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Client Alert

Global Human Capital and Compliance

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When Do International Employees Have UK Employment Rights?

In this month's update we report on new cases on the following key employment topics:

- International employees– when do they have UK employment rights?
- Can an outsourced worker claim for unequal treatment against the client's own employees?
- Buyer relief: vicarious liability for employee wrongs to third parties does not transfer under TUPE
- A new hurdle to bringing discrimination claims under parent company plans
- Narrow basis for part-time worker claims – for now

INTERNATIONAL EMPLOYEES – WHEN DO THEY HAVE UK EMPLOYMENT RIGHTS?

The question of jurisdiction and application of UK employment rights is a growing problem for employers, as employees increasingly work in multiple locations and in matrix organisations. The question of whether an employment has 'sufficient connection' to the UK, giving individuals UK employment rights, is nuanced and often difficult for employers to assess in advance.

In a recent case, the Employment Appeal Tribunal (EAT) has given further guidance on when an employee who was based outside of the UK for most of her employment and working under a US law contract benefitted from UK employment protections.

The employee had sustained an injury and asked to relocate to the UK without a guarantee that local work assignments would be made available to her. She completed at most one week's active work for her employer during this time and was otherwise inactive.

When her contract was not renewed whilst she was still in UK she brought claims including unfair dismissal, discrimination and unpaid holiday pay in the English Employment Tribunal.

The EAT found that from the date of relocation to the UK the employee had a sufficiently strong connection to England to bring her claims under English law. The case is surprising given the individual was based in Asia for the majority of her employment, carried out only minimal active work in the UK and that the employer had refused her request to formally become a UK-based employee. These factors were outweighed by apparently minor practical details such as having a security pass to the London office and being on distribution lists for UK personnel, personal factors – having British citizenship and personal ties and the fact she was in the UK at the time of termination.

The case illustrates the uncertainty surrounding peripatetic employment arrangements. When assessing employment actions, employers have a difficult task in weighing up both the work-related geographic links and the employee's own personal situation. Cases are highly fact-dependent and largely assessed by the first instance Tribunal so difficult to successfully appeal.

Cable News International Inc v Bhatti [2025] EAT 63

CAN AN OUTSOURCED WORKER CLAIM FOR UNEQUAL TREATMENT AGAINST THE CLIENT'S OWN EMPLOYEES?

In a novel claim, representatives for workers under an outsourced cleaning contract have failed in their attempt to claim equal pay to the client's own employees. The claim was based on indirect race discrimination, primarily based that the contract staff had a different racial make up to the client's own staff and were lower paid.

The claim failed because there was no 'single source' for the terms and pay of the two sets of employees; the fact the client had a contractual right to require the contract provider to increase pay was not enough to make it responsible for the disparity.

The decision is good news for employers who would otherwise face difficulties in obtaining and comparing pay across their own and third party organisations. The government is however currently considering "measures to ensure that outsourcing of services can no longer be used by employers to avoid paying equal pay" alongside expanded ethnicity pay reporting, so there may be further developments in this area.

Djalo v Secretary of State of Justice [2025] EAT 67

BUYER RELIEF: VICARIOUS LIABILITY FOR EMPLOYEE WRONGS TO THIRD PARTIES DOES NOT TRANSFER UNDER TUPE

Under TUPE, liabilities "under or in connection with" the employment contract transfer with the employee to the new employer. However, the High Court has ruled that this does not include vicarious liability for acts towards third parties.

In this case, a former patient brought a personal injury claim against the buyer of a hospital for alleged wrongful acts of employees while the hospital was under different ownership. The employees had transferred under TUPE in the asset sale.

The Court held that for liability to transfer, it must be "directly connected" to the employment contract, meaning it must be a liability the transferor has towards an employee rather than a third party. However buyers may still inherit vicarious liability for acts committed by one employee towards another - such as discrimination and harassment - which have a close connection with the employment relationship.

ABC v Huntercombe (No 12) Ltd and others [2025] EWHC 1000 (KB)

A NEW HURDLE TO BRINGING DISCRIMINATION CLAIMS UNDER PARENT COMPANY PLANS

The Court of Appeal has dismissed an indirect age discrimination claim brought by a retired employee. The claim related to beneficial changes made to an LTIP by a parent company which were limited to current, not former employees. When the claimant retired, he was not awarded shares as the performance conditions at that time were unmet. A few months later, the performance conditions were relaxed and employees received 50% of their awards.

The Court found that setting a condition that LTIP participants must be employed at the time of changes to the plan in order to benefit from them was justified as a proportionate means to achieve the legitimate aim of retaining staff.

Additionally, the Court clarified that a parent company is not automatically an 'agent' of its subsidiary when providing or amending a LTIP benefitting the subsidiary's employees (which could make the parent liable for discrimination in the application of the scheme). There was no evidence of the subsidiary having any element of control over the parent in making or amending the LTIP. The parent company's authority to create and amend the LTIP came from rules set by its shareholders and directors, without needing the local employer's consent.

The judgment identified a gap in UK discrimination protections: discrimination claims can be brought against an employer but not another affiliate. We expect this argument to be raised in future, where decisions are taken by parent companies impacting employees of local UK affiliates – although more typically the affiliate will itself take action based on the parent's requirements (for example, in terms of promotions or restructurings) and so would be directly within the UK discrimination rules.

Fasano v Reckitt Benckiser Group plc [2025] EWCA Civ 592

NARROW BASIS FOR PART-TIME WORKER CLAIMS – FOR NOW

The Court of Appeal has ruled that part-time workers and employees can only claim discrimination under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 if their part-time status is the 'sole' reason for the less favourable treatment when compared to full-time workers. This meant that a requirement for drivers to pay a fixed monthly cost - which had a greater negative impact on part time workers with lower earnings than full time workers - was not open to challenge under the part-time discrimination rules.

The court disagreed with a previous ruling by the Scottish Courts but felt obliged to maintain it pending a Supreme Court decision. It would have preferred a broader test, that part-time status need only be an "effective and predominant" cause. For now the narrow view prevails, making it easier for employers to defend these claims. But the Court gave leave to appeal so the position may change in future.

Augustine v Data Cars Ltd [2024] EAT 117
