

Revisiting the Extraterritorial Reach of Equal Employment Opportunity Laws for U.S. Employers

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Global employers often need to contend with determining whether federal, state and local employment laws, including equal employment opportunity (EEO) laws, cover their employees working abroad. Consider this hypothetical example:

Employee X, a former employee of Company ABC, an American company with fifty employees in the U.S. and abroad, files an EEOC charge against Company ABC. Employee X worked for Company ABC in Germany. Company ABC is not entirely sure of Employee X's citizenship status. Given that Employee X worked in Germany, Company ABC is surprised that it received the charge.

The extraterritorial applicability of EEO laws rests on several factors. Both Company ABC and Employee X are evaluated to determine if: (i) Company ABC is covered by EEO laws and (ii) if Employee X is protected by EEO laws.

Are EEO laws applicable to Company ABC?

Legal Considerations: First, the EEOC will determine if Company ABC is considered a "U.S. employer." Company ABC will be a U.S. employer if it is incorporated in the U.S., if it is based in the U.S., or if it has sufficient connections with the U.S.

Assuming Company ABC falls within one of these three categories, the EEOC will then review Company ABC's employee count. Company ABC must employ at least 15 employees for it to be covered by EEO laws (and 20 employees are required for age-based claims). Although the EEOC guidance is not entirely clear on this point, it appears that employees who are non-citizens (no matter where they are located) count towards the employee threshold.

Answer: Yes, Company ABC is covered by EEO laws since it is a U.S. employer and it has the requisite number of employees.

Are EEO laws applicable to Employee X?

Legal Considerations: Merely because Company ABC is covered by EEO laws, it does not follow that all employees working for Company ABC are protected by EEO laws. Employees who are not U.S. citizens and who work outside the U.S. or its territories are not protected, even if they work for a U.S. employer. The laws have a limited extraterritorial reach. That said, non-U.S. citizens who work within the U.S. or its territories, and U.S. citizens working for U.S. employers abroad, are protected.

Answer: Maybe. In the scenario above, it is critical that Company ABC knows Employee X's work location and citizenship status. If Employee X is not a U.S. citizen, and worked in Germany, Employee X would likely not be protected by EEO laws. On the other hand, if Employee X is a U.S. citizen, but worked in Germany, Employee X would likely be protected by EEO laws. (This does not account for the potential application of other countries' employment laws in this scenario.)

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