Legal Update Article

Foreign Parent Company is Joint Employer with Subsidiary for Employment Claims, Court Rules

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A foreign parent company can be held jointly liable for employment claims against its U.S. subsidiary, a federal district court has held. *Middlebrooks v. Teva Pharmaceuticals USA, Inc.*, No. 17-00412 (E.D. Pa. Feb. 1, 2018).

The employee brought claims against his former employer, Teva USA, and its parent company, Teva Israel, alleging violations of the Age Discrimination in Employment Act, Title VII of the Civil Rights Act, and the Pennsylvania Human Relations Act. The court found that the Israeli parent company "exercises significant control" over their U.S.-based subsidiary's employees such that it qualifies as a joint employer.

Background

The plaintiff, Stephen Middlebrooks, was hired in 2001 by Teva USA to be the Director of Facilities Engineering at its Pennsylvania location. In 2013, Middlebrooks was promoted to the position of Senior Director of North American Facilities Management, overseeing 70 employees. Shortly thereafter, Middlebrooks began reporting to a supervisor based in Israel, at Teva's global headquarters, and he worked closely with the Israel-based team, although remaining in his position at the Pennsylvania location.

In February 2016, the Israel-based supervisor terminated Middlebrooks due to performance issues. Middlebrooks then filed suit, alleging that the Teva Israel supervisor and team discriminated against him because of his age and national origin.

Court Analysis

The mere existence of a parent company does not mean the company is subject to liability for employment claims against its subsidiary. In fact, "there is a strong presumption that a parent company is not the employer of a subsidiary's employees." *Brown v. Fred's Inc.,* 494 F. 3d 736, 739 (8th Cir. 2007).

The federal district court in *Middlebrooks* noted that Teva Israel, a foreign corporation, is not controlled by a U.S. entity. Therefore, it could be considered the plaintiff's employer only if the single or joint employer exception applied.

The court ruled out the single employer exception because it found Teva Israel and Teva USA are not "operationally or financially entangled" enough for the exception to apply. The two entities maintain separate corporate forms, hold separate board meetings, keep separate books and records, and have separate headquarters. These details, the court said, indicate a traditional parent-subsidiary relationship, and do not establish a separate, single employer entity.

With respect to the "joint employer" exception, however, the court found that Teva Israel exercises "significant control" over the employees of Teva USA, such that the Israeli company qualifies as a joint employer.

Courts consider various factors when assessing whether there is a joint employer relationship, including:

- Authority to hire and fire employees, promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours
- Day-to-day supervision of employees, including employee discipline
- Control of employee records, including payroll, insurance, taxes, and so on

In *Middlebrooks,* the plaintiff was directly supervised and disciplined by a Teva Israel employee. The Teva Israel employee had the authority to terminate the plaintiff, and he exercised that authority. Although Teva Israel did not pay the plaintiff's salary, the court emphasized that no one factor of the "joint employer" test was determinative.

Takeaway

The court's decision is an important reminder to parent companies, both foreign and U.S.-based, that if they exercise "significant control" over their subsidiary's employees, they can qualify as a "joint employer."

Please contact your Jackson Lewis attorney to discuss this case.