

**ABA INTERNATIONAL LABOR AND EMPLOYMENT LAW COMMITTEE
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**Employment Agreements and Cross Border Employment –
Employing “Ex-Pats” Outside the U.S.:
What Obstacles Are Presented and How Do You Overcome Them**

HYPO:

Stella V. Price is a Vice President of Sales and Marketing at a large New York based biotech company. She has been there for 5 years and steadily promoted. She is a U.S. citizen and lives in Westchester with her husband, son and dog.

In the beginning of 2006, Stella is approached by a recruiter about a Senior VP position at a rapidly growing biotech firm, XYZ Tech, which is expanding its operation abroad. The position would be SVP of International Sales and Marketing at XYZ’s London subsidiary. As this would be a promotion for Stella, and she is intrigued about working abroad, she meets with the President of XYZ and the SVP of Human Resources. After a round of interviews, Stella accepts the job. In February 2006, Stella receives an assignment agreement from XYZ’s office in London. A month later, the whole Price family, including the dog, move to Kensington.

Stella’s assignment agreement has the basic housing and moving needs, a New York choice of law and jurisdiction provision and a fairly broad non-competition/non-solicitation agreement that applies for 1 year after termination. Her employment is at-will. She can be fired “for Cause”—broadly defined as poor performance, negligence or dishonesty thereby receiving no severance or terminated without cause receiving two months severance and repatriation.

After a successful year in London Stella is assigned a special project at one of XYZ’s subsidiaries in Belgium. She relocates there leaving her family in London and commutes back on weekends. Trying to get the special project off the ground Stella puts in extra hours at the office, dealing with her new staff and responsibilities. She is extremely short handed and asks the London office for more support but her boss claims that resources are hard to come by as the economy in New York is faltering and the belt is tightening on budgets. She falls further behind on the project and with the other increasing demands at home misses a second deadline. Two weeks later, she asks her boss for more time on delivering this project and he asks to meet with her. On November 7, 2007, with no notice or warning, her boss and the HR manager from the London office fly to Belgium and terminate her “for Cause”—effective immediately.

Stella calls her husband who sends her the assignment agreement. She is shocked to learn that being late on this project could constitute “Cause” and that she gets no severance, no notice and no repatriation. In addition, she has this onerous non-competition clause. In a panic Stella calls her best friend in New York who tells her to call Wendi Lazar at Outten & Golden in New York. After a brief conversation, Stella

sends Wendi an email detailing the facts of her case. She also has the name of an attorney in the UK, Clare Murray, a Belgian lawyer, Bruno Blanpain and her husband's college roommate from Ireland, Bryan Dunne, a dynamic International lawyer. They have all come here today to tell you their thoughts on Stella's case.