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3HR Legal Weekly

Employment

Right to Work in the UK

If an employer dismisses an employee because they thought incorrectly the employee did not have a valid work visa, is this an unfair dismissal?

No, held the Employment Appeal Tribunal (EAT) in a recent case law, *Nayak v Royal Mail Group Ltd* EAT/0011/15.

Before employing a worker, employers are under a legal obligation to ensure that they have the right to work in the UK. Furthermore, it is essential employers are confident that employees continue to have the right to work in UK throughout their employment.

In this case, the employer was satisfied that the employee had a valid work visa on commencement of employment. However, the employer was not certain whether the employee continued to have the right to work in the UK following the expiry of his visa.

The employer made its own enquiries of the Home Office and was still uncertain. The employer had also requested the employee to do his own research as they were not satisfied with their own findings. Despite repeated requests made over a long period of time, the employee failed to cooperate with the employer by contacting the Home Office himself for confirmation of his position.

Therefore, the uncertainty over the employee's right to work in the UK continued, and the employer felt they had no alternative but to terminate the employee's employment. However, the employee did in fact have the right to work in the UK, and subsequently the employee brought an unfair dismissal claim.

The EAT found the employer had a genuine and reasonable belief that the employee no longer had the right to work in the UK and, accordingly, the dismissal was fair. In reaching its decision, the EAT noted that the employer had done its own reasonable research, and requested the employee to also confirm the position, but the employee had failed to do so.

This decision shows the importance of carrying out a thorough investigation before making a decision to dismiss an employee. Even if the final decision is incorrect, should an employer be able to show a fair and reasonable investigation, the Employment Tribunal is likely to look favourably upon the employer.

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Commercial

Establishing a UK Branch or Establishment of an Overseas Company

Companies from outside the United Kingdom that intend to do business through a UK establishment must comply with Companies House filing and reporting requirements. An overseas company may set up and register a business establishment or a branch rather than incorporating an independent UK entity, but it will still need to comply with the **UK Overseas Companies Regulations 2009 (SI 2009/1801)** (the **Regulations**). In addition, Part 7 of the Regulations applies to all overseas companies that take advantage of UK markets to trade, regardless of whether they set up a branch or establishment in the United Kingdom. This Part requires the company name and country of incorporation to be presented in a certain manner at the business location and on communications and for other details including service addresses to be publicly disclosed.

The Regulations apply whenever a UK establishment is created, meaning that activities are carried out through a UK address which is an extension of the foreign company's business. The overseas company must register the UK establishment with Companies House and should appoint a permanent representative in the United Kingdom to conduct business for the branch. The permanent representative acts as the point of contact for commercial relationships, executing agreements and accepting service for claims in disputes brought against the company in the United Kingdom. The Regulations require that within one month of opening a UK branch the overseas company must file a Companies House form providing relevant information including name, address and type of business as well as directors' personal details and permanent representative. The constitutional documents of the overseas company and accounts with auditors' reports and certified translations are also required if the originals are required to be filed in the overseas company's home jurisdiction. The UK establishment must continue to update and file annual reports and accounts with Companies House on an annual basis. Certain other requirements apply including returns filed upon a winding up and notification if the UK establishment closes or stops doing business in the United Kingdom.

Failure to comply is an offence punishable by incurring fines or criminal liability for the directors or other persons responsible. The civil consequences of failure to comply include that the company cannot bring a claim under contract or recover for financial losses.

Should you require further information, advice or guidance as to what documents must be filed with Companies House for the UK branch of your overseas company, please contact us.

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