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News & Types: Employment, Labor & Benefits Update

Keeping the Foreign Parent Corporation Out of Legal Trouble

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Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY

A subsidiary of a foreign parent corporation should try to protect the parent from liability under America's employment laws. Although there is usually common ownership and interlocking boards of directors, the parent and subsidiary must act in certain ways to protect the parent and ensure that only the subsidiary has liability. The decision in *Middlebrooks v. Teva Pharmaceuticals USA, Inc*., 2018 U.S. Dist. LEXIS 18185 (E.D. Pa. 2018), is instructive.

The question in *Middlebrooks* was whether Teva Pharmaceutical Industries Limited ("Teva Israel") should remain in a lawsuit filed against both it and Teva Pharmaceuticals USA, Inc. ("Teva USA"). Stephen Middlebrooks was an employee of — and was paid by — Teva USA. After he was terminated, he sued both Teva USA and Teva Israel for age and national origin (i.e., American) discrimination under federal laws and the Pennsylvania Human Rights Relations Act. After working in a number of positions for over ten years, he became Senior Director of North American Facilities Management. In that role, he reported to the Global Senior Director of Facilities Management, a manager employed by Teva Israel and based in Israel.

The Legal Question: Were Teva USA and Teva Israel "single employers" or a "joint employer," so that Teva Israel should remain in the lawsuit as a defendant? They shared e-mail addresses and Teva USA's Human Resources Department counseled the Global Senior Director. However, they maintained separate corporate forms, held separate board meetings, kept separate books and records, and had separate headquarters. Therefore, to the Court, Teva USA and Teva Israel were not "single employers," because "the affairs of the parent and subsidiary [were not] so operationally or financially entangled that… [they were] substantively consolidated and collectively responsible for the discriminatory conduct." However, the Global Senior Director in Israel directly supervised and disciplined Middlebrooks, conducted Middlebrooks' mid-year review, and extended his performance improvement plan. The Global Senior Director also informed Middlebrooks of a demotion, terminated Middlebrooks, and stated the reason for the termination. Therefore, to the Court, because Teva Israel exercised significant control over Middlebrooks' employment, Teva Israel and Teva USA were joint employers, and Teva Israel should remain a defendant in the lawsuit.

Lessons Learned? To protect the parent from possible liability, the parent's managers should not exercise significant control over the subsidiaries' employees. The subsidiary and parent corporations should have clear lines of authority and organizational charts that clearly show each employee's and manager's direct supervisors. Job descriptions should list each employee's and manager's supervisor. The performance management system should establish clear lines of authority, evaluation and discipline. Although a parent's manager may have input into evaluations, discipline and termination, the subsidiary should document who recommends and makes decisions and, then, the subsidiaries' managers should sign the documentation and deliver the decision.