economy in 2019

Source

$24.88 T

Predicted size of the U.S. economy in 2023

Source

$539.1 B

Amount of compensation paid by foreign enterprises to U.S. employees in 2015

Source

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Getting started

As in most countries around the world, in order to establish business operations in the U.S., you'll need to create a legal entity or subsidiary in the country. This can take anywhere from two to six months to check off all the steps required by law, in the proper order.

Foreign-owned employers in the U.S.

6.8 M

Number of U.S. workers employed by foreign-owned enterprises in 2015

Source

58%

Percentage of said workers employed by companies from the U.K., Japan, France, Germany or Canada

Source

Choose the kind of entity

There are a number of different types of entities, including sole proprietorship, partnerships, limited liability companies (LLC) and corporations. When choosing which is best for you, consider the legal and tax implications of each one, as well as the applicable state laws in the state(s) you decide to operate in.

Acquire a Federal Tax ID number or Employer Identification Number (EIN)

The IRS Form SS-4 is required in order to open a bank account, apply for a business license and file a tax return.[2]

Open a bank account

Once you have your EIN, you can open a U.S. bank account. This will take an average of four to six weeks. Most banks require proof of a U.S. business address.[3]

Register in each state where you plan to hire

Each state has its own process for establishing your business there, including reporting and filing requirements. Factors such as how much income you derive from certain states can necessitate registering in more than one state.

Top 10 U.S. states for business in 2019

1. Virginia
2. Texas
3. North Carolina
4. Utah
5. Washington
6. Georgia
7. Minnesota
8. Nebraska
9. Colorado
10. Ohio

Source

2,3 https://fisherstonelaw.com/blog/american-bank-accounts-for-foreign-entrepreneurs/

Staffing up (and staffing down)

There are two basic ways to hire U.S. citizens: as full-time employees or independent contractors. Stringent federal requirements will dictate whether and how you can transfer or hire non-U.S. employees to work within the U.S. Similarly, there are a number of regulations to follow in order to terminate employment.

A smart hiring shortcut

Partnering with an employer of record (EOR) is an effective way to hire quickly and compliantly a foreign country. In this model, an EOR provider hires workers on your behalf. Because the EOR already has a U.S. entity, no entity establishment is required on your part. The employer of record handles all HR and payroll functions, including administering benefits, and it will advise you on how to compliantly terminate employees, should the need arise.

Full-time employees (W-2)

The standard way to hire an employee full time requires you to withhold federal, state and other taxes from their paycheck to file with the correct entity on their behalf. They may be paid an hourly minimum wage or an annual salary. Whether or not an employee receives overtime is determined by the Fair Labor Standards Act (FLSA). Nonexempt employees get overtime pay while exempt employees do not.[4]

Independent contractors (1099)

Independent contractors may work full time, but unlike permanent employees, they receive their gross salary and are responsible for paying their own taxes. As in many other countries, there are strict rules in the U.S. about who can and cannot be considered an independent contractor, and stiff penalties for misclassification. Of note: As of January 1, 2020, California passed new legislation regarding who can be classified as an independent contractor, along with fines of up to $25,000 per employee for willful misclassification.[5]

Firing

In many U.S. states, employment is governed by at-will employment laws, making terminating employment fairly simple, albeit with certain steps that must be followed. There are differing requirements for terminating employees for performance issues versus due to a decline in business.

Transferring employees to the U.S.

To transfer foreign employees to the U.S., you'll need a non-immigrant visa. A specialized immigration attorney can help you understand your visa requirements.

L1A/L1B visa

- Governs transfers of executives, managers or anyone with specialized knowledge
- Can be used by any size company

Source

E1/E2 visa

- Applies to employees from countries with treaties of commerce with the U.S.
- Used primarily by small businesses

Source

4 https://www.flsa.com/coverage.html
5 https://www.californiaemploymentlawreport.com/2019/09/five-key-issues-to-understand-about-ab-5-and-its-impact-on-independent-contractors/

Paying Uncle Sam

The U.S. government (aka Uncle Sam) is known for having one of the most complicated tax codes in the world. There are taxes that you'll owe for your business, as well as taxes you'll need to withhold and pay on behalf of your full-time employees.

Employer taxes

As an employer, you are responsible for paying a variety of **federal, state and local taxes.**[6] You must register with the department of revenue in each state where you'll hire employees or do business. If you opted to establish a corporation, you are required to pay federal income taxes on all of your income, no matter where in the world it is generated.

You're also responsible for state and federal unemployment taxes, with variable tax rates depending on how long you've been operating stateside. But fair warning: Newly formed companies have a higher tax burden.

Foreign companies doing business in the U.S. are subject to the Foreign Investment in Real Property Tax Act (FIRPTA) when or if you buy or sell property.

Employee withholding

Employers are responsible for withholding and paying federal, state, local and social income taxes on behalf of their full-time employees. Social taxes required by the Federal Insurance Contributions Act (FICA) include Social Security and Medicare.

Independent contractors are responsible for paying their own taxes, so no withholding is necessary. If a foreign employee lives in the U.S. for at least 183 days of the tax year, they owe U.S. taxes.[7]

Taxation and misclassification

33 M

Number of business returns filed to the IRS in 2013

Source

$34.7 B

Amount of revenue the U.S. government missed out on from 1996-2004 due to independent contractor misclassification

Source

6 41 states, Washington D.C. and Puerto Rico have state income taxes.
7 https://turbotax.intuit.com/tax-tips/general/tax-tips-for-resident-and-non-resident-aliens/L9Mm0x1i6

From healthcare to retirement

Beyond compensation, employees in the U.S. are entitled to a number of other employment benefits. Some of these are mandated by law. Others may not be required, but they come standard with the majority of jobs and will keep your company competitive so you can attract top talent. There are notable distinctions between benefits offered to salaried employees versus benefits for employees paid on an hourly basis.

One critical point of differentiation between the U.S. and most other countries is healthcare. In the U.S., there is no public universal healthcare system. Instead, workers share the cost of healthcare insurance with their employer. If you have 50 or more people on staff, the law requires you to offer health insurance to your full-time employees.

Keep reading for more details on healthcare as well as holidays and vacations, bonuses and profit-sharing, insurance, parental leave and retirement.

Healthcare

Holidays and vacations

Bonuses and profit-sharing

Insurance

Parental leave

Retirement

Healthcare

Companies with 50-plus employees are required to provide health insurance for their full-time employees. Although the cost is shared between employer and employee, the law dictates both the minimum value of the healthcare plan as well as the maximum employee contribution, equal to 50% of the cost of the least expensive plan. Penalties for noncompliance apply. Most healthcare plans include medical, dental and vision coverage for the employee, and usually for their family members, too.[8]

The Affordable Care Act (ACA), also known as Obamacare, is a law aimed at ensuring more Americans gain access to health insurance. There is no state-sponsored universal healthcare system in the U.S., and the majority of Americans have health insurance to help make medical care more affordable. More than half of Americans with health insurance get it through their employers. Others buy it themselves, and 8.5 million Americans have no insurance whatsoever. [9]

Not all U.S. employees are eligible for health insurance through their employers. Part-time and hourly employees, independent contractors and anyone who works at a company with fewer than 50 employees may not have access to an employer-sponsored healthcare plan. The ACA was passed as an alternative for these people to help with the high out-of-pocket costs of medical care. As an employer, even if you are not required to offer insurance to everyone you employ, most full-time employees will expect it, and not providing health benefits can be a major disadvantage in any sort of competitive environment.

Long-term disability insurance is an optional coverage you can provide to replace up to 60% of an employee's salary in case of disability. Roughly half of large and midsize businesses offer this benefit.[10]

8 https://www.ehealthinsurance.com/resources/small-business/employer-health-insurance-requirements
9 https://www.census.gov/library/publications/2018/demo/p60-264.html
10 https://www.iii.org/article/will-my-employer-provide-disability-coverage

Additionally, there are two optional non-taxable employee savings programs.

A Health Savings Account (HSA) is only available to people with a high-deductible health insurance plan as defined by the government. Eligible employees determine how much money they set aside from each paycheck. An HSA can be used to pay for prescriptions, doctor visits and other out-of-pocket healthcare costs. If the employee doesn't spend everything set aside in one tax year, the balance rolls over into the next year.[11]

A Flexible Spending Account (FSA) lets employees set aside pre-tax dollars for the same kinds of health expenses as an HSA. There are two key differences between an FSA and an HSA: Any employee can get an FSA, regardless of the type of health insurance they have, and all accumulated FSA funds must be used within the same tax year.[12]

Holidays

There are 10 national holidays in the U.S. The federal government does not require businesses to close on these days, nor do they require employers to pay employees for days off; however, many states do have requirements related to holidays. The 10 national holidays are:

New Year's Day
(January 1)

Martin Luther King Jr. Day
(third Monday in January)

George Washington's Birthday or Presidents Day
(third Monday in February)

Memorial Day
(last Monday in May)

Independence Day
(July 4)

Labor Day
(first Monday in September)

Columbus Day or Indigenous Peoples Day
(second Monday in October)

Veterans Day
(November 11)

Thanksgiving Day
(third Thursday in November)

Christmas Day
(December 25)

11,12 https://www.nerdwallet.com/blog/health/employer-offers-hsa-fsa-whats-difference/

Vacations

Although paid vacation time is not required by law, the average private sector employee receives 10 days of paid time off (PTO).[13] The more experience and responsibility your employees have, the more paid vacation time they will expect—PTO is a perk many employers use as a competitive advantage. Upon termination, some states require employers to compensate employees for any PTO that was accrued but not used.[14]

Bonuses and profit-sharing

Additional compensation can be offered in the form of performance-based bonuses and/or profit-sharing programs.

Bonuses can be a set amount or a percentage of an employee's base salary. They may be given at year's end or throughout the year as thanks for meeting specific work objectives. The amount might increase depending on the level of seniority or responsibility. An individual's performance may also be considered in determining the amount. Bonuses are taxed as compensation for the employee and are a tax benefit for the employer.

Profit-sharing is based on a company's annual performance. It can come in multiple forms, including cash compensation, stock and/or deferred profits that are handed out at retirement.

Insurance

Employers are responsible for workers compensation in order to cover lost wages and medical expenses in the event of workplace injuries or illnesses. The cost of your workers comp plan is determined based on the industry you're in.

General Liability (GL) and Professional Liability (PL) insurance protect your business from third-party claims that result from business practices and/or employee errors. GL protects you from claims of injury or damage to a person or property while PL protects you from claims resulting from advice or professional services your employees provide.

13 https://cepr.net/documents/no-vacation-update-2014-04.pdf
14 https://www.nolo.com/legal-encyclopedia/paid-vacation-what-are-rights-33485.html

Parental leave

In most states, paid parental leave is not required. Currently, only 11 states, the District of Columbia, and 30 cities and counties in other states have paid leave laws. However, the Family Medical Leave Act (FMLA) requires employers to grant up to 12 weeks a year of family leave for a number of medical reasons. This leave can be paid or unpaid at the discretion of the employer. Some states and localities require paid leave for family, illness or other reasons.

Even though it's not required, in an attempt to attract the best employees, more and more employers are offering paid parental leave for both parents following a birth or adoption.[15]

Retirement

Employers in the U.S. are not required to fund retirement or pension plans. However, many do, in an effort to be competitive with other companies when it comes to employee recruitment. The most common retirement plans offered are 401(k), for for-proft companies, or 503(b), for nonproft organizations. Employees choose how many pre-tax dollars to contribute to their plans. Employers are not required to match funds, but many contribute to their employees' retirement accounts, up to a maximum amount. Aside from the government, fewer and fewer companies offer traditional pension plans where the employer pays fixed monthly lifetime retirement benefits determined by an employee's length of employment.

Top 5 U.S. cities for innovation in 2017

1
Boston, MA

2
San Francisco Bay Area, CA

3
Philadelphia, PA

4
San Diego, CA

5
Austin, TX

Source

15 https://www.businessmanagementdaily.com/60668/the-new-hr-rules-employment-law-updates-for-2020/

Doing business in the U.S.

Name
United States of America (U.S.A.) or United States (U.S.)

Location
North America

Neighbors
Canada and Mexico

Territory
50 states, the District of Columbia (Washington, D.C.), plus additional territories including Puerto Rico and Guam

Currency
U.S. Dollar (USD)

Government
Democratic republic with three branches:

- Legislative
  Congress made up of Senate and House of Representatives
- Executive
  President, Vice President and Cabinet
- Judicial
  Supreme Court, Circuit Courts and District Courts

Establishing an entity

Your first step to U.S. expansion is deciding what kind of legal entity to establish, or whether to establish one at all. An employer of record (EOR) is a simple and cost-effective alternative to getting up and running quickly without the need for establishing an entity.

Hiring and firing

Federal and state laws dictate how you classify and compensate employees, and regulate termination. Full-time employees are governed by different regulations than independent contractors. Misclassifying an employee as an independent contractor can carry massive penalties.

Taxes

Employers are responsible for a number of taxes, including federal, state and local taxes; federal and state unemployment taxes; and taxes on real estate when you buy or sell property. You are also required to withhold and pay federal, state, local and social taxes on behalf of your employees.

Employee benefits

Some benefits are mandated by law and some are not. The most common benefits include health insurance, holidays and vacations, bonuses and profit-sharing, insurance, parental leave and retirement.

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Speak with a global solutions advisor today to learn how Safeguard Global can help you launch your U.S. expansion.

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