SEYFARTH SHAW

European Employment Law ALERT

US Corporation Not a Joint Employer of the French Workforce for Merely Coordinating Group Interests and Exercising Financial Influence Over the French Subsidiary

By Ming Henderson

Given the unfortunate reputation of French courts for awarding substantial damages to employees for unfair terminations, US corporations with operations in France are anxious to limit their financial and legal exposure in case of litigation initiated by their French workforce. How to achieve this efficiently is a far from rhetorical question as French employees frequently pull in the US parent company as a named defendant. The recent decision of the French Supreme Court [Cass. Soc. 2 July 2014 (1298 FS-PB)], is evidence that having a separate legal entity employing the French workforce may not be sufficient to get the US Corporation off the hook, but can help if specific corporate discipline is followed.

Background

In this case, the French subsidiary of a US Corporation had carried out a site closure in France leading to the redundancy of 280 employees and the French subsidiary being put into administration. 190 employees filed a suit before the French labour courts claiming unfair dismissal and seeking substantial damages from both the US and the French companies. On appeal, after having rejected the motion from the US Corporation that the US Courts should have jurisdiction, the court of Appeal found that the US Corporation was a joint employer and ordered it to pay the damages awarded to the French employees as the French subsidiary was by then in liquidation. The Court of Appeal relied on several facts to find the US Corporation was a joint employer:

- the Directors were appointed by the US Corporation,
- the US Corporation capped the authority of the Directors beyond a specific ceiling,
- the US Corporation had been involved in the decision-making for the site closure and the transfer of production back to the US to avoid disruptions in case of strike,
- the US Corporation had agreed to finance the employees' severance packages.

Decision

On the US Corporation's further appeal, the French Supreme Court made a different analysis and ruled that the Court of Appeal had erred in its application of the law. The Supreme Court stated that a parent company could not be treated as a joint employer of French employees on the sole basis of its financial influence and for coordinating activities with the French

©2014 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.

entity. It added that apart from where there is an actual contract of employment between the French employees and the US Corporation, joint employment can only be found where there are identical interests, activities and management between both companies characterised by the close day-to-day involvement in the human resources and economic management of the French entity.

Take aways

This decision of the French Supreme Court is good news for US Corporations and other multinationals with subsidiaries in France, provided however that they act cautiously to leave some autonomy to the French subsidiary and refrain from constantly controlling the routine activities and decisions of the French entity. As a reminder, in 2011, the Supreme Court [Cass. Soc. 18 January 2011 (199 FS-PBR and 200 FS-D)] had found in cases involving a German parent company and its two subsidiaries in France that the parent should be deemed a joint employer of one of the French subsidiaries due to its constant involvement in its day-to-day running and identical business interests. The Supreme Court relied on a different set of facts to reach its decision: i.e. the group absorbed 80% of the production of the French subsidiary and set the product prices, the parent company and the subsidiary had the same management team and its strategic choices, including the decision to transfer certain activities to the other French subsidiary, were taken by the parent company.

If you would like further information please contact any member of our International Employment Law practice:

IN THE UNITED KINGDOM/EUROPE

Peter Talibart
Direct: + 44 (0) 20 7763 2550
ptalibart@seyfarth.com

Ming Henderson
Direct: + 44 (0) 20 7763 2553
mihenderson@seyfarth.com

Tessa Cranfield
Direct: +44 (0) 20 7763 2517
tcranfield@seyfarth.com

IN CHINA

Wan Li
Direct: +86 21 2221 0688
lwan@seyfarth.com

IN THE UNITED STATES

Darren Gardner
Direct: +1 (415) 544-1018
dgardner@seyfarth.com

Dominic Hodson
Direct: +1 (415) 544-1017
dhodson@seyfarth.com

Marjorie R. Culver
Direct: +1 (212) 218-5546
mculver@seyfarth.com

IN AUSTRALIA

Luke Edwards
Direct: +61 2 8256 0401
lukeedwards@seyfarth.com

Amber Millhouse
Direct: +61 3 9631 0702
amillhouse@seyfarth.com

www.seyfarth.com

Attorney Advertising. This European Employment Law ALERT is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

©2014 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.