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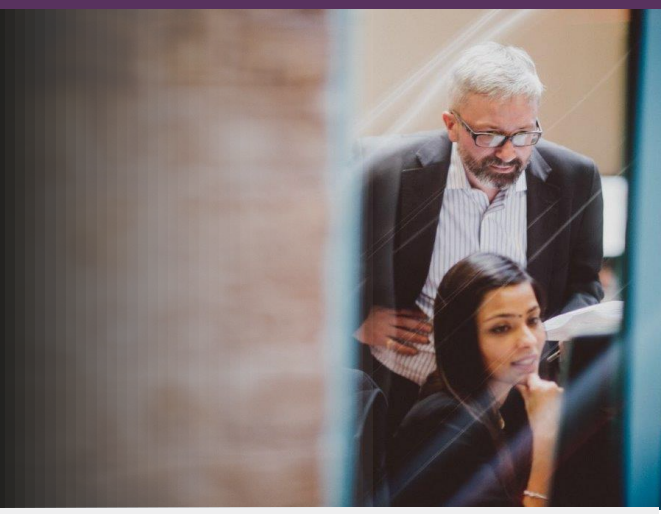
Employment contracts and working abroad



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Is an employment contract governed by English law valid if the employee works abroad?

Under the Employment Rights Act 1996 (ERA 1996) employees have the right not to be unfairly dismissed by their employer. However, the ERA 1996 is silent as to its geographical scope, so it has been left to the courts to decide.

An interesting set of circumstances was recently put before the Employment Tribunal (ET). A British citizen employed by a British company (who worked remotely from Saudi Arabia), was protected against unfair dismissal under the ERA 1996.

A UK company, Sig Trading Limited (SIG) employed Mr Green as the Managing Director of its business in Saudi Arabia. Mr Green had lived in the Middle East for over 15 years and had no home in the UK. He continued to live in Lebanon, commuting to work in Saudi Arabia for 2-4 days a week. Given that the Saudi Arabian operation had only recently been established, Mr Green reported to a manager based in the UK and other staff and support services were also located in the UK. Further, when offered the position, Mr Green was given one of SIG's standard UK contracts which recorded that it was to be governed by English law and included references to statutory employment protections. It also included post-termination restrictions relating to the UK and he was paid in UK pounds sterling.

Mr Green was dismissed for redundancy but his claims were rejected by the ET on the basis that he had stronger connections to Saudi Arabia and the Middle East than he did to the UK, and in practice the Saudi Arabian budget was independent of the company's UK financial budget.

Mr Green appealed this decision and the Employment Appeals Tribunal (EAT) allowed the appeal in part.

The EAT said that the assessment of whether Mr Green's employment had a stronger connection with Great Britain and English or Saudi Arabian employment law must be viewed objectively.

The fact that the employment contract was stated to be subject to English law was not a factor that could be discounted simply because the employer had, out of convenience, used its standardised form of UK contract.

The ET had therefore wrongly disregarded this relevant factor as it had considered the employer's subjective explanation rather than applying an objective test. The case was sent to the ET for reconsideration.

Although it is possible that on remission the ET won't find that there's a strong connection between Mr Green's employment and UK employment law, the risks for UK businesses using standard contracts for overseas employees are highlighted by the case.

Best practice therefore dictates that businesses must consider carefully each and every form of employment contract used on a case by case basis at the start of any employment relationship.

Equally, if a business has employees working outside of the UK, it is advisable to take legal advice before taking steps in relation to those individuals' employment.

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