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Employment Claims in the UK and US, A Comparison of Two Common Law Regimes

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by Kent J. Schmidt, Matthew M. Durham, and Lisa Patmore

The U.S. and U.K. legal systems share many similarities rooted in their common law heritage. However, important differences have developed over time, including those related to liabilities that arise from employment relationships.

In this episode, Kent Schmidt interviews Dorsey Partners Lisa Patmore, based in London, and Matt Durham, based in Salt Lake City. They address employment litigation and discuss how HR professionals, lawyers, and others responsible for managing these claims must understand the distinctions between the U.S. and U.K. legal structures.

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Transcript

Voiceover [00:00:03]

Welcome to another episode of the SharkCast on litigation risks management where we explore why businesses are so frequently sued, and how to mitigate and navigate the dangers lurking in the risky waters. Join us now as we welcome our host Kent Schmidt, Litigation Partner at the law firm of Dorsey & Whitney.

Schmidt [00:00:25]

Welcome to another edition of SharkCast. Today's episode is a cross-border edition, and so I'm really looking forward to this conversation. You know, we often speak here on the podcast about the five Cs of litigation risk. And perhaps we spend a disproportionate or a greater amount of time talking about the fifth C, the crew member litigation, than we do some of the other sources of litigation risk. Crew member claims, which is what I call employment claims to try to force the alliteration of the five Cs, are a frequent topic of discussion because they are some of the most common types of claims and lawsuits that plague companies today. And in today's episode, we're going to tackle crew member or employment claims, but from a slightly different angle. I'm very pleased to welcome to the virtual SharkCast studio two of my partners, Lisa Patmore and Matt Durham, who are employment lawyers, but operate both figuratively and literally in different hemispheres. Welcome, Lisa and Matt, to the SharkCast episode as first-time guests.

Patmore [00:01:44]

Hi, Ken.

Durham [00:01:44]

Thank you, Ken.

Schmidt [00:01:47]

Well, thanks again for being here. I've asked Lisa and Matt to join me today in this cross-border edition of SharkCast to address how employment claims differ in the UK and the US. So let me try to set the table here quickly as we dive into this discussion. The reason this is a very important topic to discuss from a cross-border perspective is that companies often have a need for support through employees or workers in a far-flung jurisdiction. So here we have, for example, a UK company will have a need for US employees, either directly employed or through a subsidiary in the US, or vice versa, a US company may have a need for UK employees. And it becomes apparent or will become apparent to those charged with managing those employees that the rules of the road for employees are starkly different between the US and the UK.

[00:02:58] So this episode is created in mind for those HR managers, the in-house counsel, outside counsel, and anyone else charged with addressing employment matters and claims between the US and UK and experiencing challenges in trying to understand both regimes. So let's begin with some broad strokes observations from both of our guests on what you, in your experience, have observed about some of the fundamental differences in approaches between the US and the UK. Lisa, why don't you start with, why don't we start with you and your general knowledge or your awareness of US law and some broad strokes understanding of how that differs from the UK regime?

Patmore [00:03:51]

I think the most obvious one is the employment at will. It often comes as a surprise, I think, to some clients who are based in the US when they realize actually it's not the same in the UK. People do have the right to claim unfair dismissal in the UK if they've been employed for two years or more, where you have to have a fair reason for dismissal and go through a fair procedure before the dismissal as well. And also there is the statutory right to minimum levels of notice and also a requirement to give a contract of employment written reasons, written statement of terms that I'm not sure is necessary in the US. And so immediately you have some fundamental differences right at the outset when you're starting employment and then what the impact is if you dismiss. So there are underlying statutory rights that the employees have, like the notices I say, sick pay, certain parental family leave pay, et cetera. So those are the fundamental differences, I would say.

Schmidt [00:05:22]

So let's hear from the US perspective. You mentioned at-will, and just for some of our listeners, perhaps in the UK or elsewhere, that don't understand how extensive at-will is or what is represented by that phrase, Matt, can you unpack that a little bit as to what at-will employment means and perhaps the limits of at-will employment in the US?

Durham [00:05:47]

Sure. At-will employment is the idea that the employer and the employee are both free to terminate the employment relationship at any time for any reason with or without notice. And it began as a very kind of broad concept because I think there was a recognition that the employment relationship is a kind of a personal one and has a lot of impact on people's lives, and so people should be able to move in and out of that relationship pretty easily if they want to. Over time, in the United States, there, limitations on that have evolved. For example, you can contractually agree to termination for cause only, or your collective bargaining unit, if you're a union employee, may have restrictions on the ability to terminate at will. And there are also some statutory limitations like the Civil Rights Act that doesn't allow termination on the basis of race or gender or disability or things like that.

[00:06:46] But generally speaking, the framework from which employers in the United States operate is that they have a little bit more flexibility in terms of the reasons for why they terminate, what kind of notice they give, and what sort of separation benefit they choose to provide employees when they terminate.

Schmidt [00:07:04]

So let's paint a hypothetical. I know that sometimes creates some consternation. Certainly does when I'm taking a deposition, but that aside. We have a company that has a sales force in both the UK and the US. And so it's stipulated that the employees in the US are governed by US law and employees in the UK are governed by UK law. And they have a number of sales reps that are just underperforming, not really even meeting minimum, and they've been there for four or five years. Perhaps the company's been acquired recently. And so the new broom cleans swiftly and cleans very efficiently. And so new management comes in and wants to essentially terminate the underperforming sales reps in both. Matt, we have to make sure that they pay all of the accrued vacation time, but these are at-will employees, make sure that if they have commissions that have, they've earned and have vested, that those are paid, et cetera, but they can essentially terminate those for underperforming, correct? They're all at-will employees.

Durham [00:08:31]

Right. I mean, a lot of the things that you just mentioned, like termination pay, vacation pay, those kinds of things, a lot of that is governed in the United States by state law. And so you'd wanna check what state you're in terms of jurisdictional statutory requirements. The other thing I would say about that is, although the simple statement of the at-will employment rule is that you can terminate someone for any reason or no reason, I think we all know that doesn't really happen. Employers don't come in and terminate someone for no reason. And so I think it's always a good idea to check and see a couple of things.

[00:09:08] One, can you articulate a legitimate business-based reason for why you're making the termination decision? And two, are you applying the standards that you're using to make this decision consistently for all employees? Those two things, I think, help avoid discrimination claims when terminating. But in terms of the timing and the reason, I think in the United States, you could easily move pretty quickly to terminate underperforming employees.

Schmidt [00:09:36]

So here we have, we meet that, and we have economic reason, underperforming, and we're gonna apply it to those that are underperforming and not to those that are performing. And so we check that box and we're gonna give them a two-week notice and collect your stuff, and, you know, we wish you well in your next adventure. So this is where the at-will employment principle really does benefit the employer. Now let's pivot to the UK. The HR now turns to outside counsel, Lisa, and says, Matt's taking care of us in the US. What can we do and how swiftly can we do it in the UK? Without going into massive detail, give us an overview of that process in the UK.

Patmore [00:10:28]

Okay, so it's not as easy in the UK. If somebody is underperforming and they've got two years or more service, the law will require you to have a fair reason for termination, performance or underperformance is one of them, but they will require a fair procedure to be embarked upon before a dismissal takes effect. So there would generally be expected to be a series of warnings where an individual is given the chance to improve. And so there might be a, this is where you're not performing, we need you to perform, we need you to perform within this period of time, and if you don't, you get a warning. And you can expect to have a series of those before you can safely dismiss for poor performance. And if you don't follow the right procedure, even if you have a fair reason, which is underperformance, then you can face an unfair dismissal claim. And they probably, if the procedure wasn't followed properly, they would succeed in their unfair dismissal claim.

Schmidt [00:11:43]

Could I just interject a question here? When you talk about this procedure, how formal does that have to be? Can it just be the sales manager over the last six months saying, hey everyone, your numbers have been down, you have to really get out there and start improving those numbers. Or is it, when you say procedures, is it something much more formalized than that?

Patmore [00:12:06]

It is much more formalized and therein lies a problem because there are discussions like the ones that you've referred to having been had. And so when you might say to a client, you need a procedure, they're like, what do you mean? I've given this guy or this girl, whatever, warnings over a particular period of time. What else do I need to do? And so now we're in a situation where, no, it does have to be formal. You have to write a letter to them before a meeting, telling them you want them to come to a meeting, this is what you want to discuss. They're able to bring a colleague or a trade union representative with them. So it is a very formal procedure and certain steps need to be followed in order to carry that out fairly. And how long that takes depends upon the targets not being met. If you have a target that you can measure a weekly target, then your period, your warning period will be short. But if you have targets to be met monthly, then giving people a chance to improve will, may take three, four, five months. So it isn't a quick process at all.

Schmidt [00:13:26]

So where the rubber meets the road here is the employees in the US may be terminated within a few weeks and the process in the UK may be pretty protracted and extended.

Patmore [00:13:38]

Yeah.

Schmidt [00:13:39]

Let's now turn to the next phase. Maybe we'll just extend this hypothetical. It seems to be working pretty well. And that is how claims are brought, sort of the driving force behind the claims and the role of regulators and government enforcement agencies in protecting employee rights, vindicating those rights versus plaintiff employment lawyers. In the US, there's a very significant role of plaintiff employment lawyers. And so why don't we let Matt go first and talk about the role, although there are regulators in the US, employment regulators, of course, their role, particularly on a federal level right now, is somewhat in flux, which perhaps Matt'll touch on. But let's talk about the role of plaintiff lawyers, even in our scenario where these sales reps have been terminated for underperformance, and those sales reps go to talk to a lawyer. Can you give us an overview of that, particularly with our, you know, UK HR person in mind who has some unfamiliarity with the US system and regime?

Durham [00:15:07]

Sure. I think the first thing I would probably tell them is that it's gonna depend on what kind of claim it is. If some of these sales representatives are saying that they didn't get the commissions they're entitled to, or we didn't pay them their vacation or part, their PTO that they were entitled to, or we missed a payment or something like that, that kind of contractual or wage-based claim can be brought initially in court by an employee through their, with their counsel if necessary. On the other hand, if what they're saying is, hey, you applied this rule to me differently because of my gender or my race or my ethnic background, that would be a claim that would need to begin in an administrative process with an agency like the EEOC on the federal level or a state anti-discrimination agency.

Durham [00:15:59]

And there's a requirement by statute that those claims begin in this administrative process before they can be brought in court. There still may be plaintiff's counsel involved in that process, but it's designed to be a much more user-friendly process that someone could navigate on their own or with the assistance of state employees that would help them fill out forms and things like that. And you mentioned a little bit about the priorities and influence on administrative changes in terms of enforcement of employment rights. We've seen a real change in the change with the Trump administration in terms of the kinds of claims that are being enforced and looked at closely. And that's something that I think I would want an HR person to understand is that as time changes, different political administrations have different priorities in terms of what they enforce.

Schmidt [00:17:04]

Okay. And before we move to Lisa, what about the role of plaintiff lawyers that are operating on a contingency fee type of basis and have a vested interest in the outcome of employment litigation, whether it's a single claim or a class claim? And then we'll have Lisa comment on whether that, how that might differ or compare in the UK.

Durham [00:17:30]

Yeah. In the United States, a plaintiff's lawyer can take a case on a contingency fee basis, which means that they make a contractual arrangement with their client to be compensated by some factor of whatever their recovery is. And that can influence the way the claim proceeds because sometimes you'll see a plaintiff's counsel who's very aggressive and wants to get something, they wanna get in, they wanna get some money quickly, and then they wanna get out because that's an efficient way for them to have volume in terms of their claims. Often in those contingency fee cases, the attorney's fee arrangement can become an obstacle to any kind of negotiated resolution. If the fees get too high and the lawyer's made too much of an investment in the claim, then that can be something that really affects how the resolution of the claim happens. So it's a good idea to be aware that that's an option that many employees in the United States have, is to do their cases on a contingency fee basis.

Schmidt [00:18:33]

So let's now go back across the pond quickly to Lisa and hear the perspective from you in terms of what is, what drives the claim from a regulatory standpoint versus private plaintiff lawyers and how they're compensated in their economic interest in the outcome in the litigation?

Patmore [00:19:01]

So it doesn't sound like it's very in terms of the administrative process, it doesn't sound like that is very similar. So in the UK, most employment claims are brought in front of the employment tribunal. A handful of claims that may be brought in in the normal civil courts, but most claims in the employment tribunal, there aren't any fees for bringing a claim. Those employees can bring the claims themselves. They don't have to have a lawyer. It's supposed to be, you know, a forum for employees to bring a claim in a way that's not too regulated in terms of process, no big rule books saying what they need to do and when. So it's a lot more employee friendly to bring a claim there.

Patmore [00:19:57]

Realistically, most or many employees are represented. And, but sometimes actually that's much easier for an employer's, for an employer, because if you have a litigant in person who doesn't know the legal test or what the employment tribunal will be asked, will be asking them to prove, the principles take over, the feeling that they've been treated unfairly takes over. And so the legal, what the legal test is sometimes it doesn't matter if the employee is entirely wrong. If they feel hard done to, like nobody has taken, you know, issue with their performance before the sale of the company, then it's difficult because you can't speak to them about, well, the law says this and therefore you've not got a claim. So sometimes it is better for them to be represented. And there is a process that needs to be followed before a claim can be brought, but it's not really that onerous.

[00:21:08] They just have to basically engage with somebody called ACAS and what's called start ACAS early conciliation. The role of ACAS is just to try to see if they can broker a deal between the employee or ex-employee and employer. If there's no deal to be had they bring to an end their early conciliation, the employee then gets a certificate with the number on that the employee needs to quote when they're making a claim. So the employee can contact ACAS. They might not be at all bothered in seeking any conciliation, but as long as they then get the number, they can commence, can commence a claim.

[00:21:55] Now, there are certain bodies that might be interested in what the outcome of any decision is, but it's for the employee to bring their claim. And class actions, we would normally call them, they're not that regular in the UK. It's mainly where things like there's been equal pay claims. So you'll see where, you know, men in some jobs get paid more than women in certain jobs, and do they do equal work. So those are the types of claims that you have class actions, not your standard complaints. And also, I don't think contingency fees or no win, no fee, whatever you might call it, are that regular in the UK in employment matters either.

Schmidt [00:22:45]

So in the event that employment claim is brought and the employee loses, in the UK, how are fees decided? Does the employee have to pay the employer's fees?

Patmore [00:23:03]

No. So the general rule is that both parties pays their own fees either to bring the claim or to defend the claim. There are limitations on that in that there is the ability to apply for the other side to pay your fees. But there has to be some behavior that's, brought the claim vexatiously or basically progressing it without there being any reasonable prospects of success. So there has to be some wrongdoing or misconception and progressing with your claim or defense when it's got no chances of success. But awards against claimants are rare. And even if you get an award, it's not very generally not very high. So an employer generally will be out of pocket in defending a claim, even if they get to a tribunal and they are found to have done nothing wrong.

Schmidt [00:24:05]

So this is, as I understand it, an exception to the general rule under English law, which is that the loser pays, so as not to unfairly penalize or create a significant risk for an employee to vindicate their rights. Well, let's turn back to Matt. What role does the attorney fees and the statutory provision as to which party is going to have to pay attorney fees depending on the outcome of the case? What role does that have in the employment litigation as well as in trying to settle these claims?

Durham [00:24:48]

In some ways, it's kind of the mirror image, right? Because in the United States, the default position is that everybody pays their own fees. And unless you have a contractual provision or a statute that allows for recovery of attorney's fees, you pay your own. Many, if not most, I would say employment statutes contain provisions that if the plaintiff, the employee prevails in the lawsuit, then the employer may be required to pay their attorney's fees. And that's usually a decision made by the judge. I would say that if a plaintiff prevails, usually they are awarded their attorney's fees. And if the plaintiff loses, it's like in the UK, very rare that an employer would be asked to pay, or that the employee would be asked to pay the employer's attorney's fees.

Schmidt [00:25:36]

So it's kind of a one-way street in favor of the employee for employee cases. So that's a one-way street that creates the risk for the employer in facing these employment risks.

Durham [00:25:50]

Yeah. I think the idea is when they pass many of these statutes, they want them to be kind of remedial in nature where employees feel like if there is an actual problem, they can come forward and get it resolved. So they don't want fees to be an obstacle to that necessarily, but it does end up being a little one-sided. It's kind of just the nature of the deal.

Schmidt [00:26:11]

Sure. So let's move on to a couple of other topics and compare the two jurisdictions. And just, observation here, it seems that the law in both jurisdictions, and elsewhere as well, is trying to balance the interests of the employer, which has significant economic interests with the interest of the employee and strike that right tension. And sometimes it seems like it veers one way versus the other. A very significant topic of conversation and change in the US over the last several years relates to employee mobility and what we in the US call covenants not to compete. And that is a classic illustration of how the law has to try to strike a balance between employees' interest and employers' interest. And we see great significant changes between various states in the US.

[00:27:16] So let's begin with Matt and give us a lay of the land. I'm not asking for a 50-state survey plus the federal, current state of the federal regulations on employee mobility and covenants not to compete. But what's a general overview and where do we see this going? And then we'll turn it to Lisa, which based on my knowledge is going to be quite different.

Durham [00:27:47]

So in the United States, it really is largely a function of state law and different states have different common law rules and/or statutory rules about covenants not to compete. And generally speaking, they have to be carefully drafted and really sort of tailored to the specific situation. So they're protecting a legitimate interest of the employer and they are reasonable in terms of their geographic scope and their temporal scope. So that this isn't an agreement that's going to really prevent someone from finding a job in their chosen industry or profession within a reasonable geographic area.

Durham [00:28:25]

But as you pointed out, Kent, kind of tries to balance the legitimate business interests that an employer might have in preventing unfair competition. We've really seen, I think, a movement in the last few years away from the enforceability of non-compete agreements. And a growing number of states have passed laws that limit the ability of employers to use non-competes. They often will still allow other kinds of restrictive covenants, like non-solicitation agreements or non-disclosure agreements, but there is increasing regulation of non-compete agreements in particular. At the end of the Biden administration, there was a pretty serious effort by the federal government to outlaw non-competes on a national basis on the grounds that they contributed to unfair competition. That initiative has sort of been put on the back burner, I think, since the change in administration.

Schmidt [00:29:22]

And subject to a lot of litigation as well. And some of it's been struck down, correct?

Durham [00:29:28]

Yes, that's right. There was litigation trying to strike down the Biden initiative. And since the change, we haven't really heard much about it one way or the other.

Schmidt [00:29:39]

So we'll see where the federal initiative goes, but in the meantime, a 50-state patchwork, as we like to say. Okay, Lisa, covenants not to compete, restrictions on post-separation employment in the UK is actually quite different, isn't it?

Patmore [00:30:01]

Well, some of the terms that Matt was using there are very similar to the UK. So legitimate business interest is one that any court is going to be looking at. And the restriction would need to go no further than necessary to basically protect that legitimate business interest. So there does need to be very careful drafting, very careful drafting to make sure that it's, you know, the restrictions go no further. And the key to drafting sometimes is in the UK, if a court is faced with post-termination restrictions, and which go too far, then sometimes they can use what's called a blue pencil test. So they can take out their pretend blue pencil and strike out the offending words and see if they took those out, would the restrictions still stand? And so when drafting, it's important to consider things like that.

[00:31:07] So the geography, Matt, that you referenced there, if you seek to protect a company across the UK and they don't do work in Wales or Scotland or Northern Ireland, they just do work in England, then there is, the non-compete would be struck down, it wouldn't be enforceable because you're trying to protect an area where you don't carry out business, which is why in the drafting you'd draft it very differently so that if the courts said that's too wide, you could strike out Wales, Northern Ireland, Scotland. So the drafting is very important.

[00:31:51] In terms of non-competes, theoretically, they're enforceable here. There has been consultation on whether they should be, whether they should be allowed or shouldn't be allowed, and if they are allowed, should they continue as they are or should you have something like some European jurisdictions have where you have to pay for it to be enforceable? The consultation has gone quiet on that front. And so where we stand at the moment is that non-compete clauses are always going to be under more scrutiny than your non-solicitation of employees or clients. And so you should always look more carefully and try to tighten up and make the post-termination or the non-compete shorter in period than the other post-termination restrictions.

Schmidt [00:32:49]

Well, I'll just append to what Matt has said with the California perspective, which is why I sort of had this understanding that perhaps the distinction was more stark than it was between the UK and the US. My perspective is perhaps colored by California, which is one of those flat prohibition states. In fact, you can be sued for even having the provision in the agreement, just because it has a dissuading effect. And you mentioned the blue pencil. That's the exact language that's used in California cases that says, no, we will not blue pencil your agreement to try to excise its overbroad provision.

[00:33:35] And so they are very much frowned upon under California law. And you can actually expose yourself to some liability for even including such a provision. So very important topic. Can we touch briefly in the time that remains on arbitration provisions and the approach in both jurisdictions? I'll let you decide who goes first, on whether the law recognizes and encourages or at least permits employers to require the onboarding employee to submit all or some other disputes related to employment to binding arbitration as opposed to the judicial or administrative process.

Patmore [00:34:32]

Matt, should I go, should I go first?

Durham [00:34:35]

Yeah.

Patmore [00:34:37]

I mean, I have to say that arbitration clauses are, you would never see them or very rarely see them in an employment contract in the UK. Arbitration is, you can have arbitration through the employment tribunal system, but the issue with having, or an employee committing to go through arbitration is if they do do that, then they run out of time potentially to bring their claim in the employment tribunal. They generally only have three months from the act complained of to bring a claim. And normally, any arbitration processes, it would be longer than that anyway. So it's very rare that you would ever see them in a contract of employment. And so it's not really anything that tends to be dealt with as part of an employment context in the UK.

Schmidt [00:35:40]

Okay. Matt, let's hear your perspective, as well as your own views on the advisability of arbitration provisions for employees.

Durham [00:35:51]

In the United States, you can have arbitration provisions, and they're not unusual in employment contracts. I think the thing that I would say about them is that, again, depending somewhat on the nature of the claim and the jurisdiction where the claims are being brought, there may be restrictions or regulations on how the burden of arbitration can be allocated between the parties. And so, for example, some states will find it unconscionable to require the employee to pay the arbitration costs or to have to go to a forum distant from where they worked and lived. An arbitration clause that required those kinds of things might not be enforced. But particularly with respect to statutes of limitations or class action issues or things like that, it's not unusual to see arbitration clauses in employment contracts.

[00:36:49]

I am a little bit agnostic about them. I mean, I think there was some sort of initial promise that arbitration was gonna be so fast and efficient and it was gonna solve all of our litigation problems, and I haven't really seen that play out very well. I think one place where that does kind of pay off is there's, you don't have a right of appeal, generally. And so there is some finality maybe that comes a little bit earlier, and if confidentiality is a concern, I think that's another issue that can be important with respect to arbitration. But if you're doing it just to sort of save money and streamline your process, I'm not sure it's going to be a huge difference.

Schmidt [00:37:28]

Okay. Interesting perspective. I talked to different employment lawyers in the US, and everyone has a little bit different take on advisability of arbitration provisions. Let me ask this question of both of you, and maybe Lisa, we'll have you go first. As you read the headlines in both, you know, around the world, including both in Europe and the US, it's becoming increasingly aware how we're reminded how acrimonious our culture is and how polarized political and social issues are becoming, and dealing with these issues percolating in the workplace and people of different perspectives and different persuasions arguing in the workplace and creating hostility in the workplace. How are employers in the UK dealing with that, and trying to bring efficiency and peace and focus in the workplace?

Patmore [00:38:37]

I mean, I think you're, you know, the difference of opinions between, you know, people who have maybe different religions or, you know, different genders, there are always, as you say, those types of issues that you're grappling with. In the UK, there are protections like similar to what you would find in the US. So, protection against sexual harassment, harassment on the basis of your gender, disability, age, and so there are all the protections there for the employees. Of course, what happens is the difficulty when one comes against the other. So, for example, somebody who has strong religious beliefs who doesn't, you know, who has strong beliefs about, you know, what a female is, what a male is, you know, whether, you know, is it okay to be gay, is it not okay to be gay? And there was a whole host of different case law there about the different rights that people have, up to their private life, but also the conflicting freedom of expression. So there are a few, quite a few cases that have grappled with that. But, certainly I think more and more, we're seeing more and more claims that grapple with that difficulties, but two different beliefs and where, you know, it's not who's right and who's wrong, but how do you deal with that?

Schmidt [00:40:14]

Matt, I know you've talked extensively on this, so can you give us just a very short, quick summary capsule on that?

Durham [00:40:23]

Yeah, we've really seen, I think, a change in the workplace culture in the United States in the last few years. And one aspect of that is that the class of aggrieved categories that are possible under employment law is expanding and expanding. And now when it used to be considered very difficult to bring what we've called reverse discrimination claims, that's becoming easier in the United States. I think what a lot of employers are doing is adopting an approach where there are kind of two primary rules. One is, treat everybody with dignity and respect, try and help them be successful. And the other is help everyone understand that part of being in the workplace is you're gonna be with people who don't agree with you on everything and you have to get along with your coworkers. And those are two kind of underlying principles that I think employers that are having success navigating this are trying to implement.

Schmidt [00:41:27]

Yeah. Huge challenges right now. And those challenges aren't gonna go away. Well, I think that's about all the time we have to talk about the differences between the UK and the US, employment claims, litigation management. At this point in our episode, we like to do what we call the Deeper Dive, and talk about things unrelated to litigation and employment matters, and talk a little bit about what each of you enjoy outside the workplace. And today, I'd like to talk about travel. Lisa, my wife and I recently enjoyed the Cotswolds earlier this year for the first time, not too far from where you are there in London, and it was just amazing. We went there primarily at her request. It was kind of on her bucket list, but I enjoyed it thoroughly, far exceeded my expectation. Just, and so I'm sure you get out there, but from time to time and enjoy it, hopefully when the crowds aren't there.

Patmore [00:42:37]

It can get very busy.

Schmidt [00:42:39]

Why don't you tell us about one or more of the just favorite places that you and your friends or family have traveled to that hopefully doesn't create a crowd with all the listeners we have on SharkCast. We wouldn't be like those social media hotspots that, you know, now are overrun, but just between us Sharkcast listeners.

Patmore [00:43:05]

Okay.

Schmidt [00:43:06]

What are some amazing places that you've travelled to?

Patmore [00:43:10]

I have done quite a lot of travelling. And so to say what my favorite place is would be difficult, but three spring to mind. The Iguazu Falls, and I think it borders Brazil and Argentina.

Schmidt [00:43:30]

Okay.

Patmore [00:43:31]

Absolutely beautiful, amazing. Argentina, the Perito Moreno Glacier. But actually somewhere that there won't be very many crowds, if those people listening to this, is a place on the Utah-Arizona border called the Wave. It's rock formations that have been shaped by the wind over time and it's very protected and there are only a handful of people allowed there per day. It was 20 when I went and there has to be, there is, you can be allocated tickets in advance or turn up on the day and see if you're lucky that day. So, but really beautiful. Definitely recommend to visit there.

Schmidt [00:44:18]

Matt, of all the places in the world that this person all the way in the UK could choose, you are, based in Utah. Are you from Utah originally?

Durham [00:44:31]

I am, yes.

Schmidt [00:44:32]

Okay, so you in Utah, you must be very proud that she would choose a place in Utah.

Durham [00:44:37]

You're on Lisa Patmore's travel list, that's **[UNINTELLIGIBLE]**.

Patmore [00:44:40]

Absolutely.

Schmidt [00:44:42]

That says a lot. Utah is, of course, a beautiful place. But Matt, I'm sure notwithstanding all the beauty of Utah, you often travel outside of Utah. So, give us some of your favorite places that you've been that are awe-inspiring.

Durham [00:44:57]

I think a couple of places that we've traveled that have been really memorable, when our kids were a little bit younger we went to Peru and went to Cusco and Machu Picchu. And that was a really remarkable, amazing experience. A lot of places are very hyped and you get there and you wonder if it kind of lives up to the hype. Machu Picchu lives up to the hype by every measure. And then another trip we took, my wife and I went to Vietnam and really enjoyed that. The food was amazing. The people were so gracious and wonderful and the history was really, really interesting.

Schmidt [00:45:35]

Excellent. You know, I really think it's fantastic that these places that have been mentioned are, outside the top tier of the most common places to go to. We sort of get in a rut sometimes and think, you know, these are the places that you have to go, they're where the beauty is, and it's a massive world out there and places that 99% of us have never heard of…

Durham [00:44:57]

So many times **[UNINTELLIGIBLE]**.

Schmidt [00:45:35]

…have so much to offer.

Patmore [00:46:05]

Definitely.

Schmidt [00:46:07]

Well, before we sign off, maybe I just hear a sentence or two from each of you with parting thoughts for, again, those HR directors, inside lawyers, outside counsel who are tasked with the daunting challenge of managing HR claims, employment claims on both sides of the pond, both in the US and the UK. Lisa, what's the takeaway from all of this?

Patmore [00:46:38]

Yeah, I think one of the key takeaways is this, is that US employees as well, if they come over to work in the UK, they may also acquire UK employment rights. And so there may be a misconception that because they are employed by a US company or they were based in the US originally and just came over to work in the UK, that they only have the US rights and haven't got any other rights, and that's not correct. They will, or they may have UK employment rights, which does cause further issues and needs to be considered.

Durham [00:47:21]

I think a big takeaway is that although our cultures and language and everything are very similar between the US and the UK, the employment law can be very different. And so if you're operating in both countries or expanding to another country, I think it's really important to consult with a legal professional that knows the laws in that country so that you're complying.

Schmidt [00:47:40]

Very good. Thank you both for being here today on SharkCast. I've enjoyed our conversation. I've learned a lot. I think this will be an informative episode for our listeners who have relevant business profiles in both the UK and the US. And with that, I'd like to also thank our listeners for tuning in. As always, I'm very indebted to the extraordinary team at Dorsey for making this podcast and episode possible. For more resources on this and other litigation risks, go to litigationrisks.com, where more information can be found, including a book on managing litigation risk, written by yours truly. Until next time, my friends, this is yet another reminder that there are a lot of sharks swimming out there in the murky waters, so swim safely.

Voiceover [00:48:28]