

Employment

Expatriates and Local Employment Rights

Where an individual carries out work in the UK for any significant period there is a risk that they will acquire local employment rights. This is particularly concerning for companies who bring expatriate employees over to the UK to manage operations locally.

Choice of Law

The UK is separated into three separate jurisdictions: England and Wales, Scotland, and Northern Ireland. The employment legal systems in each of these three jurisdictions are very different but there are some employment rights that cross the borders. What is common to all three jurisdictions are certain European regulations, which can affect whether an individual may gain local employment rights (this is likely to remain true at least until the UK leaves the European Union).

Of relevance to this newsletter is Regulation (EU) 1215/2012 also known as Brussels 1 (recast), and Regulation (EC) 593/2008 also known as Rome 1.

Where an expatriate employee comes to the UK, they will usually arrive with a contract of employment from their own country. Their home country contract will be the basis for the employment relationship even while the individual is abroad and that contract will often confirm that the home law is applicable to the employment relationship. However, where the individual is based and works in the UK for any significant period of time, Brussels 1 (recast) and Rome 1 will apply to add complications to their legal rights.

Local Employment Rights

Article 8 of Rome 1 confirms that the employment contract can state which country's laws will apply to the employment relationship. However, article 8 goes on to confirm that, in applying a particular country's law to the employment relationship, an employee cannot be deprived of certain local legal rights.

The relevant rights that an employee cannot be deprived of are the employment rights that specifically state in the legislation cannot be removed by an employment contract. These rights include holiday entitlement and pay, maternity and family friendly leave rights, the prohibition on discrimination and the right not to be unfairly dismissed.

As an example of the result of Article 8 Rome 1, consider a Japanese expatriate employee who is based in London for a year. Their employment contract is subject to Japanese law but despite this fact, during their time in England, they will be entitled to take advantage of the specific English employment rights that cannot be removed by contract.

In the UK, all full time employees have the right to take a minimum of 28 days' leave a year. An employer cannot prevent an employee from taking this leave and is not permitted to pay in lieu of this minimum allowance. If the Japanese expatriate's employment contract states that he is entitled to fewer than 28 days' holiday per year, then that particular clause would be ignored for the duration of his stay in England and replaced by a clause that would permit him the minimum English holiday allowance.

Forum

The final key to an individual gaining UK employment rights is whether they can enforce them. To do this, an individual must have the

right to bring a claim before a UK court or tribunal. Brussels 1 (recast) confirms that an employer may be sued in a UK court or tribunal if they have a branch, agency or other establishment in the UK. Therefore, if the employer has an office in London, they may be sued in an English Employment tribunal.

If you have any concerns about the employment rights of expatriate employees, please contact our employment team for advice.



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