

Employment News: Happy Thanksgiving? - Extending wide-ranging US discrimination laws to UK Employers

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Extending wide-ranging US discrimination laws to UK Employers

Many UK employers assume that their UK-based employees are limited to the protections of UK employment law, irrespective of the employee's nationality or the terms of their contract. To find themselves subjected to US federal and/or state discrimination claims, with the eye-watering demands for punitive damages, mental anguish and attorney's fees that typically accompany such claims, can therefore come as a nasty surprise to employers (or as a 'curve-ball', as the Americans would say). In this summary we outline the circumstances in which UK employers with US employees can find themselves covered by US discrimination laws.

US discrimination protections derive from federal, state and city laws. At federal level, these protections include a prohibition from discriminating against an employee on the basis of race, colour, sex, national origin, pregnancy, religion, age (for those at or over the age of 40), disability or on the grounds of genetic information. These protections extend extraterritorially, and therefore can cover employees based in the UK, if:

- the employee is a US citizen working in the UK for a US company; or
- the employee is a US citizen working for an entity in the UK that is 'controlled' by a US company.

'Control' for these purposes is determined by a four-part test, which examines: (1) the interrelation of operations between the entity and the US company; (2) whether there is centralised control of employment decisions (such as a central HR department); (3) whether there is common management; and (4) whether there is common ownership or financial control.

Importantly, US federal-level discrimination laws do not protect non-US citizens working abroad, irrespective of whether or not their employer is a US company or 'controlled' by a US company. Employers should also note that each US state will have its own test as to whether state-level protections can apply to US citizens working in the UK.

One key consideration for employers who may fall under US federal discrimination statutes is that the time limit for filing a claim is significantly longer. An employee generally has 180 days from the alleged violation to file a claim with the Equal Employment Opportunity Commission (EEOC) (extended to 300 days if the alleged violation is also prohibited by state-level laws). Employers who feel safe in the knowledge that the three-month time limit for filing with an English Employment Tribunal has passed cannot therefore sleep too soundly until the applicable US time limit has also expired.

Key points for employers

If you believe your company is covered by US federal or state discrimination laws, consider providing training to front line managers and HR on basic US discrimination provisions so they are aware of risks and how to avoid them.

Consider conducting an audit of manuals and procedures to ensure they are compliant with applicable federal requirements.

If you are unsure whether your company could be covered by US discrimination laws, contact the Withers employment team who will be able to assess the likelihood that your company falls under the scope of applicable federal law.

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