



# UNDERSTANDING STATUS OF FORCES AGREEMENTS (SOFA):

## Removing Barriers to Military Spouse Employment Overseas

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## ABOUT THE “FORCE BEHIND THE FORCE” SERIES

The Institute for Veterans and Military Families (IVMF), as part of its broader employment research efforts, and with the generous financial support and collaboration of Prudential Financial, Inc., is exploring the topic of military spouse employment. This paper marks the second iteration in a series of hands-on products geared to human resource professionals, hiring managers, C-Suite executives, philanthropists, and nonprofit leaders interested in hiring military spouses. The initial three-part suite of research included:

- **BUSINESS CASE:** an overview of military spouse demographics and the business case to hire them;
- **PROFILES:** case studies of military spouses that demonstrate some of the common employment difficulties they encounter, and (anticipated release date, November, 2016)
- **TRAINING MATERIALS:** for human resource professionals who wish to learn more about recruiting and hiring military spouses (anticipated release date, December, 2016)

The newest suite of products in the “Force Behind the Force” Series will include:

- **RESEARCH BRIEF** defining career portability, providing recommendations for employers
- **INFORMATION** to help military spouses and employers better understand issues related to Status of Forces Agreements (SOFA) and working Overseas
- **TOOLKIT** for employers on enabling job portability.



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## Introduction

Status of Forces Agreements (SOFA) are multilateral or bilateral peacetime agreements that define the legal status of U.S. Department of Defense (DoD) personnel, activities, and property in the territory of another nation. They also set forth rights and responsibilities between the United States and the host government.<sup>1</sup>

The United States has some form of SOFA agreement with more than 100 nations, about half under the NATO or the Partnership for Peace SOFAs.<sup>2</sup> There are also comprehensive agreements with long standing U.S. allies and partners like Australia, Israel, Japan, and Korea, and a variety of less comprehensive agreements with other nations.

SOFA agreements differ in their specificity, complexity, and their transparency. SOFA agreements have employment implications for military spouses living overseas as a result of military orders. However, it is often unclear how and when SOFA agreements apply since most agreements do not specifically address employment issues directly, they are often written in legalese, and many are simply not accessible. This brief provides an overview of SOFA agreements and addresses their implications for prospective military spouse employees as well as their employers.

## What is a SOFA agreement?

SOFAs are the means by which the DoD supports its own policy that personnel should not be sent to foreign countries without status safeguards to ensure their safety.

- SOFA protections normally extend not only to uniformed service members in the host country, but also to civilian employees of defense organizations in the country, and (with some limitations) to their dependents.<sup>3</sup>

<sup>1</sup> Specific information about SOFA agreements was reprinted or adapted from the following publication: International Security Advisory Board (2015, January 16). Report on Status of Forces Agreements. Retrieved from <https://www.state.gov/t/avc/isab/236234.htm>. Recommendations and barriers specific to employers and spouse employment were developed from interviews with both military spouses and employers.

<sup>2</sup> "The Partnership for Peace (PfP) is a program of practical bilateral cooperation between individual Euro-Atlantic partner countries and NATO. It allows partners to build up an individual relationship with NATO, choosing their own priorities for cooperation." More information: <https://www.sto.nato.int/Pages/partnership-for-peace.aspx>

<sup>3</sup> According to DoD 6010.8-R, Military dependents are the spouse(s), children, and possibly other familial relationship categories of a sponsoring military member for purposes of pay as well as special benefits, privileges and rights. Retrieved from [https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/60108r\\_0791/cp3.pdf](https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/60108r_0791/cp3.pdf)

✘ **Barrier:** SOFA agreements with host countries can impact employment for DoD dependents. Because most agreements do not address employment specifically (and many agreements are not accessible), dependents (and their employers) do not have access to reliable or accurate information about how SOFAs impact their employment overseas. Finally, there is no central point of contact or centralized clearinghouse of information.

✔ **Recommendation:** There are countries with which the U.S. has significant military relationships but no SOFA. It should be a U.S. government priority to either fill those gaps or provide clarifying guidance. With regard to employment, clear, location-specific guidance is needed for DoD dependents working overseas (e.g., specific actions and procedures to take in order to seek and accept employment; taxation implications). A designated central point of contact (e.g., a Legal Officer on each installation) should be established for military spouses working overseas to gather relevant information about overseas employment as it pertains to SOFA.

## Who is responsible for SOFA agreements?

The Department of State (DOS) has overall responsibility for leading the U.S. government's negotiation of SOFAs and shares responsibility for their implementation with the (DoD), which serves as executive agent for the implementation and negotiation of supplemental agreements.

✘ **Barrier:** Ongoing relationships are difficult to establish when there is no mandated or designated point of contact tasked with this responsibility and no specific position tasked with having the specialized knowledge needed to answer complicated, consequential, and dynamic SOFA questions.

✔ **Recommendation:** Employers can establish working groups that include appropriate representatives from the DOS and the DoD and develop ongoing working relationships in both departments that includes points of contacts to address issues, concerns, and questions pertaining to SOFA agreements. This forum could be used to share up-to-date information.

## Can SOFA agreements be revised?

The United States has, in recent years developed a "Global SOFA Template" (GST). A GST is an interagency approved standard form that provides for status protections desired by the U.S. The GST is intended to be the standard for all future agreements, affording broad U.S. immunities.

- Some new SOFAs have been negotiated, but DOS negotiators believe a gap has emerged between the comprehensive provisions desired by the U.S. (and provided for in many of the earlier-era agreements and prescribed in the GST) and those to which host countries today are willing to agree.
- SOFAs, by definition, involve some compromise of the sovereign rights (i.e., foreigners present in a nation are subject to the laws of that nation) that host nations would otherwise have under the basic international law rule. Further, countries can exercise exclusive or shared jurisdiction within a host nation, and this is contingent upon the established agreement between the countries. These factors may impact specific regulations that affect military spouses and their employment.

✘ **Barrier:** Military spouses who choose to work on the economy (as opposed to working on a military installation), may lose their SOFA status protections and be subject to the host nation's laws and policies regarding taxation and employment. In addition, host countries may be reluctant to allow employment opportunities of U.S. citizens if they (1) perceive them as decreasing the employment opportunities of their own citizens or (2) if the same employment opportunities are not reciprocal.

✔ **Recommendation:** Revise SOFAs to include or allow special provisions related to employment that may be needed on a case by case basis (i.e., military spouses who also work as contractors outside of the DoD). For example, a procedure could be developed that allows employers to provide proof that the employment of military dependents does not disadvantage the citizens of the host country.

# How do SOFA agreements impact military spouse employees?

SOFA agreements can negatively impact the employment situation of military dependents living overseas. Lack of transparency with regard to SOFA agreements, their complexity, and a lack of centralized information specific to particular locations makes it difficult for spouses to seek or accept employment while living overseas. Below are a few ways SOFA agreements can influence the employment situation for military spouses:

## LACK OF INFORMATION

- Inability to access information about the requirements related to overseas employment leads to lack of clarity about the ability to work, uncertainty about finances, and inability for military families to prepare financially for overseas tours.
- Lack of information can lead to delays in employment even when SOFA agreements enable it; military spouses do not have enough information about what types of employment are allowed or how and where to secure available jobs. Further, companies overseas do not always advertise for job openings. Thus, spouses may experience excessive wait times or delays in securing employment.
- Updated guidance relevant to local SOFA agreements is not transparent to spouses or employers. When guidance is available, it may not be updated or accurate.
- Even when SOFA agreements are accessible they are written in legalese and do not necessarily address employment issues directly. In fact, many SOFAs in effect do not address employment at all, focusing instead on exclusive or shared civil/criminal jurisdictions.

## UNCLEAR POLICIES AND PROCEDURES

- Differing agreements, rules, and procedures are confusing and may inadvertently discourage military spouses from seeking employment (or starting or maintaining a small business) even if it is desired. For example, countries may vary in their requirements for visas, work, and residence permits.
- In some countries, SOFAs can restrict the number of U.S. citizens that are able to fill certain positions on the installations.
- Because a portion of the SOFA agreements are intended to protect the U.S. interests, employment for spouses should be treated as a national security issue as it diminishes military family financial readiness.

## LACK OF COORDINATION

- There is no central point of contact for employment-related information related to overseas employment. Thus, military spouses may need to seek the assistance of a legal advisor or tax specialist (this could be a Legal Officer on an installation).
- When institutional knowledge does exist with regard to SOFA agreements, it may be lost when employees with uniquely acquired knowledge and understanding of employment policies and procedures, change location and are replaced with new employees that lack the same depth of knowledge.





## How do SOFA agreements impact employers?

Employers experience difficulty in accessing information that could enable them to retain or hire military spouse employees. Similar to military spouses, employers experience difficulty accessing SOFA related information relevant to employment. Below are examples of how SOFA agreements can interfere with employment or retention of military spouse employees.

- There are no clear guidelines for employers who wish to retain military spouses when they move overseas. For example, employers may wish to not retain their current employees in their current roles after they relocate overseas, but there are not clear guidelines to facilitate this process even in cases where retaining the employee would not displace a worker in the host country.
- Without clear guidance, an employer who wishes to retain veteran or military spouse employees may be discouraged from doing so because of the opportunity cost.
- There is no central point of contact with specialized knowledge related to employment under SOFA agreements that employers can access with ease.
- SOFAs offer very limited guidance for employers particularly if they have no physical presence in the host country.
- Lack of transparency or clear guidance puts American businesses at risk if they are unsure whether they are compliant with existing agreements (e.g., when employers wish to retain their workers after they relocate overseas, the tax implications for both the employers and employees are unclear).

✘ **Barrier:** SOFA agreements are cumbersome and difficult to understand with no centralized point of contact to gather information. There may be little incentive for employers to retain their employees when they relocate overseas.

✔ **Recommendation:** Establish points of contact within the DoD and the DOS to answer questions pertaining to SOFA in the countries where employees are most likely to relocate. Know where military spouse employees intend to relocate as early on as possible to develop a plan of action to minimize unforeseen issues that may arise as a result of overseas relocations.

## How can employers help?

Business leaders who hire military spouse employees have a vested interest in retaining them if they are required to relocate but they also have limited guidance related to how SOFA agreements influence those decisions. To gather relevant information or to make changes related to SOFA, employers must identify the specific problems they encounter, describe the impact to their business, and, ideally, develop some desired solutions. Therefore, we make the following recommendations.

### POINTS OF DISCUSSION AND RECOMMENDATIONS FOR GOVERNMENT AND EMPLOYERS:

- ✓ Convene working groups with key stakeholders (business leaders who hire military spouse and veteran employees, congressional staff, military nonprofit leaders focused on employment issues, and human resource professionals)
- ✓ Identify key priorities with regard to SOFA changes as they pertain to both military spouses and employers
- ✓ Establish a SOFA point of contact within the DoD and the DOS
- ✓ Establish a SOFA point of contact within Congress and embassies overseas
- ✓ Consider the feasibility of establishing a dedicated role in the appropriate DoD department (Legal Office, Employment Center, or Military Spouse Employment Partnership (MSEP)) to be a central clearinghouse for information pertaining to SOFA and employment
- ✓ Encourage installations to publish up-to-date and accurate guidance as it relates to employment to include military spouses, contractors, and small-business owners who wish to operate overseas. This should include information about the feasibility of working overseas, how to obtain a work permit, and taxation issues that apply
- ✓ Dedicate resources to ensure that there is a trained professional who is available to answer questions related to SOFA for both military spouses and employers
- ✓ Identify countries who have established employment related guidelines or preferred processes that can be used as exemplars
- ✓ Identify businesses or companies who have developed policies or procedures that have minimized barriers to overseas employment and develop a plan to disseminate, share, and improve those practices
- ✓ Identify “champions” in the DOS, DoD, and Congress and determine how each entity can develop a short-term, medium-term, and long-term plan for influencing changes to SOFA agreements as they relate to employment



## Conclusion

Ideally, agreements with host countries could facilitate seamless employment of military spouses overseas. Instead, SOFA agreements impact military spouses' ability to seek out and accept employment and appear to be a barrier to their employment. Military spouses have limited ways of gathering information about these agreements, and there are not designated people responsible for disseminating SOFA specific information to spouses who may be interested in working while overseas.

Spouses can easily become discouraged given this dearth of information leading them to temporarily or permanently leave the labor market. Gaps in employment result in a loss of income, and those losses are compounded over time when that spouses misses opportunities for pay increases, advancement, or additional training. To improve their unemployment situation, employers who are willing to invest in hiring and retaining military spouse employees need SOFA specific information in order to retain their employees when they relocate overseas. Companies who have already committed to hiring military spouses will find themselves responding to employees who are asked to relocate overseas; they are also unlikely to be able to find information to help them inform their decisions. Like spouses, employers have little to no access to the information that could inform their hiring and retention decisions.

This paper is an initial attempt to identify and acknowledge the gaps pertaining to SOFA agreements and start to gather relevant information, develop relevant recommendations, and identify actionable solutions. Though no one entity alone is likely to change SOFA agreements, enlisting the help of committed employers, partners at the DOS, the DoD, and relevant members of Congress (if legislative changes are needed) is the most likely way to improve the exchange of information and eventually move towards the desired change.

# STAY IN TOUCH

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