



German American
Chambers of Commerce
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Handelskammern

Human Resources in the US

A Guide for German Companies





Human Resources in the US

HR departments in Germany and the US operate in considerably different environments. That is why it is critical for each German company to establish a comprehensive human resources strategy when entering the US market - even if it will have only a small team or single employee to start.

Smaller companies without a dedicated local HR Manager should develop detailed plans to ensure that necessary HR functions for the US subsidiary are handled effectively and in accordance with regulatory requirements and market best practices.

Furthermore, companies must determine who will perform each specific HR responsibility or function: the HR Department within the German headquarters, the non-HR specific management at the US subsidiary, or local external service providers/consultants following an outsourcing model.

Due to cost constraints, hiring a local HR Manager may not be immediately feasible for many new market entrants. If your company plans a major initial investment that includes production operations and/or a workforce of roughly 50+

employees, it is highly recommended to hire an experienced local human resources manager at the outset who can establish and run the HR department at the US subsidiary.

The appropriate balance regarding the execution of HR functions from Germany or from within the US subsidiary varies by company and depends on a number of factors, including financial costs, growth plans for the local market, overall administrative capacity, and available technical resources.

Companies should ensure that any parties executing these functions have the requisite local market knowledge and experience and should provide resources and training wherever necessary.

This publication is designed as a guide and go-to resource for German companies setting up an HR function for their US subsidiary. The German American Chamber of Commerce of the Midwest is your trusted partner in the US. Our team and a strong German-American network of peers, experts, and service providers is here to support you and your business in the US.

✓ CHECKLIST FOR YOUR US SUBSIDIARY'S HR STRATEGY

Recruiting & Staffing

- ☐ Candidate sourcing - research relevant job boards; ensure job descriptions conform to market and legal standards; leverage network and LinkedIn for proactive target candidate outreach
- ☐ Define interview process; ensure all participants are informed of local dos and don'ts
- ☐ Ensure processes are in place to onboard new hire(s) and complete/submit required governmental paperwork (W-4 and I-9 forms)

Compensation & Benefits

- ☐ Research prevailing salaries/wages per industry and region to create a comprehensive and market-competitive compensation package that includes standard benefits
- ☐ Ensure internal process or an external partner are in place for payroll administration, including proper withholding of "payroll taxes" such as Social Security and Medicare contributions
- ☐ Research and engage local broker to administer employee health insurance and 401k plans

Talent Management

- ☐ Develop Training & Development plans for all job functions and seniority levels
- ☐ Define pathways for US employees to advance within the organization
- ☐ Create policies and structures to measure and document employee performance and communicate feedback (both ongoing and formal periodic reviews)

Employee Relations

- ☐ Work with US legal counsel to create a comprehensive Employee Handbook per local norms
- ☐ Develop mechanisms and assign responsible parties to handle disputes between employees and between employees and management
- ☐ Establish policies and procedures for disciplinary action and termination of employment

Your Contact



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Interviewing and Hiring Staff

What advice do you typically give clients about finding applicants?

It is important to advertise to a broad network of potential applicants. Federal and state employment laws prohibit discrimination in employment decisions based on race, gender, religion, color, national origin, age (for persons 40 years of age or older) genetic information (such as family medical history) and physical or mental disabilities. When advertising for a job, select a number of different platforms, methods, and locations for advertising. This reduces the risk of discriminatory hiring practice claims. Your job posting should include a statement that your organization is an equal opportunity employer. Additionally, the posting should outline the essential functions of the position based on a written job description.

Collect resumes and standardized applications to compare and contrast applicants. This will help you determine if your applicants can perform the essential functions of the job, with or without accommodation. It will also help you narrow the pool of applicants to a reasonable number for interviews.

What are best practices for conducting job interviews?

Train your interviewing team ahead of time to minimize any risk of your interviewers asking any questions about a protected status. By establishing a routine format for your interviews, you can more accurately weigh job candidates against one another and, at the same time, ensure that your company avoids seeking information about membership in a protected class. Importantly,

several state and local laws also ban inquiries into the salary history of applicants, so it's important to know the laws regarding salary history inquiries where you are interviewing before asking any of these questions.

By default, employees in the United States are hired at-will, meaning they can be terminated for any reason and at any time, so long as termination is not prohibited by an applicable law. Be mindful not to make any statements during the interview that would modify the at-will employment relationship by promising job security or permanent employment.

In what ways does US law protect against unfair competition?

Federal and state law recognize that employers have a substantial investment in developing products, gathering market data, and researching customers and potential customers. To that end, employers frequently enter into noncompete agreements which limit the ability of former employees to work for competitors for a certain period of time. Courts interpret noncompete agreements on a standard of reasonableness, looking at both the length of time the employee is prohibited from working for a competitor as well as the geographic limitation of the agreement.

It's best to ask applicants if they have signed any non-compete agreements in the past which they might still be bound to. This will mitigate the risk of another company filing suit against you to enforce these non-compete obligations.

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The Importance of Company Culture

The influence of strong organizational culture on the overall success of high-performing companies is a hot topic in both Germany and the US. While organizational culture should permeate all aspects of operations, HR departments in both countries have “a special role in ensuring that an organization's culture will continue and thrive”, according to the *Society for Human Resource Management* (SHRM). German companies should thus strive to create and implement HR policies, programs, and strategies that foster their organizational culture within the new US team - with or without the support of a local HR Manager.

Beyond contributing to the general success of a company, organizational culture is important for attracting and retaining millennial talent. As per Forbes, “millennials value company culture more than any other generation that’s come before them... (and) on average, would be willing to give up \$7,600 in salary every year to work at a job that provided a better environment for them.” In particular, millennials seek employers whose organizational culture emphasizes corporate social responsibility (CSR) and diversity/inclusion, provides for a good work-life balance, and offers ample performance feedback and room for professional growth.

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Strategic Alignment

Planning for Implementation

Improvement Realization

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Key Factors

Higher Job Turnover in U.S vs EU

Lower Levels of Education and Technical Training in U.S

Shortage of Skilled Labor in U.S (~3.5% Unemployment Rate)

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HR in Germany vs the US

To prepare for the launch of a new US subsidiary, German companies should inform themselves about prevalent differences related to human resources. The following table highlights some of the main areas where regulations and best practices differ between the two countries. It is important to keep in mind that companies operating in the US must not only adhere to federal employment regulations, but also to those at the state and even local

level, which can vary greatly across regions. It is therefore important to consult different states' regulations in areas such as paid sick leave.

Even in the absence of regulatory requirements, companies should align their HR policies with local best practices in order to attract and retain top talent.

Category	Germany	USA
Average Working Hours	<ul style="list-style-type: none">• 35 - 40 per week (M-F), not exceeding 8 hours per day• Working on Sundays and public holidays is generally prohibited	<ul style="list-style-type: none">• Generally 40 hours per week, weekend/holiday work common• Overtime pay: "Exempt" vs "non-exempt" employees
Vacation Policy	<ul style="list-style-type: none">• Typically 25-30 vacation days per calendar year	<ul style="list-style-type: none">• Paid vacation days not mandated by federal law, but 96% of companies offer them• 10 days of paid vacation to start is standard
Medical and Parental Leave	<ul style="list-style-type: none">• Full paid maternity leave plus optional unpaid parental leave• Full salary payments for a period of six weeks in case of sickness of an employee	<ul style="list-style-type: none">• No federal law for paid medical or parental leave; some states have regulations• Unpaid leave as per Family and Medical Leave Act (FMLA)
Recruitment Process	<ul style="list-style-type: none">• CVs can include photo, city/date of birth, marital status, children, nationality, gender, interests, and Zeugnisse• CVs can be 2-3 pages long	<ul style="list-style-type: none">• Resumes don't include birth dates, marital status or photos• No written Zeugnisse; professional "references" provided for employers to contact
Termination of Employment	<ul style="list-style-type: none">• Employment contracts regulate firing and resignation procedures• A typical notice period can be up to 90 days for both parties	<ul style="list-style-type: none">• Most employment relationships are "at-will"• "Two weeks notice" common but not legally required

A Start-up Guide to Employment Immigration

Transferring to the United States to work is not easy, immigration-wise. Human Resources departments should be aware of the different non-immigrant classifications and the requirements, duties, and costs each classification brings about. Having an employee in the US working without the appropriate visa – no matter for how short a time – can result in fines and even criminal prosecution for the company, as well as long lasting consequences for the employee.

Visitor Visas

First of all, it is worth noting the difference between entering the US to work or on business. The kinds of activities that can be performed as a visitor for business are very limited and, although listed, frequently ambiguous and fluid. In order to enter the U.S. on business, a VWP (ESTA) or “visitor” visa (B-1) may suffice. The only difference holding a B-1 visa brings as opposed to entering on the VWP with an ESTA is the authorized period of stay. The VWP authorizes stays of up to 3 months, while an actual B-1 visa allows for stays of up to 6 months.

Employment Visas

On the other hand, work implies performing regular duties for wages or a salary. To enter the United States to work, the visitor needs a “work” visa. A temporary worker who is incorporated into a company’s payroll needs the employer to petition for one of the work visas available (E1/ E2; H-1B; L-1A/ L-1B; O-1). Each visa type has different requirements and the periods of stay and extensions options also vary.

Prior to moving the employee from Germany (or the EU) to the United States, the employer must consider the country of nationality of both the company and the employee, the length of time the employee will be needed in the US, and the level of education and job duties he or she is going to perform. Salary issues may also come up while looking into visa options or preparing the petition for certain classifications.

As with everything else, the devil is in the details and each visa classification has its own advantages and disadvantages, therefore careful preparation and follow up is essential.

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SETTING UP THE HR DEPARTMENT AT YOUR NEW US SUBSIDIARY

Foreign investors confront a number of challenges when operating in the US. At the core of a successful business entity is its employees and it is essential that the Board of Directors establish a human resource function to manage all of the employment needs of the US subsidiary. The human resources function is both strategic and transactional, with human resource professionals having overlapping responsibilities. Compliance with the laws of the US, individual states and local municipalities is central to the HR function.



Fig. 1: The Human Resource Functions

Strategic Functions

The company must set its financial goals, as well as create and maintain the company's operating principles, such as accountability, collaboration, communication, customer focus, or innovation. Strategic responsibilities of the human resource professional include:

- assist in finding the best location(s) for the company's operations to attract the best talent;
- create staffing plan and budget in line with the company's overall budget and financial goals;
- recruit the best talent;
- develop pay structures and salary ranges;
- establish and document the most appropriate employment relationships;
- design and implement compensation system and benefit and wellness programs;
- design and implement a performance management system; and
- create lawful procedures for ending employment relationships.

Transactional Functions

The company must comply with the regulations of federal, state and local governments, including the collection and submission of Social Security and payroll taxes, as well as taxes for workers' and unemployment compensation. The human resource professional is responsible for various day-to-day transactional responsibilities, which include:

- draft and implement work rules and policies and procedures to be incorporated in the employee handbook;
- draft job descriptions for the employees;
- process payroll accurately and timely;
- administer benefit programs such as medical insurance, retirement savings plans, and policies for leaves of absence;
- provide a healthy and safe working environment;
- assist supervisors with addressing employee performance issues;
- train employees to safely and effectively perform their duties and responsibilities;
- administer performance management system to evaluate the effectiveness of the employees; and
- implement procedures to respond meaningfully and lawfully to employees' issues and complaints to avoid interference with the company's operations.



Fig. 2: The Human Resource Circle of Responsibilities

To effectively manage the company's human resource department, HR professionals utilize technology and software, conduct research, seek input and education opportunities from professional HR associations, in addition to relying on the expertise of consultants and attorneys.

The Human Resource Department

The size and staffing of the human resource department depends upon a number of factors, such as the number of employees, whether the company has multiple locations, and the company's plans for expansion. At the earliest stage, the human resource function may be managed by the company's finance or administration manager, relying on software and the advice and counsel of external consultants and attorneys. As the company expands to about 50 employees, a dedicated human resource professional is typically hired in the role of HR generalist, coordinator or manager.

Successful companies consider the human resource professional an important member of the executive management team, responsible for communicating and implementing the company's goals and serving as a liaison between employees and management. This professional may hire and supervise a recruiter, as well as an HR assistant to perform payroll, handle benefits administration and other transactional tasks.

With additional expansion up to 150 employees, specialists are needed to help plan strategies and to oversee compensation and benefits, employee relations, and workplace health and safety.



Fig. 3: Stages of the HR Department

When deciding to recruit and hire a human resource professional, the company should consider the candidate's experience with new and growing companies, including adjusting to changes in a company's operations, as well as his/her ability to handle multiple challenges and projects. These attributes are as important as the candidate's education, years of experience and professional certifications.

Conclusion

With the appropriate infrastructure and legal advice, foreign investors can successfully expand their operations into the United States. Please contact us for more information.

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- **Full-Cycle Recruiting**

The experienced and intercultural Recruiting Services team at GACC Midwest can assist you in finding qualified employees for your new US subsidiary. We support companies within the German-American business environment with all steps in the recruitment process, including advising them on relevant HR matters. We recruit talent across all industries, functions, and seniority levels with a special focus on candidates with German-language abilities and/or work experience within German-American business.

- **The GACC Talent Network**

The GACC Talent Network is the career portal of the German American Chambers of Commerce (GACCs), featuring both internal staff and internship openings at the GACCs as well as current opportunities at our external client companies in German-American business. The GACCs also maintain a free and confidential database of active and passive jobseekers who we match with suitable career opportunities across the US: www.gacctalentnetwork.com.

- **Joint Success - Expat Partner Services**

GACC Midwest also offers individualized support for people accompanying their partners on an international assignment in the areas of job search, higher education, and community engagement. International assignments can present challenges not only for the expatriates but also for their spouses and families. The successful integration of an accompanying spouse into the new environment is the most critical success factor for international assignments.

- **Talent Spotlight Newsletter**

In addition to our full-cycle recruitment support, GACC Midwest's Recruiting Services team also connects our member companies with professionals seeking new opportunities in German-American business through this newsletter.

Other GACC Midwest Services

GACC Midwest, with its offices in Chicago and Detroit, has broad experience and knowledge of the market conditions in the US and in Germany. In our role as an advisor, we help German companies identify opportunities for cooperation and growth in the US market. Our team is specialized in effectively setting up your subsidiary for success in the US.

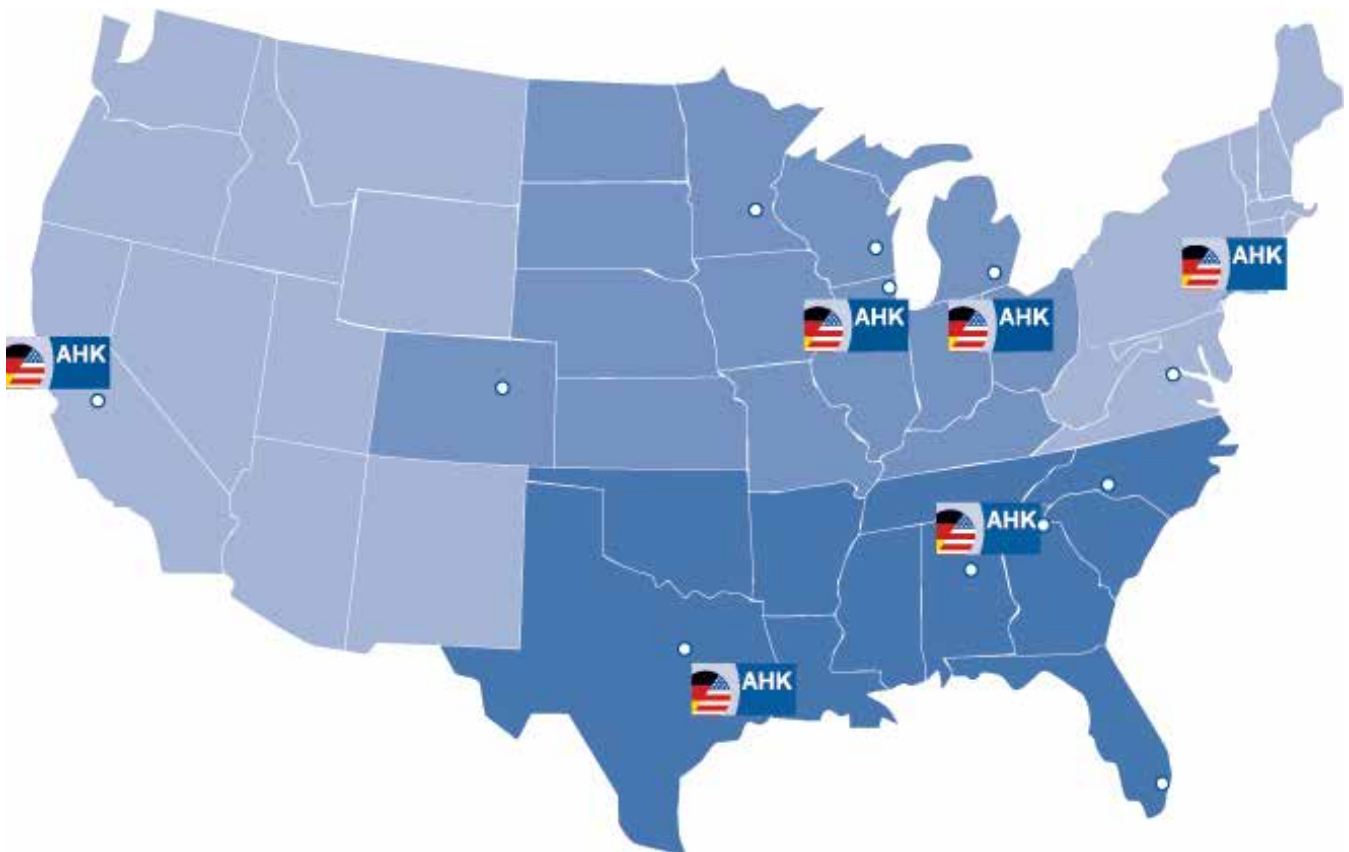
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About GACC Midwest

The German American Chamber of Commerce® of the Midwest (GACC Midwest), headquartered in Chicago with a branch office in Detroit and an extensive chapter network across the American heartland, was founded in 1963. GACC Midwest is an integral part of the German Chamber Network (AHKs) with 140 offices in 92 countries around the globe.

Our continuing mission is to further, promote, and assist in the expansion of bilateral trade and investment between Germany and the United States, especially the Midwest. Our organization combines elements of a trade commission, a membership association, and a professional consultancy - quite a unique concept in international trade promotion.

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