

The Nine-Step Playbook European Companies Can Follow to Help Their U.S. Operations Comply with U.S. Labor Laws

A playbook for navigating U.S. labor relations from day one doesn't just reduce legal risk—it preserves the operational flexibility and speed that attracted these companies to the U.S. market in the first place.

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Joshua Redelman, with Nelson Mullins. Courtesy photo

In the first part of this two-part series, I explained why it's important for European companies planning to do business in the U.S. to avoid inadvertently mobilizing unionization efforts among their U.S. workforces and violating the National Labor Relations Act (NLRA) when such efforts are underway, and to understand how European works councils and U.S. labor unions differ. In this second part, I offer a nine-step playbook for European companies to follow to help them stay compliant with U.S. labor laws as they contemplate and eventually decide to launch U.S. operations.

The playbook applies with even greater urgency when a European company enters the U.S. by acquiring an existing operation rather than building one from scratch. An acquired facility may come with an existing collective bargaining agreement the company inherits as a successor employer, or a workforce with union sympathies or a dormant organizing campaign already underway.

A Playbook for Attempting to Comply With U.S. Labor Laws

First, as they begin exploring expansion into the U.S., European companies should retain experienced counsel knowledgeable about both U.S. and European labor laws to guide the company through the process of deciding whether to expand to the U.S. A lawyer who has never encountered a works council cannot reasonably be expected to anticipate the instincts that will get a European manager into trouble. Likewise, a lawyer with no experience engaging with U.S. labor unions will place the company at risk of NLRA violations soon after operations begin. Placing counsel on retainer allows management to ask questions early and often and embed counsel into their planning process, preventing well-intentioned decisions from becoming legal liabilities.

Second, European companies should train their European and global leadership, the people who are responsible for deciding whether to do business in the U.S., on U.S. labor laws and the differences between U.S. unions and European works councils. These leaders need to know what they are getting into by doing business in the U.S. The attorney hired in step 1 should oversee the design and implementation of this training.

Third, European companies should commission a compensation benchmarking study. Unionization efforts often get their start when workers feel they're undercompensated compared to their peers. Benchmarking studies should include data on wages and benefits for local unionized and non-union workers, but they should also compare what the company offers its U.S. workforce against what it offers employees in its home country. That is the comparison U.S. employees will make. A benchmarking study that quantifies both the local market gap and the internal disparity gives leadership the information it needs to decide whether and how to close them.

Fourth, assuming the first three steps lead the company to move forward with U.S. expansion, a European company should hire a U.S. human resources executive with experience in union relations or organizing efforts. Before operations begin, they can help design workplace policies with labor-relations realities in mind. Once operations begin, they will be able to recognize early warning signs of organizing activity and problematic managerial activity that could violate the NLRA. European companies frequently have their U.S. human resources leadership report to a European HR director who has no NLRA training and may default to works council norms. If the U.S. HR executive's judgment is being overridden by someone in Munich or Stockholm, the value of the hire may be neutralized.

If a European company's entry into the U.S. is through the acquisition of a U.S. company that already has a union, the HR executive will need to be prepared to hit the ground running. Collective bargaining agreements may expire, but the obligation to bargain in good faith doesn't. And, a European company should know that its acquisition means it has purchased the union relationship and the contract, too. If the acquired company doesn't have a union, educating and training frontline supervisors is critical to union avoidance.

Fifth, a European company should design its U.S. employee handbook with union vulnerabilities in mind. Many unionization campaigns gain traction because employees perceive policies as inconsistent or unfair and see unions as the only way to right those wrongs.

Clear policies and procedures concerning discipline, promotion, and compensation, vetted by outside counsel, can reduce the kinds of grievances organizers often highlight. European companies frequently adapt their global employee handbook for U.S. use with only surface-level changes, leaving in provisions like redundancy consultation processes, statutory notice periods, and benefits entitlements, which do not apply in an at-will employment state like Texas. When those provisions remain in the handbook, they create expectations the company may not intend to meet. Employees who later discover that will feel misled—exactly the kind of grievance organizers exploit.

Sixth, a European company should train its managers and supervisors on the NLRA. Frontline supervisors are often the individuals whose words and actions create the greatest legal risk during organizing campaigns. Yet many companies devote little attention to preparing them. One law firm estimates that only 24% of employers have conducted frontline management training. These employees should be trained on NLRA basics, including scenarios drawn from typical works council interactions that are problematic under the NLRA (such as a supervisor casually asking "What does the floor think about the new overtime policy?"), how "TIPS" issues manifest, and how to spot early signs of organizing.

Seventh, the line between a lawful communication channel and an unlawfully dominated labor organization is complex and is one that requires experienced counsel to draw. Therefore, a European company should build its employee communication infrastructure with the help of outside counsel. Effective communication systems can reduce the perception that workers need outside representation to be heard. Open-door policies, clear grievance procedures, and regular communication from leadership about workplace decisions can help build trust and transparency.

Some elements of the works council ethos, such as talking to employees before changing compensation programs or benefits, can be beneficial when adapted to be compliant with U.S. labor laws. These should be designed to gather feedback and share information, though, and not to negotiate or resolve workplace issues through a representative body. Section 8(a)(2) of the NLRA

prohibits employers from dominating or interfering with a “labor organization,” a term interpreted broadly enough to cover employer-created employee committees that address working conditions.

Eighth, building on what it learned from its benchmarking studies, a European company entering the U.S. should offer benefits that align with local expectations and the reputation associated with its global brand. Union organizers often highlight discrepancies between a company’s benefits and its public image as a sign that employees are undercompensated. European companies often assume their global benefits reputation precedes them. But U.S. employees don’t compare their benefits to what a German or Swedish worker receives in the abstract—they compare them to what the company’s own website, recruiting materials, and Glassdoor profile led them to expect. When a company markets itself as a progressive European employer but offers a standard U.S. benefits package, that gap becomes the organizer’s most effective recruiting tool.

Finally, ninth, a European company should establish monitoring and response protocols that offer a clear plan for responding to early signs of organizing activity. That includes building a response team comprising internal legal, HR, and operations representatives, as well as outside counsel. Identifying who will lead the response and how communications will be handled can prevent rushed decisions that create unnecessary legal exposure.

New U.S. Operations Require a New Playbook for European Companies Navigating U.S. Labor Laws

European companies launching operations in Texas and across the U.S. are, in many ways, victims of their own success: U.S. workers arrive with expectations shaped by the European brand, and when those expectations go unmet, unionization becomes the path to securing what they believe they deserve. When that happens, European managers may unknowingly violate U.S. labor laws by engaging with workers in ways that are perfectly lawful back home. A playbook for navigating U.S. labor relations from day one doesn’t just reduce legal risk—it preserves the operational flexibility and speed that attracted these companies to the U.S. market in the first place.

Joshua Redelman, a partner at Nelson Mullins, is a trusted employment lawyer and legal adviser for international and high-growth companies in Texas. His practice combines employment litigation, day-to-day employment counseling, and international advisory work. He can be reached at josh.redelman@nelsonmullins.com.

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