

10 Tips For Operating Under A Status-Of-Forces Agreement

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The U.S. government has military bases and outposts around the world and — as it does within the United States — utilizes contractors to support its mission overseas. Because military personnel and employees of government contractors are necessarily in foreign countries, questions arise about how and which laws of the host nation apply. This uncertainty is often resolved with bilateral — or multilateral — agreements between the host nation and the United States that are known as status-of-forces agreements, or SOFAs.



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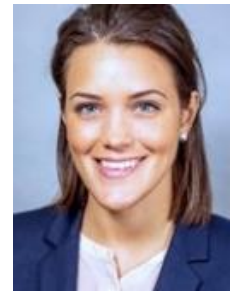
SOFAs serve a number of functions. First, they define the legal status of U.S. Department of Defense personnel and supporting government contractors with respect to their activities and property in the territory of another nation. Second, they set forth rights and responsibilities between the U.S. and the host nation government. For personnel, SOFAs can dictate all aspects of employees' lives while they are residing in the host country.



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For example, SOFA agreements may address status, entry and departure from the host nation, military training within the host nation territory, jurisdiction, law enforcement, taxation, import and export laws, driving privileges, employment, schooling, housing, and more.

SOFA protections generally extend beyond uniformed service members in the host country to civilian employees of defense contractors and other organizations who provide services in the host country and to their dependents. The terms of such agreements vary across jurisdictions to reflect the specific needs of the personnel operating in any particular country.



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SOFAs can be complicated and difficult to navigate. This article provides a list of the top 10 considerations of which contractors should be aware when providing services overseas in a country covered by a SOFA.

1. Designate a central point of contact.

Establish contact with appropriate representatives at the U.S. Department of State and the DOD, as well as with the relevant overseas embassy and U.S. military bases. Developing an ongoing working relationship with these contacts is important for addressing issues, concerns and questions pertaining to SOFAs, including onboarding and preparation for the overseas roles.

2. Register To facilitate employee management and accountability.

Under the Defense Federal Acquisition Regulation Supplement, employers must register for the Synchronized Predeployment and Operational Tracker web-based system, or SPOT, for personnel to be eligible to process through a deployment center or travel to, from or within a designated operational area. Personnel will thereby be granted the SPOT-generated letter of authorization, which identifies any additional authorizations, privileges or government support that the personnel may be entitled to under the SOFA arrangement.

3. Establish the terms of the employment relationship.

Prepare and execute contracts with employees who will be providing services abroad. This includes establishing a process to ensure that employees complete training certifications and satisfy immunization requirements and Centers for Disease Control and Prevention approvals (if applicable), as well as formalizing policies for employee performance evaluations, termination and discipline.

4. Review SOFA and ancillary documents for guidelines.

Review the SOFA to understand employees' entitlement to benefits, the documentation required to comply with verification of employee status and legal residency by the host country, terms relating to mobility and access to government-sponsored and private transportation, exemptions from laws and regulations of the host country with respect to terms and conditions of employment and labor laws, employee tax obligations and the tax treatment of income received as a result of service with or employment by the U.S. armed forces, and the application of customs and import taxes on imported goods.

5. Establish health and welfare benefits abroad and domestically.

Employers should work with a benefits broker to ensure that relocating employees — and their dependents — continue to have access to health and welfare benefits coverage while outside of the U.S. In some cases, employees — or their dependents — will also require continuing coverage in the U.S. while working abroad.

6. Procure defense base act insurance coverage.

The Defense Base Act of 1941 mandates that U.S. government contractors provide and maintain workers' compensation insurance coverage for personnel working on service contracts outside the U.S. (A waiver may be available under certain circumstances.)

7. Coordinate with payroll to properly structure payroll processing.

Some foreign countries may require federal employers to register with a foreign tax authority for foreign payroll tax reporting and compliance. Depending on the jurisdiction, employers may be able to register for foreign payroll tax reporting by operating directly through a branch activity in the foreign country or by forming a foreign subsidiary company. Check with your payroll provider to identify any special programs for addressing payroll processing for employees providing services overseas.

Under certain circumstances, a SOFA may exempt U.S. government contractor employers from foreign payroll tax reporting and compliance, or may exempt both employees and employers from income taxation in the host country. An exemption from the requirement to make contributions into the foreign social security system may also be available under a U.S. social security totalization agreement.

8. Consider personnel's personal needs.

Employers should arrange for travel, relocation and housing options ahead of an employee's arrival to a foreign country. Employers should also contact the U.S. military base in the particular foreign country to gather information and resources on matters relating to: understanding local customs and requirements; long and short-term housing options;

access to religious centers, community centers and local facilities; transportation; scheduling and logistical matters relating to the move, including storage facilities for personal items; banking options, access to local currency and common pay practices for contractors' employees; options for child care and pet care services; and access to health care and military base health centers.

9. Identify the limitations for dependents overseas.

SOFAs may have implications for dependents of DOD service providers living overseas, which are often left unaddressed by these agreements. For example, SOFAs do not provide special opportunities for employment of spouses living abroad. Additionally, the laws of the host country may impose barriers to overseas employment for those visiting on nonworker visas, which may further impact employees' ability to prepare for and succeed financially while on an overseas assignment.

Given the lack of information, transparency and coordination typical of SOFAs relating to dependents, employers should consider assisting employees in identifying employment opportunities and applicable visa and eligibility requirements for dependents who want to work within the host country.

10. Manage and coordinate with subcontractors.

If the U.S. government contractor is engaging subcontractors to provide the required services under the government contract, ensure that the subcontractor is aware of the SOFA and its impact on the subcontractor's work. It is imperative for the subcontractor to inform its employees of their individual rights and responsibilities under an applicable SOFA.

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