The question of legal jurisdiction is crucial in employment matters on the issue of whether employees can expect the protection of the UK courts and the compensation that an employment tribunal might award.

A basic rule is that when you leave a country you leave behind its laws and practices, but with overseas business travel the norm for many in the UK's workforce, this basic rule is becoming more complex. The legislation in this area is silent as to its territorial scope; it does not make clear the legislative reach of UK employment tribunals and courts if you work abroad. As a result, it has generally been left to the national courts to determine the outcome of each case and this has not always provided clarity.

Generally, an employee can bring a statutory employment claim in the UK if:

- they are protected by the relevant legislation; and
- a UK employment tribunal has jurisdiction to hear the claim.

It may therefore be possible for those working outside the UK to have employment rights enabling them to pursue their claim within the UK jurisdiction. This will however largely depend on the exact claims that an employee is making, where they are based, and the extent of their UK 'workplace connections'.

Making a claim for unfair dismissal

There have been a number of cases in recent years that have sought to clarify the circumstances where an employee could receive unfair dismissal protection. There are four categories:

- Employees ordinarily working in Great Britain (at the time of dismissal). These employees will almost certainly have protection.
- Peripatetic employees. These are employees who spend extended periods of time working overseas (for example, pilots). Such employees would be able to claim if they are 'based' in the UK. There is however, no clear definition of 'employee's base'. A number of relevant factors would be considered, namely where the employee has their home, where they are paid and in what currency, and whether they are subject to National Insurance.
- Expatriate employees. These employees are those who work and are based outside the UK. This is the category in which it is hardest for employees to make a claim. It will not be enough that the employee has been recruited by a UK employer. Additional factors would be needed, such as being posted abroad for the purposes of a business carried on in the UK (for example, a foreign correspondent for a UK newspaper).
- Equally strong connection. These are employees who do not fit into the above categories, but have 'equally strong' connections with the UK and its employment law. A leading case (Ravet vs Halliburton Manufacturing and Services Ltd) has provided some clarification on this point and has established some factors that will be taken into account as to whether an employee's connection with the UK is sufficiently strong.

  These include:

  1. Whether the employee's home is in the UK.
  2. Whether the employee's salary is paid in GBP.
  3. Whether the employee is paid normal UK pay and pensions, and is treated as a commuter under the employer's international assignment policy.
  4. Whether the employee's contract is stated to be subject to UK law, and they have been assured that the employment relationship is governed by UK law.
  5. Whether HR issues are handled in the UK, including termination of employment.

Making a claim for discrimination

There is slightly more flexibility when it comes to discrimination cases, largely because the right not to be discriminated against initially arises from EU and not domestic law.

The Equality Act 2010 will protect overseas employees if the employer is a British organisation based in the UK and the employee:

- is working overseas, but within what can be regarded as an extra-territorial British political or social enclave;
- is posted abroad for the purposes of a business carried on in the UK;
- is posted abroad as a representative of a business carried on in the UK; and
- has strong connections with the UK and its employment law.

The test as to whether a particular employee is protected by UK employment law is highly fact-sensitive, and employers will not be able to apply a 'one-size-fits-all' approach to their entire workforce. Each case must be determined on its own facts and therefore employers should be aware that their international employees may or may not be protected by certain aspects of UK employment law. Advice should therefore be sought on a case-by-case basis.

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