

News & Types: Employment, Labor & Benefits Update

Japanese Parent May Be Jointly Liable with its Subsidiary

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Practices: Employment, Labor & Benefits

Todd Brown worked in the New Business Development Group for Daikin America, Inc. ("DAI"), a wholly owned subsidiary of Daikin Industries Ltd. ("DIL"), a Japanese parent corporation. Brown is Caucasian and his national origin is the United States. Of the six employees in the Group, three were American local hires and three were Japanese nationals on rotation to the American subsidiary. Brown alleged in his complaint that, in 2009, DAI terminated Brown and another American local hire but did not consider terminating the Japanese employees assigned to work at DAI. Brown alleged that DAI discriminated against him because of his race (Caucasian) and his national origin (United States). He also named DIL as a co-defendant. DIL asked the court to dismiss it from the case, but the court refused, allowing Brown to continue the case against both the Japanese parent and the American subsidiary. See *Brown v. Daikin America, Inc., et al.*, No. 12-2955-cv (2d Cir. June 27, 2014).

The court ruled that Brown alleged sufficient facts that DAI and DIL were a single integrated enterprise. Specifically, Brown alleged that DIL closely directed the operations of DAI and that DIL's approval was required for all significant actions. He also alleged that DIL directed DAI to discharge only employees who were not Japanese. As a result, the court found that Brown alleged that DIL exercised centralized control of the labor relations. Second, Brown alleged that there was an interrelation of operations, because DIL closely supervised DAI's employees by e-mail, telephone conference calls, visits to DAI and required visits to Japan by DAI's employees. Third, DAI is a wholly-owned subsidiary of DIL, creating common ownership.

Finally, although Brown did not allege common management, the court ruled that there were sufficient allegations to allow the case to proceed to the discovery phase of the litigation. Thus, DIL is a proper co-defendant with DAI and the case will proceed against both DAI and DIL. During the discovery phase, DIL may be able to prove that it is not a single integrated enterprise and will need to file a motion for summary judgment to ask the court to dismiss the suit against it.

This decision shows that the "due process" employed by companies is critical to avoid liability by a parent company which may not be part of a single integrated enterprise with its subsidiary. The subsidiary – and not the parent – should make decisions about its employees' employment status as well as their terms and conditions of employment. Directions and approvals should come from the subsidiary's board of directors and officers in the subsidiary's name, even if the boards of directors of the subsidiary and parent include the same members. Creating and maintaining the separation should be a critical task of the companies' risk management team and compliance officers.

