



Employment discrimination law exposures for international employers

Employment
discrimination
law

A risk assessment model

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Abstract

Purpose – The purpose of this paper is to use a risk management perspective to identify the risks of employment discrimination law liability for multinational employers.

Design/methodology/approach – Data from 101 US Federal Court cases that involved multinational employers operating both inside and outside of the USA were content coded and then used to identify factors that predict the frequency that foreign employers operating inside the USA – and US employers operating outside the USA – were subject to lawsuits under US employment discrimination laws.

Findings – This study found that employment lawsuits based on sex discrimination against females was the most significant risk exposure. Employers whose home country was from a Western culture were at comparatively greater risk for charges of both age and religious discrimination. Employers whose home country was from an Asian culture were at comparatively greater risk for charges of both race and national origin discrimination.

Research limitations/implications – This study demonstrates the viability and usefulness of a risk management framework for examination of issues related to law and management.

Practical implications – This study enables the identification of risk factors that multinational employers can use to strategically target their loss prevention efforts in order to more effectively and efficiently avoid or reduce potential liability for employment discrimination.

Social implications – The risk factors identified in this study can help employers to take efforts to reduce employment discrimination in their multinational operations, thereby reducing the frequency and likelihood that such discrimination may occur.

Originality/value – This is the first study to use a risk management framework to empirically identify employment law risk exposures for multinational employers.

Keywords United States of America, Discrimination in employment, Law, Multinational employers, Employment legislation, Risk management

Paper type Research paper



Background

Managerial decisions are frequently driven by concerns about employment law compliance and the risk of lawsuits from employees. This study assesses those risks as they pertain to employers operating in more than one country. We focus on loss exposures that arise because of the potential applicability of US employment laws to foreign employers operating in the USA or US employers operating outside the USA.

In conducting this study, we respond to the call for organizationally sensible approaches to employment law risks (Roehling and Wright, 2004). We do so by adopting a risk management framework (Head, 1986; Head and Horn, 1985). In general, risk management involves the assessment of risks and the selection and implementation of the most effective techniques designed to prevent or reduce losses (Mehr and Hedges, 1974; Williams and Heins, 1985). Through the identification and assessment of risk, the risk management process enables organizations to deploy their resources to address the most likely types of losses. For this reason, risk management is a popular notion that has been used by some management practitioners for many years (Gallagher, 1956; MacDonald, 1966). In April 2004, the Business Source Premier database in EBSCO host contained more than 14,000 articles on the topic of risk management.

Several practice-oriented articles have applied risk management concepts to employment law risks (Chapman, 2003; Davis *et al.*, 1999; Fisher and Mittorp, 2002; Thrasher, 2003). Some of these focus on a particular type of employment law risk such as employee retirement plan compliance, sexual harassment, and workplace safety (Achampong, 1999; Davis *et al.*, 1999; Vredenburg, 2002). Despite the popularity of risk management thinking among managers, there is very little theory-based empirical research that advances our understanding of these processes (Close, 1974). Moreover, prior research has not addressed the assessment of employment law risks as they pertain to employers operating in more than one country. Therefore, this study tests a model of employment law risk exposures for international employers. Throughout the paper, we summarize the facts of particularly illuminating cases to illustrate key points.

Model

Employment law risk exposure

Risk is the probability a loss will occur as the result of a risk exposure (Gallagher, 1956). Risk exposures are situations in which organizations face the possibility they may incur a loss (William and Heins, 1985). A loss is an actual event that requires an organization to expend money or resources in response to it (Head, 1986; Head and Horn, 1985). Employment law risk exposures are one type of loss exposure. Here, we define an employment law-related risk exposure as a situation in which there is a set of circumstances that creates the possibility an organization may incur a loss related to an employment law. For multinational employers, an employment law risk exposure occurs when they employ individuals and those individuals become subject to the employment laws of a particular country. Actual losses occur when the organization is required to expend resources in response to a claim or charge they have violated an employment law. The specific type losses studied here are lawsuits that charge multinational employers with unlawful employment discrimination under US law.

The three most frequently cited employment discrimination statutes in the USA are the Age Discrimination in Employment Act of 1967 (ADEA), Title VII of the Civil Rights Act of 1964, as amended in 1991 (Title VII), and the Americans with Disabilities

Act of 1990 (ADA) (EEOC, 2003). Despite the fact that other employment statutes are occasionally cited in international employment discrimination cases (*Helder v. Hitachi Power Tools*, 1993), they are not included in this study either because they are less frequently cited or because they are typically not applied outside the USA.

Figure 1 shows three categories of circumstances that are expected to create employment discrimination law risk exposures for multinational employers. These categories are: worker individual difference factors, work and organization factors, and employer home country culture factors.

Worker individual difference factors

Sex-based discrimination against women is likely to be one of the most frequent risk exposures for multinational enterprises (MNEs). This is likely to occur because women seeking managerial positions face significant resistance from the international divisions of MNEs (Adler and Israeli, 1995). Furthermore, several studies illustrate there may significant levels of sex discrimination outside the USA. For example, Lawler and Bae (1998) found significant levels of overt sex discrimination in employment recruiting ads in Thailand. Other studies suggest female US expatriates may often face sex discrimination from host country nationals (HCNs) and other expatriates (Adler, 1987; Caligiuri and Cascio, 1998; Israeli *et al.*, 1980; Stone, 1991). For example, in *Greenbaum v. Handelsbanken, N.Y* (1998) Victoria Greenbaum sued her employer, Svenska Handelsbanken, NY (SHNY), for discrimination based on sex and age discrimination in promotion in response to her employer’s retaliation against Greenbaum for filing an EEOC charge. SHNY is a New York branch of Svenska Handelsbanken AB whose headquarters are in Stockholm, Sweden.

Other demographic factors such as age, race, ethnicity, and national origin are expected to generally be less important risk factors for most MNEs:

- H1. Discrimination against women based on sex will be the most significant risk exposure for MNEs.

Often employers use parent country nationals (PCNs) to manage their overseas operations (Schuler *et al.*, 2004). However, these expatriate assignments are often very expensive, so eventually organizations turn to HCNs. Because the expatriate PCNs

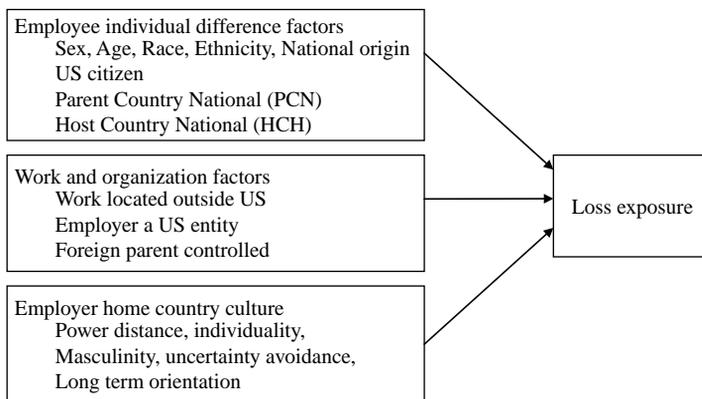


Figure 1.
Model of employment
discrimination
law exposures for
multinational employers

are often carefully selected, it is less likely the employer will engage in employment discrimination against them. However, organizations operating in foreign countries will often employ PCNs in higher ranking positions or positions with higher pay because they are used to maintain control of local operations. As a result, HCNs may be shut out of these more desirable positions.

For example, in *Avagliano v. Sumitomo Shoji America, Inc.* (1981) several US citizens working as clerical employees sued Sumitomo Shoji America, Inc. (Sumitomo), a US corporation and subsidiary of Sumitomo Shoji Kabushiki Kaisha. The latter was a Japanese general trading company typical of the type of Japanese *sogo shosha* that handles many products of other companies (e.g. marketing, financing, trade regulation compliance) involving more than 50 percent of Japanese imports and exports. The plaintiffs alleged Sumitomo only hired male Japanese citizens for the higher level executive, managerial, and sales positions.

For these reasons, it is expected that:

H2. MNEs face greater employment law risk exposures from HCNs than from PCNs.

In addition, because US employment discrimination laws are primarily designed to protect Americans, it is expected there will be a greater risk exposure for workers who are US citizens. Therefore, the US citizenship of the plaintiff is used in this study as a control variable. For example, in *Hu v. Skadden, Arps, Slate, Maegher & Flom, LLP* (Skadden) (1999), a district court in New York ruled William Hu, a lawful resident of the US and Chinese citizen, did not have a right to sue under the ADEA for not being hired for jobs in China. His application to become a US citizen had not yet been approved. Hu was a recent law school graduate who had previously worked for the defendant law firm as a legal assistant. After graduating from law school, he applied at Skadden's New York offices for a job as a first year associate there or alternatively to perform due diligence work in their Beijing and Hong Kong offices. He was not hired for the New York job because other applicants were more qualified. However, Hu alleged he was not hired for the jobs in China because of his age. The court noted that even though the job search occurred inside the USA and Skadden may have conducted interviews and made hiring decisions in their New York offices; Hu was not covered because he was a Chinese citizen and the job would be performed outside the USA.

Work and organization factors

Interunit linkages refer to the nature of the relationship between organizational units in different countries (Schuler *et al.*, 2004). A primary objective of these linkages is to balance the need for control and coordination while maintaining competitiveness. In this study, we examine two categories of interunit linkages. The first type is operating units inside the USA that are controlled by a foreign parent corporation. The second type is US parent corporations that control operating units outside the USA.

For example, in *Goyette v. DCA Advertising, Inc.* (1993), a district court ruled employees of a US subsidiary of a Japanese corporation could claim national origin discrimination under Title VII when the company retained Japanese personnel but discharged the Americans. DCA Advertising, Inc. (DCA), a US corporation, was a wholly owned subsidiary of Dentsu, Inc. (Dentsu), a Japanese corporation headquartered in Tokyo that is the world's largest advertising and communications company.

Dentsu placed its own Japanese expatriates in charge of DCA and retained control over which Japanese expatriates DCA could terminate. The company fired several US citizens and replaced them with Japanese expatriates. The court ruled DCA's Japanese parent company, Dentsu, significantly affected the employment policies of DCA. Therefore, with Dentsu's employees included, the defendant had enough employees to be covered by the statute.

As illustrated in this example, it is expected that when foreign parent corporations are controlling subsidiaries inside the USA, they will have greater employment discrimination law exposure because they will be less familiar and less accustomed to dealing with US laws:

H3. When a foreign parent corporation controls a subsidiary inside the USA, there will be a higher risk of an employment discrimination lawsuit.

Furthermore, because US employment laws only apply outside the USA when the employee is a US citizen working for a US employer, it is expected work location inside the USA and the US nationality of the employer will increase the risk exposure for employers. Therefore, the work location and nationality of the employer are used as control variables in this study.

For example, in *Mota v. University of Texas Houston Health Science Center* (2001) Dr Luis Mota filed suit claiming same-sex sexual harassment against his department chair, Dr Caffesse. Dr Mota was a citizen of Venezuela who was working as a resident alien in the USA. Mota cited several incidents of sexual harassment that occurred at academic conferences. The first occurred at a conference the two attended in Monterrey, Mexico, where Dr Caffesse arranged for them to share a hotel room. While in the hotel room, Caffesse made several unwanted sexual advances and implied that Mota needed to get to know him better and get along with him; he also indicated Mota's immigration status would be jeopardized if he lost his job. Mota alleged Caffesse also harassed him at academic conferences in Philadelphia, Breckenridge, and Orlando. He also cited incidents that occurred in their offices in Houston. The court ruled for Mota with respect to the incidents that occurred inside the USA but not in Mexico.

Employer country culture

Clustering countries by culture factors can aid in the development of theory and provide practical implications for organizations (Gupta *et al.*, 2002). Prior work has demonstrated a society's culture can have significant influence on the practices within an organization (Brodbeck *et al.*, 2004). Following the work of others who have clustered countries by culture, we expect to find there will be distinct Anglo and Asian clusters in these data (Ashkanasy *et al.*, 2002).

Asian-based employers are likely to prefer to retain Asians in positions of confidence to manage their foreign operations. The facts in *Fortino v. Quasar Co.* (1991) illustrate this point. Quasar was an unincorporated division of Matsushita Electric Corporation of America (Matsushita) a Delaware corporation. Much of Quasar was formerly part of Motorola. The latter is wholly owned by the Japanese corporation Matsushita Electric Ind. Co., Ltd (MEI) whose headquarters are in Osaka, Japan. Quasar markets the electronics products of Matsushita and MEI products in the USA. MEI assigned several of its own executives to work temporarily at Quasar. They became Quasar employees, but were designated as Matsushita personnel on Quasar's records.

While working at Quasar, Matsushita evaluated their performance, kept their personnel records, determined their salaries, and arranged relocation expenses. They were authorized entry into the USA under temporary worker visas that required them to be employed by a corporation that is at least 50 percent foreign owned. When Quasar began losing money, three US citizens, John Fortino, Carl Meyers, and F. William Schulz, were laid off in a cost-cutting move. The decision to lay off the plaintiffs was dictated in large measure by MEI executives. None of the Matsushita executives working at Quasar were laid off, and some even received salary increases.

This case illustrates a circumstance in which a foreign corporation operating in the USA retained foreign national expatriates in highly desirable positions in lieu of Americans. Whenever this occurs, it is likely US nationals will view their relative lack of access to these positions as unfair. As a result, they are more likely to file charges of race or national origin discrimination. This is likely to be a significant risk exposure for Asian foreign corporations operating in the USA:

H4. Asian MNEs will have a greater risk exposure to race and national origin claims than other MNEs.

Case year

We also recognize the year of the case is an important control variable because prior to 1991, there were differences among the courts as to whether US employment discrimination laws could be applied outside the USA. In general, we expect that in more recent cases MNEs will have greater risk exposure.

For example, as originally enacted, the ADEA did not have language expressing a clear intent that it should be applicable outside US borders. Several cases rejected plaintiff attempts to extend the coverage of the ADEA outside the USA. These cases involved jobs located in several countries (England: *Cleary v. United States Lines, Inc.*, 1984; France: *Wolf v. J. I. Case Co.*, 1985; Holland: *Thomas v. Brown & Root, Inc.*, 1984; Honduras: *Zahourek v. Arthur Young & Co.*, 1984; and the coastal waters of the Republic of Zaire: *Belanger v. Keydril Co.*, 1984).

However, in 1984, Congress amended the ADEA to expand coverage to US citizens working for US corporations operating outside the USA. The amendments also extended coverage to corporations controlled by US firms, but they did not require employers to comply with the ADEA if it would violate local laws. Similarly, in 1991, the US Congress amended both Title VII and the ADA to provide a clear statement of intent that these statutes could apply outside the USA. The new language extended the coverage of these statutes by changing the definition of covered employees, which now includes: “[...] [any] individual who is a citizen of the USA employed by an employer in a workplace in a foreign country.” However, Title VII and the ADA do not apply to foreign corporations unless a US firm controls the foreign corporation. One firm controls another when there are interrelated operations, common management, centralized control of labor relations, common ownership, or financial control of the foreign employer. In addition, the 1991 amendments prohibit applying these statutes to situations which would require the employer to violate the laws of the foreign country that is the site of the employment.

The impact of these amendments is illustrated in *Peterson v. DeLoitte & Touche* (1993), involving Olga Peterson, a US citizen who had been born in the Soviet Union but moved to the USA in 1979. After completing her MBA from the University of Chicago

in 1988, she was hired by Deloitte and Touche. In 1990, because of her familiarity with Russian language and customs, they offered her an assignment in Moscow as part of the firm's joint venture to provide financial and accounting services in Eastern Europe. She told the firm she did not want to go because of Russian customs. For example, she had been denied a higher education in Leningrad because she was Jewish.

To reassure her, the company offered her a written long-term contract that was supposed to last for three years. The contract included a benefit package with a hardship allowance, housing costs, and transportation back to the USA upon completion of the assignment. She was also told she would remain an employee of the US firm and continue to be covered by the firm's personnel policies, including the policy that prohibited harassment based on sex, race, ethnicity, or religion.

However, despite these assurances, she encountered sexual harassment while working on an assignment in Siberia. A manager told her to take off her clothes and physically accosted her until others stopped him. The same manager accosted other women during a staff meeting. Her superiors did nothing and allegedly told her, "[m]en make passes at women in the USA as well." Furthermore, some of the firm's local partners objected to the employment of Jews. One of the managers purportedly stated, "They escaped our country and now they are back and you pay them so much money."

Peterson reported these incidents to her superior in Moscow and demanded that a statement prohibiting discrimination and sexual harassment be issued and that violators be disciplined. However, to placate their local business partners, DeLoitte adopted a policy under which they would not intervene in local matters regarding religious and sexual harassment. To avoid further incidents, they chose not to hire additional Jewish women in Russia even though well-qualified applicants were available.

Peterson was fired on October 21, 1991 and she filed a complaint alleging hostile work environment, retaliation, and disparate treatment in benefits in that she did not receive the same three-months severance pay male employees had received. She also complained male employees received six paid trips home for themselves and their spouses, while she received six paid trips home for herself, but none for her spouse.

However, it was not until November 21, 1991 that Title VII applied to the employment practices of US employers employing US citizens outside the USA. Every act of harassment, and everything on which her employer failed to act upon occurred before the date the statute was amended. Nevertheless, DeLoitte and Touche permitted her to remain on the payroll until December 13, 1991. In her final paycheck, she did not receive the severance pay and travel benefits that male employees had received. The district court dismissed all claims regarding hostile work environment and retaliation because they related to incidents that occurred before the statute was amended. However, the district court permitted Peterson to proceed with her claims of disparate treatment in benefits.

Methods

After searching the Lexis-Nexis electronic database, we identified federal court cases dealing with the issue of the applicability of US employment discrimination laws to multinational employers. We used several different search terms (international, Title VII, extraterritorial, etc.). Using the Shephard's citation system, we determined if the cases selected had been appealed, overturned, affirmed, etc. (Roehling, 1993).

The highest level opinion for each case was used to prepare this study. This resulted in a final sample of 101 relevant cases from the federal district courts, Courts of Appeal, and Supreme Court. These cases used are listed in the reference list.

We content-coded each case using dummy variables in which 1 – applicable and 0 – not applicable. This process resulted in the following variables. Sex: female indicated the plaintiff was alleging sex discrimination because she was female and was being treated differently than a male. Age: older indicated the plaintiff was alleging age discrimination because he or she was treated differently than a younger employee.

Race, ethnicity, and national origin indicated the plaintiffs were alleging they were being treated differently based on their membership in a particular group. Employee US indicates the employee was a US citizen. Notably race, ethnicity, and national origin often overlap. Nevertheless, they are treated as distinct concepts under US employment discrimination laws. Furthermore, national origin is often the same as citizenship. However, citizenship is a legal status question determined by a country's immigration laws, while national origin is a demographic characteristic that refers to the place where people or their ancestors were born.

Employee PCN indicates the employee had the same nationality as the employer's parent country. Employee HCN indicates the employee was a national of the host country within which the MNE was operating.

We constructed a measure of employer home country culture. First we coded the home country of the employer for each lawsuit. Then, the Hofstede (1980) country-level culture scores for the employer's home country were assigned to the case. As a result, each case has a home country culture score for employer: power distance, individuality, masculinity, uncertainty avoidance, and long-term orientation.

For measures of interunit linkages, the cases were coded to indicate for each employer whether a Foreign Parent Controlled a US Subsidiary, or a US Parent Controlled an Overseas Subsidiary.

US lawsuit exposure was also a dummy coded variable (1 – yes, 0 – no) indicating if the court ruled the employer was subject to the US employment discrimination law cited by the plaintiff.

Results

These data supported *H1*. Table I presents descriptive statistics and correlations between the variables in this study. The correlation between claims of sex discrimination against women was positive and significant ($r = 0.36, p < 0.01$). In addition, a hierarchical logistic regression analysis was performed with the results reported in Table II. In that analysis, the dependent variable was the dichotomous variable indicating a loss exposure. That analysis indicates that after controlling for case year, work location, and nationality of the employee and employer, sex discrimination was a significant predictor of loss exposure.

Table II also illustrates as expected that there is a significantly higher risk exposure in recent years and lower risk exposure when employment is located outside the USA.

The data provided partial support for *H2*. Table I shows there was a small and positive correlation between employee HCNs and employment law loss exposure ($r = 0.19, p < 0.05$). The correlation coefficient for PCNs was not significant. Furthermore, when entered into a hierarchical regression analysis that predicted loss exposure, this variable was not significant.

	M	SD	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1. Year	1992	7.78	-																	
2. Sex: female	0.41	0.49	0.03	-																
3. Age: older	0.42	0.50	-0.01	-0.37	-															
4. Race	0.17	0.38	0.09	-0.10	-0.12	-														
5. Ethnicity	0.02	0.14	0.06	0.03	-0.12	0.32	-													
6. National origin	0.40	0.49	-0.11	-0.05	-0.19	0.34	0.18	-												
7. Work outside the USA	0.53	0.50	-0.16	-0.21	-0.04	-0.15	0.01	-0.31	-											
8. Employer US entity	0.48	0.50	-0.07	-0.10	-0.14	-0.16	0.01	-0.28	0.54	-										
9. Employee PCN	0.08	0.27	0.06	0.36	-0.18	-0.03	-0.04	0.06	0.17	0.24	-									
10. Employee HCN	0.03	0.17	0.01	0.21	-0.03	0.08	-0.03	0.10	-0.16	-0.17	-0.05	-								
11. Employee US	0.75	0.43	-0.35	0.10	0.03	0.07	-0.08	0.09	0.03	-0.24	0.08	0.10	-							
12. Employer power dist.	45.5	12.0	-0.06	0.06	-0.06	0.13	0.02	0.35	-0.32	-0.44	-0.09	0.04	0.13	-						
13. Employer individuality	72.9	21.9	0.06	-0.12	0.04	-0.25	-0.03	-0.39	0.51	0.79	0.17	-0.25	-0.29	-0.65	-					
14. Employer masculinity	63.7	16.9	-0.09	0.03	-0.29	0.18	0.13	0.26	-0.04	-0.10	0.04	0.14	0.15	0.15	-0.24	-				
15. Employer uncer. avoid.	56.9	22.3	-0.09	0.03	-0.20	0.23	0.08	0.44	-0.30	-0.47	-0.07	-0.14	0.12	0.58	-0.53	0.43	-			
16. Employer LT orientat.	39.9	21.1	-0.15	0.13	-0.28	0.36	0.11	0.52	-0.43	-0.62	-0.07	0.21	0.22	0.60	-0.81	0.69	0.94	-		
17. Foreign parent controlled US subsidiary	0.29	0.45	-0.03	0.01	0.03	0.07	0.07	0.38	-0.33	-0.52	-0.19	0.02	0.26	0.23	-0.41	0.23	0.39	0.53	-	
18. US parent controlled overseas subsidiary	0.09	0.29	-0.07	-0.12	-0.06	0.14	-0.04	0.03	0.20	0.19	0.04	-0.06	0.10	-0.16	0.22	-0.02	-0.12	-0.18	-0.20	-
19. US law exposure (1=yes/0 otherwise)	0.47	0.50	-0.19	0.36	-0.13	0.06	0.01	0.02	-0.19	-0.21	0.09	0.19	0.26	0.13	-0.23	-0.08	0.01	0.13	0.07	-0.01

Notes: Significance at: $p < 0.01$, < 0.18 and $p < 0.05$; correlations > 0.22 ; $n = 101$

Table I.
Descriptive statistics
and correlations
between variables

Table II.
Hierarchical logistic
regression analysis
predicting multinational
employer exposure
to US employment
discrimination laws

	B	B
Year	0.047	0.083*
Work outside the USA	-0.847	-1.54*
Employer US entity	-0.337	-0.347
Employee US	1.07	1.07
Sex: female	-	2.17**
Race	-	0.725
Ethnicity	-	1.28
National origin	-	-0.646
Disability	-	0.967
Religion	-	0.486
<i>Model</i>		
-2 log likelihood	125.21	108.33
χ^2	14.3**	31.20
df	4	10
Percent correct	68.3	72.3
Nagelkerke R^2	0.18	0.36

Notes: Significance at: * $p < 0.05$ and ** $p < 0.01$; $n = 101$

The data did not support *H3*. The interunit linkages examined in this study (Foreign Parent Controlled US Subsidiary, US Parent Controlled Overseas Subsidiary) did not have different levels of loss exposures.

The data supported *H4*. Owing to the relatively novel and innovative nature of this study, we chose to do a cluster analysis to explore the possible grouping of study variables. Table III presents the results of a two-step cluster analysis. In this analysis, the cases were clustered according to country culture scores and types of employment discrimination law exposures. The results of this analysis suggest the data can be grouped into clusters that can be interpreted as a Western cluster and an Asian cluster. All of the country culture means were significantly different across the two clusters. In general, the Western cluster is dominated by Anglo counties such as the USA while the Asian cluster is dominated by countries such as Japan. The type of discrimination law exposures were different for these two clusters. The Western cluster captured most of the age and religious employment lawsuit exposures. The Asian cluster had relatively fewer of these types of claims. The Asian cluster was roughly equal to the Western cluster in the frequency of sex employment lawsuit exposures. However, the Asian cluster had significantly more race and national origin employment lawsuit exposures. This suggests there are significant differences across cultures in the type of employment law exposures that face MNEs.

Discussion

Contribution and strengths

This study provides a new paradigm for the study of employment discrimination issues. We illustrate how a risk management perspective can be usefully employed to study employment law risk exposures for MNEs. We found MNEs have a greater risk exposure for certain types of losses. Therefore, employers can strategically choose to focus their resources to prevent the likelihood of these losses. They may do so in several ways. For all MNEs employment discrimination against females may be one of their

Country culture dimensions	Western cluster		Asian cluster		<i>t</i>		
	Centroids		Centroids				
	M	SD	M	SD			
Power distance	Low	41.0	8.98	High	55.5	3.88	10.0*
Individuality	High	85.6	13.3	Low	42.4	9.09	-15.9*
Masculinity	Low	60.8	8.03	High	86.2	20.3	5.21*
Uncertainty avoidance	Low	46.8	6.31	High	90.3	4.23	34.3*
Long-term orientation	Low	29.0	4.60	High	78.6	3.76	46.9*
<i>Employment discrimination lawsuit frequency^a</i>		%			%		<i>Z</i>
Race		11.9			44.4		6.93*
National origin		25.0			88.9		7.09*
Sex		26.8			28.1		1.07
Age		45.3			0.1		-5.21*
Religion		100.0			0.0		-2.73*
Country most frequently associated with cluster	USA		Japan				
<i>Cluster statistics for two clusters</i>							
Schwarz's Bayesian criterion (BIC)	3,109.36						
BIC change	-157.78						

Table III.
Employer country cluster
profiles and frequencies of
employment
discrimination
lawsuit exposures

Notes: *Significant at: $p < 0.01$; ^afrequency is the percentage of cases within the cluster that found an employment lawsuit exposure for each type of claim; *t*-tests used for differences in means, *Z*-tests used for differences in proportions from Western to Asian cluster; $n = 101$

most significant loss exposures. Therefore, focusing attention on the prevention of discrimination against women should be a primary concern.

Nevertheless, Asian employers operating in the USA are also faced with a significantly greater risk exposure from claims of race and national origin discrimination. This is probably, the case because they tend to prefer to employ foreign nationals in higher level positions to manage and control their US operations. This appears to be particularly true for Japanese employers operating in the USA. This may be considered a form of reverse national origin discrimination because the favored group is neither White nor American. For these employers, it makes sense to pay particular attention to efforts that will prevent charges of race and national origin discrimination.

There was no significant difference in employment law risk exposures for different types of organization interunit linkages (*H3*). One possible explanation for this finding is that foreign direct investors (FDIs) operating inside the USA are sometimes protected by treaties of friendship, commerce, and navigation (FCN treaties) (Schnitzer, 1999). When international treaties apply to a situation, they supersede any contradictory provisions of federal statutes (US Constitution, Article VI; *cf.*, *Weinberger v. Rossi*, 1982). There are numerous FCN treaties that apply to many countries (e.g. FCN Italy, 1948; FCN Japan, 1953; Senate Committee on Foreign Relations, 1953). While negotiating these treaties, US diplomats typically insist on provisions that permit US firms that operate in foreign countries to select their own executives (Silver, 1989; Walker, 1958). These provisions surpass local laws that require the hiring of HCNs for key management jobs. Reciprocal rights are typically granted to FDIs operating in the USA.

For example, in *MacNamara v. Korean Air Lines* (1988) the FCN between the USA and Korea gave the Korean Air Line (KAL) the right to replace executives

who are US citizens with Korean citizens. In that case, Thomas MacNamara, a US citizen, was 57-year old when he was fired and replaced with a younger Korean citizen, Wan Gin Chung who was working for KAL under an E-1 "treaty trader" visa. MacNamara alleged race, national origin, and age discrimination. The court ruled KAL did have the right to replace MacNamara with Chung under the FCN with Korea. The invocation of these FCN treaties is likely to significantly reduce the risk exposure for FDIs operating inside the USA.

A particularly noteworthy feature of this study is the richness of understanding that is gained by the illustrative case examples that are summarized herein. They underscore the findings by illustrating the types of real world situations in which these types of discrimination can occur.

Limitations and directions for future research

Although the findings of this study suggest Japan fits within an Asian country cluster, other studies have suggested Japan is distinct from other Asian countries (Hofstede, 1980; Ronen and Shenkar, 1985). Thus, it may be that the finding in this study that countries whose home country is Asian are more likely to be exposed to risks for national origin discrimination lawsuits may not apply to firms whose home country is some Asian country other than Japan.

Nevertheless, the significant difference in the profiles of types of employment discrimination law exposures between Western and Asian firms suggests culture may make a difference. It may be the case that firms whose home country is more collectivistic will be more likely to make hiring and selection decisions that favor persons within their own reference group. In this way, collectivism may increase in-group bias towards members of one's important reference group. However, this is something that will need to be explored by future studies.

Researchers can also examine the effectiveness of alternative employment practices in preventing employment discrimination lawsuit exposures. An important question is which type of HR intervention (training, performance, management or institutional controls) is relatively most effective. That type of research can aid organizations in designing loss prevention methods that will reduce employers' risk exposures.

In addition, future research should investigate the extent to which individual dimensions of culture (e.g. collectivism, uncertainty avoidance) relate to international employer risk exposures.

Implications for practice

The first step in the risk management process is to identify and assess loss exposures. The data in this study provide some indication of the type of loss exposures MNEs face. The next step is to choose methods whereby these losses can be prevented.

Loss prevention. Loss prevention involves managerial actions intended to prevent employment law losses from occurring. These actions take several forms. First, consistency in organizational policies and practices is important (Baron and Kreps, 1999), because inconsistent policies and practices may contribute to invidious social comparisons and feelings of distributive injustice.

Second, employment practices should be clearly job related and not based on outmoded perceptions of the proper roles of subgroups of the population. When policies are clearly job related, employees are more likely to perceive the policies

as distributively and procedurally fair and therefore they will be less likely to file charges of discrimination (Goldman, 2001).

Third, organizations can use managerial training to reduce their risk exposure. For example, foreign managers working in the USA should receive training that familiarizes them with US discrimination laws. In addition, US managers going overseas should receive training to familiarize them with the employment laws of their host country. In addition, MNEs should assess the need for cross-cultural training addressing cultural differences that could cause employment-related litigation. For example, it has been observed that when foreign employers operate inside the USA, they may not have sufficient appreciation for issues related to sexual harassment. Therefore, cross-cultural training can address the different perceptions of appropriate treatment of persons based on sex and ethnicity (Taylor and Eder, 2000).

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