
Employees Working Outside the UK May Still Have UK Employment Protection

2003-03-26

If your company is registered, incorporated, or carries on business in England and Wales, then your employees based outside the UK may well be entitled to statutory employment protection in the UK, regardless of their actual nationality. This startling news arises from two developments: the first is a recent change to the [Employment Rights Act 1996](#), (the Act of Parliament which codifies many of the UK statutory protections). The change removes the old prohibition on employees working outside the UK from suing for unfair dismissal in the UK. That change still left open the possibility of UK employment tribunals refusing to hear such claims, on the grounds that they could be determined more appropriately by a foreign court. However the UK Employment Appeal Tribunal, in a [decision](#) which has only just been published, has held that UK employment tribunals do not have a power to stay such cases.

In short, the UK Employment Appeal Tribunal decided that:

1. employment tribunals have jurisdiction to hear claims under the Employment Rights Act simply on the grounds that the employer is incorporated, registered in, or carries on business in, England and Wales - irrespective of the law governing the contract of employment, and regardless of where the employee happens to be working; and,
2. employment tribunals have no jurisdiction to stay such cases, so as to enable them to be determined in a more fitting jurisdiction outside the UK.

On the facts of the case, an employee working for a UK company on Ascension Island, where he reported to local management, was nonetheless entitled to sue for unfair dismissal in the English Employment Tribunal.

Implications:

Non-UK employers with branches in the UK, or UK companies operating abroad, need to exercise great caution before dismissing employees based outside the UK, regardless of the nationality of those employees. Proceeding on the assumption that they only need to be

concerned with local practice and law is now extremely dangerous. Such employers need to be alert to their employees' UK statutory rights. In particular, prior to dismissing, they need to determine whether they have a potentially fair reason for dismissal and whether the procedure they are adopting is fair under English law. In addition, as UK statutory rights cannot be settled other than by a Statutory Compromise Agreement meeting the requirements of the [English Employment Rights Act](#), any release will need to be amended to ensure compliance with that Act. Otherwise, the release will be ineffective to prevent employees suing to enforce their statutory employment rights in the UK.