Handling Cross-Border Employment Disputes in the EU: A Multinational Employer's Guide

Insights
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Multinational corporations operating in the European Union should be ready to handle cross-border employment disputes and the unique legal challenges they raise given the increasing likelihood of such challenges and the high stakes involved. Unlike the US, where employment law is primarily governed by federal and state statutes, the EU's framework for disputes involving employees working across borders is shaped by regulations, treaties, and case law that determine both the applicable law and the competent jurisdiction. Here's what employers need to know as you navigate employee relations issues in the European Union and four best practices you can implement now.

The Legal Framework

Employers must navigate conflicting legal systems, strict procedural deadlines, and potential liability for non-compliance with foreign labor laws. Moreover, the European Court of Justice (ECJ) adopts a broad definition of "employee," which may include individuals who don't qualify under national laws, such as:

- Trainees (such as student teachers)
- Public servants (like firefighters and judges)
- Sole directors of companies (even if classified as self-employed domestically)
- Professional athletes and part-time officials

For US businesses, this means that independent contractor classifications may not hold up in EU courts, thereby exposing companies to misclassification risks and additional liabilities.

When an employee works across EU borders (whether remotely, on international assignments, or for multinational companies) the first questions to ask are:

1. Which country's employment law applies?

2. Which courts have jurisdiction in a dispute?

The answers lie in two key EU regulations:

- Rome I Regulation (Article 8): Determines the applicable substantive law for employment contracts
- Brussels Ia Regulation (EuGVVO, Articles 20–23): Establishes jurisdictional rules for cross-border disputes

These regulations override national conflict-of-law rules, ensuring consistency across the EU.

Determining Applicable Law: The Role of Rome I

Party Autonomy and Mandatory Protections. Under Article 8(1) of Rome I, employers and employees can choose the law governing their contract. However, this choice cannot deprive the employee of protections guaranteed by the law that would apply in the absence of such a choice. This ensures that employees retain mandatory rights, such as minimum wage, working hours, and termination protections, under the objectively applicable law.

The Objective Connecting Factors. If no law is chosen, Article 8(2–4) provides a hierarchy of rules to determine the applicable law:

1. Habitual Place of Work (Article 8(2)): The law of the country where the employee "habitually carries out their work" applies. This is straightforward for employees in a specific workplace, like an office or factory. For mobile workers (such as flight crews, truck drivers, or remote workers), courts examine where the employee receives instructions, organizes their work, or returns regularly. For example, for seafarers working on multiple vessels, the home port or the location where they receive instructions and organize their work determines the applicable law. For employees working in multiple countries but returning regularly to one base, that base is considered the habitual place of work.

2. Law of the Engaging Establishment (Article 8(3)): If the habitual place of work cannot be determined, the law of the country where the employer is located applies.

3. Closer Connection (Article 8(4)): If the contract has a closer connection to another country (for example, due to the parties' nationality, contract negotiation location, or currency of payment), that country's law may apply.

Overriding Provisions

Even if a law is chosen or determined under Article 8, courts can use Article 9 of Rome I to apply overriding mandatory provisions of the forum country (where the court is located). These are laws considered vital to public policy (e.g., anti-discrimination rules and collective bargaining agreements) that they apply regardless of the contract's governing law.

Where Can Disputes Be Litigated?

Jurisdiction in cross-border employment disputes is governed by The Brussels Ia Regulation (EuGVVO), with rules designed to protect employees.

Employee Claims Against the Employer (Article 21). An employee can sue their employer in:

- The courts in the employer's headquarters or principal place of business.
- The courts in the place where the employee habitually works or, if no such place exists, where the employer is located.

This ensures employees can litigate in a familiar and accessible forum.

Employer Claims Against the Employee (Article 22). Employers are restricted to suing employees only in the courts of the employee's domicile. This rule can only be modified after a dispute arises or if the modification grants the employee additional options for jurisdiction.

Practical Implications for Employers

- **Forum Shopping.** Employees often have multiple jurisdiction options, while employers are limited. This can lead to strategic litigation in employee-friendly courts.
- **Enforcement of Judgments.** A judgment from one EU country is automatically recognizable and enforceable in another (under Article 53 EuGVVO), simplifying cross-border enforcement.
- **Conflicting Legal Systems.** Employers may face situations where:
- A German court applies Italian labor law (or vice versa)
- Procedural deadlines (like Italy's 60-day window to challenge a termination) must be met, even if the case is litigated elsewhere
- Local mandatory rules (like France's strict termination protections) override contractual choices

4 Best Practices for Multinational Employers

1. Draft Clear Jurisdiction and Choice-of-Law Clauses

- Specify the applicable law and competent courts in employment contracts, but ensure compliance with Article 8's protective floor.
- Avoid clauses that deprive employees of mandatory rights under the objectively applicable law.

2. Conduct Cross-Border Compliance Audits

- Review contracts, policies, and practices for alignment with local labor laws in all countries where employees work.

- Consult local legal experts to identify hidden risks (for example, those involving collective bargaining agreements or sector-specific regulations).

3. Prepare for Litigation Complexities

- Work with experienced counsel to navigate foreign procedural rules.
- Obtain Article 53 EuGVVO certificates to facilitate cross-border enforcement of judgments.

4. Leverage Legal Insurance

- Ensure legal expense insurance covers cross-border disputes, including the cost of local and foreign counsel.

Conclusion

Understanding EU frameworks can help multinational companies minimize exposure to unexpected liabilities, design compliant employment contracts, and leverage the EU's enforcement mechanisms to protect their interests. We will continue to monitor developments related to legal changes in the EU that affect the workplace. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our International Practice Group.

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