

Extraterritorial Application of United States Employment Law: Who is Covered, and Where?

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It is well established that Congress has the authority to enforce its laws beyond the territorial boundaries of the United States.¹ Thus, amidst an increasingly globalized economy, it is important for employers with foreign affiliate companies to understand which United States employment laws apply outside the United States, and to whom these laws apply.

I. Laws with Extraterritorial Application

A. Title VII of the Civil Rights Act of 1964 (“Title VII”)

Title VII prohibits employment discrimination against any individual because of such individual’s race, color, religion, sex or national origin.² In 1991, Congress enacted the Civil Rights Act of 1991 and amended Title VII to give the statute limited extraterritorial reach.³ The amended Civil Rights Act expanded Title VII’s definition of “employee” to include U.S. citizens employed abroad.⁴ Congress also explicitly precluded Title VII’s extraterritorial scope from covering aliens.⁵ Furthermore, this amended language extended Title VII abroad only to corporations controlled by United States employers.⁶

B. Americans with Disabilities Act (“ADA”)

Title I of the Americans with Disabilities Act (“ADA”) makes it unlawful for any employer to discriminate against a qualified individual with a disability with regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.⁷ In 1991, Section 109 of the Civil Rights Act of 1991, which amended Title VII, enacted identical amendments to the ADA to give the statute limited extraterritorial application.⁸ This amended the ADA’s definition of “employee” to include a citizen of the United States working in a foreign country.⁹ In addition, Section 109 of the Civil Rights Act amended the ADA so that the statute only applies to foreign operations of U.S. controlled foreign corporations.¹⁰

¹ See *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991).

² 42 U.S.C. § 2000e-2.

³ *Shekoyan v. Sibley Int’l Corp.*, 217 F.Supp.2d 59, 64 (D.D.C. 2002).

⁴ 42 U.S.C. § 2000e(f).

⁵ *Id.* § 2000e-1.

⁶ *Id.* § 2000e(c).

⁷ *Id.* § 12112(a).

⁸ See *Torraco v. Int’l Bus. Machs. Corp.*, 213 F.Supp.2d 390, 397-98 (S.D.N.Y. 2002).

⁹ 42 U.S.C. § 12111(4).

¹⁰ *Id.* § 12112(c)(2).