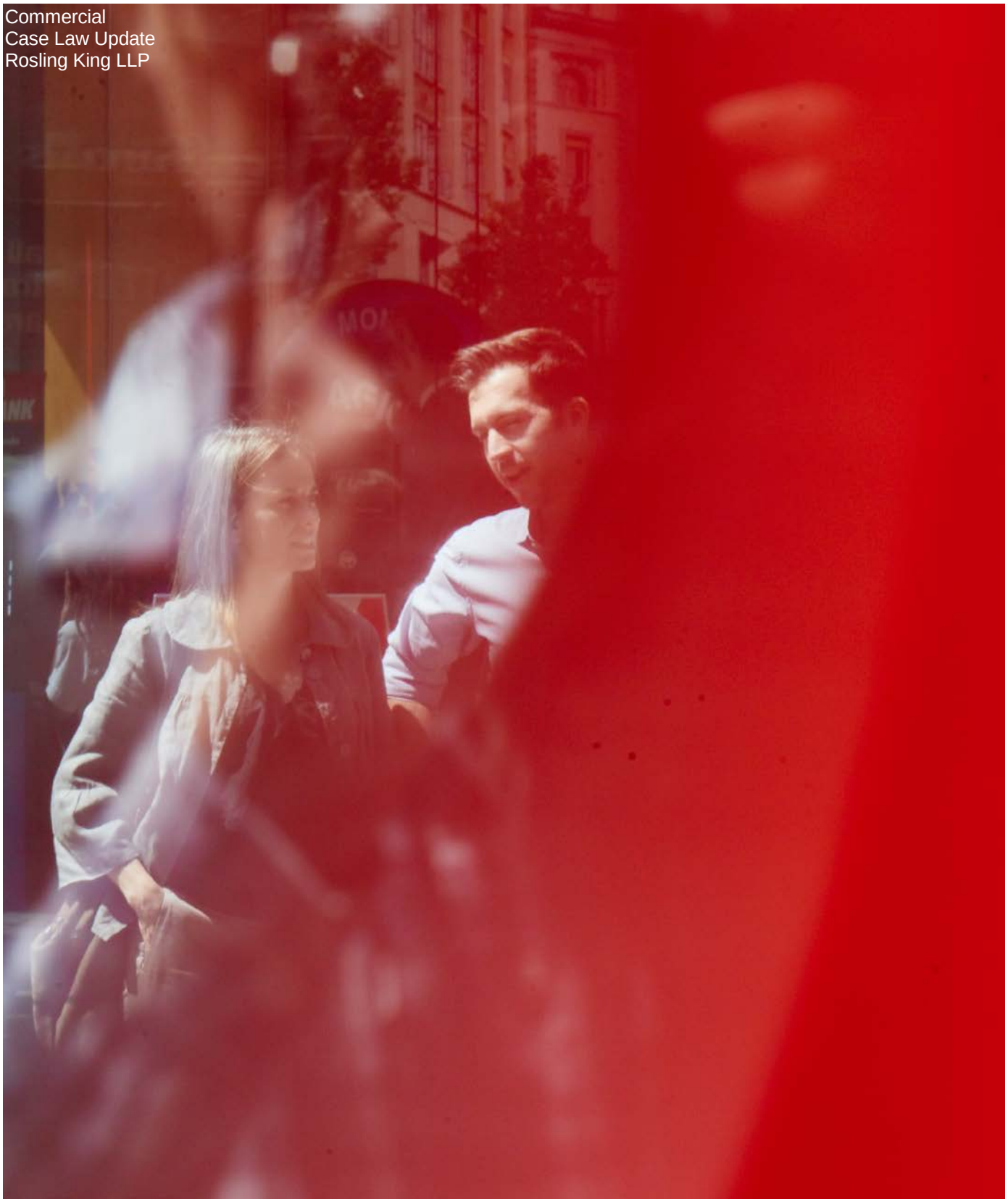
Commercial
Case Law Update
Rosling King LLP



The EAT in Fuller v United Healthcare Services Inc & Another IKEAT/0464/13/BA has upheld a jurisdictional decision of the ET which excluded a US employee from pursuing an unfair dismissal and discrimination claim under the Employment Rights Act 1996 and Equality Act 2010.

The Facts

Mr Fuller, a US citizen, was employed as chief operating officer of Optuminsight, a segment of the United Healthcare Services Inc ("UHSI"), part of the United Health Group ("UHG"). In 2012, Mr Fuller began a newly created role of managing director of Unitedhealth UK Ltd, a subsidiary of the UHG incorporated in England and Wales. Though Mr Fuller retained his previous role of chief operating officer of Optuminsight, his focus moved on to Optuminsight's business in the UK and Middle East. Mr Fuller was required to spend approximately 49% of his time in the UK as part of his new role.

Mr Fuller's contract of employment stipulated that either he or his employer could terminate the relationship at will and that any employment dispute would be determined solely by arbitration, administered by the American Arbitration Association ("AAA").

Though Mr Fuller spent much of the first six and a half weeks of his new role in the UK, he also spent time in the UAE, USA, China, Mexico and Sint Maarten, before returning to the USA. On 31 October 2012, Mr Fuller was told that due to budget issues and a change in status in the UAE, his "expatriate assignment was being terminated". Mr Fuller was unsuccessful in his attempts to find another role with the UHSI and, on 3 January 2013, he was dismissed.

Mr Fuller brought claims before the Employment Tribunal ("ET") for unfair dismissal, automatic unfair dismissal and discrimination on grounds of sexual orientation. The ET decided it lacked territorial jurisdiction. Mr Fuller appealed.

The Decision of the Employment Appeals Tribunal ("EAT")

The EAT rejected the appeal and said the relevant question was whether or not Mr Fuller "moved to the UK and gave up his base in the USA". The EAT found that the "ET was entitled to find that the connection with the US was much stronger than the connection with anywhere else". Their finding was based on the following factors:

(1) Mr Fuller was paid in US dollars;
(2) his contract provided that any unresolved disputes would be referred to the AAA;
(3) his accommodation in London was paid for by UHSI; and
(4) Mr Fuller was required to work in other countries as well as in London.

Comment and Advice

The decision of the EAT highlights the value of contractual documentation to guard employers against claims in other legal jurisdictions. Had the ET concluded that there was jurisdiction to hear the matter then the claim for unfair and automatically unfair dismissal was likely to have succeeded. In addition to the contract's terms, other factors likely to be considered clearly include the currency in which the employee is paid, where the employee is

taxed and the length of time the employee is situated in any one place.

Of course this claim involved a US citizen, an EU citizen's position would depend on when the dispute arose and the application of Article 21 of the Brussels Regulation. Whilst this greatly limits the impact of an exclusive jurisdiction clause in an employee's contract, it is still prudent for employers to include the clause in their contracts. Where employee roles are multi-jurisdictional an employer should seek legal advice prior to dismissing an employee to avoid any unintended liability.

For further information, please contact Jacqueline Kendal or the Partner with whom you usually deal.