***Hiring to Firing* Podcast — Lords, Ladies, and Labor Laws: Downton Abbey and the Modern Employer**
Hosts: Tracey Diamond and Emily Schifter
Guest: Nick Elwell Sutton
Recorded: 11/5/25
Aired: 3/17/26

Tracey Diamond:
Cheerio, Emily!

Emily Schifter:

A great way to kick off our episode for today. So we've traveled to Canada to learn about some of the similarities and differences of employment laws there, and we are now taking a journey over to England with our partner Nick Elwell-Sutton, who sits in our London office, who is going to join us for a great conversation about all of the differences and similarities in English and UK employment laws compared to the US. So listen in.

[INTRO]

Tracey Diamond:

Welcome to Hiring to Firing the podcast. I'm Tracey Diamond, a labor and employment partner with Troutman Pepper Locke, and I'm here with my partner and co-host Emily Schifter. Together we tackle all employment issues from hiring to firing.

Emily Schifter:

Today we're thrilled to welcome as our guest, our labor and employment partner, Nick Elwell-Sutton who sits in our firm's London office. Welcome Nick, and thank you so much for joining us. Can you start by telling us a little bit about your background and the types of employment matters that you handle in your practice?

Nick Elwell-Sutton:

Of course. Well thanks Emily and Tracey. I'm delighted to join you today to give you some insights into UK practices. Day-to-day I cover the full range of employee lifecycle issues from recruitment and team hiring to employee relations, so disciplinary grievance determinations. I also do a good degree around whistleblowing, discrimination and

restructures as well as trade secrets and restrictive covenant work that's -non-competes. In addition to the UK, the data privacy rules known as GDPR are really quite involved and there's quite a large overlap between those and the employee issues, so I cover that as well.

Tracey Diamond:

Today we're taking advantage of Nick's expertise and focusing on the difference between us and English employment law and as we always do, we're taking inspiration for our topic from a TV show and this time we're focusing on Downton Abbey. I have to say I've watched Downton Abbey a while back and I really loved it and now I'm sort of motivated to rewatch the entire thing again. So happy to be talking about this show today. This British historical drama chronicles the lives of an aristocratic family, the Crawley family and their servants working at their English country estate in the early 20th century. The popular series has spawned three movies and at one point was the most watched series on both ITV and PBS. And while it may be, it looks a little bit like pure historical fiction, it is really a workplace story in a lot of respects as we will soon see. So before we get into our discussion, Nick, though, one question our listeners may have is about how employment law in England compares with the law of the other UK countries. Are they all under the same system?

Nick Elwell-Sutton:

It's largely the same across each of the countries comprising the UK, but with some minor differences in Scotland and Northern Ireland. Most of the legal framework is common though. So a similar concept to federal laws in the US but with some nuanced differences between England, Scotland, Wales, and Northern Ireland. For example, in Northern Ireland, employees gain dismissal protection after one year in employment, whereas in England, it's England, Wales and Scotland, it's two years. There are also more significant procedural differences in the court systems, which were run separately, but in practice for employers, that's not going to be too much of an issue.

Emily Schifter:

So kind of like in the US where we have our different states, there's federal overlay and then differences depending on which country you're in.

Nick Elwell-Sutton:

It's exactly like that. Yes, very similar. So the federal equivalent is what applies across the entire of the United Kingdom, and then we have the equivalent of the state laws for England, Scotland, and Northern Ireland.

Emily Schifter:

That makes sense. Getting into our first clip here, Robert Crawley, formally titled Lord Grantham, the seventh Earl of Grantham hires John Bates to replace his previous valet, Mr. Watson. Mr. Bates' arrival was met with a bit of a cold shoulder for most of the staff because he walks in with a pretty obvious limp, which they fear would make him unsuitable for the job, including even being able to climb the stairs to reach his room. So let's take a listen.

[BEGIN CLIP]

Mrs. Hughes:

How can you manage?

Mr. Bates:

Don't worry about that. I can manage

Mrs. Patmore:

Because we've all got our own work to do.

Mr. Bates:

I can manage.

Carson:

Alright, Mrs. Hughes, I'll take it. Thank you. Good morning Mr. Bates. Welcome. I hope your journey was satisfactory.

Mr. Bates:

It was fine, thank you.

Carson:

I am the butler at Downton. My name is Carson.

Mr. Bates:

How do you do Mr. Carson?

Carson:

This is Thomas first footman. He's been looking after his lordship since Mr. Watson left. It'll be a relief to get back to normal, won't it, Thomas? I assume that everything is ready for Mr. Bates's arrival?

Mrs. Hughes:

I put him in Mr. Watson's old room, though he left it in quite a state, I can tell you.

Mrs. Patmore:

What about the stairs?

Mr. Bates:

I keep telling you I can manage.

Anna:

Of course you can.

Carson:

Thomas - take Mr. Bates to his room and show him where he'll be working.

[END CLIP]

Emily Schifter:

Today, in the US employers cannot decline to hire somebody because they perceive they might have trouble performing a role because of a disability. In other words, they can't regard someone as disabled and there may also be the obligation to reasonably accommodate a limitation. Is that also true In England and the UK?

Nick Elwell-Sutton:

The legal framework in the UK around disability is complicated and the threshold to meet the definition of disability is low. So it's quite common for claims to arise. They can be particularly problematic in circumstances where you've got mental health issues. Particularly the common trend we see is around ADHD and autism and establishing whether or not those may meet the definition can be quite difficult. But looking at the clip in question, it seems relatively clear that this would be a disability case just based on the obvious limitations he has. So the main obligations of an employer are to make reasonable adjustments to remove any substantial disadvantage. So quite similar to the reasonable accommodation requirement in the US and it's also not to treat an employee unfavorably because of something arising from the disability unless it is both justified and proportionate, but that can be quite a difficult balancing act. There's also protection from being harassed related to disabilities as you might expect. And here just looking at the clip again, you could quite see that Bates could argue that the first floor room should have been adjusted to a ground-floor room to remove the problems he had with the stairs. That's in his most straightforward removing the impediment he has. unable to climb the stairs easily.

Tracey Diamond:

Nick, I have a question about that. So Bates keeps saying, I'm fine, I can manage, I'm fine, I'm fine, I'm fine. I'm going to be fine. In the US an employee has to request an accommodation or make it kind of obvious. They may not have to use any particular magic words, but they do have to make the request and the request has to be related to their job. It's not just I need an accommodation just because I need an accommodation In the UK does the employee in a situation like this where Bates basically says, I don't

need any accommodation, does that end the analysis or do you have to give an accommodation anyway?

Nick Elwell-Sutton:

It would really turn on that case whether it was reasonable not to provide it in circumstances where the employee had said, actually I'm okay, I don't need any help here. What you do find on occasions is employees will either be masking things or not giving a full account because they don't want to think the employer might then treat them unfavorably because of a disability. So in those circumstances it's usually pretty wise to get some kind of professional input, occupational health advice, a doctor or a similar, and that way you can get a much more objective independent view as to whether there is an accommodation required or you can take the employee at their word. But in general terms, unless it's really obvious that what they're telling you is not correct, you're usually entitled to take it at face value.

Tracey Diamond:

It's really interesting because I think here if you were to sort go against the employee's wishes and try to sort of foist an accommodation on them that that could become problematic under the law. So that's one big difference. So later on in the clip or after the clip, some of the staff discover Bates uses a leg brace to help his limp and they try to force the matter by attempting to expose it to the Crawley family and lead to his dismissal. Of course, having coworkers and an employer involved in an employee's personal medical details raises privacy concerns. In the US the Americans with Disabilities Act governs certain employee data related to medical conditions and there's also HIPAA, which doesn't necessarily always apply to employees in the employment context, but sometimes may in certain circumstances. So otherwise here in the US privacy is largely governed by state law if at all. I do think that that's somewhat evolving here in the US. How does that differ from England? I know it really does.

Nick Elwell-Sutton:

The data privacy rules in the UK under GDPR and its sister, the Data Protection Act are very pro-employee and really quite process driven, so it's quite easy for an unwary employer to trip up across them. Health data as you might expect, is subject to a high level of safeguards and protections, so it can only be processed that's used by the employer if either the employee has given free and informed consent, which is fine, but consent can be withdrawn any time or the employer is able to show it is necessary to comply with employment law rights and obligations. An example here might be if Bates was having difficulty at work due to the leg problems and the Crawley family decided

they wanted to obtain a medical report to advise them on any adjustments or accommodations that they needed to make in that case, they could rely upon it as being necessary to comply with their duty to Bates as his employer to make accommodations for him.

Nick Elwell-Sutton:

One particular feature for employees is the ability on employees to make what are known as data subject access requests. That requires an employer to provide all the employee's personal data. So basically anything from which they can be identified and they had to give it to them with very, very limited exceptions. Usually you now know when a dispute with an employee is looming as it's almost the first shot fired, the employee says, give me all my data. I want to see what you've got. I want to see if there's enough evidence to see if I've got a claim against you. Given the vast proliferation of methods of communication in the workplace, emails, Teams, Slack, WhatsApp, text messages, the whole lot, this can give rise to what amounts to a very substantial quasi discovery request with all the time costs and effort that goes with that. It's also led to advice to clients being dance like nobody's watching and email like you're reading it back in court.

Tracey Diamond:

I love that. How do you think that resonates with employers? Be careful what you say in emails, but I do think that employees and frankly employers tend to be a little bit looser when it comes to things like text messaging and that often leads to liability here in the US. So all those different methods of communication really can be very problematic.

Emily Schifter:

That's right. Even if there's not in the US, the automatic obligation to give those things over to an employee at any time once you get into litigation, it's discoverable and that can definitely trip people up. And then I think sometimes employers forget in the US certain states have personnel file access laws that require you to give employees their personnel files on request. Certainly much narrower than GDPR, but I've definitely had employers be surprised when they've got somebody working remotely from a state that gives a lot more employee access than the state that they're headquartered in.

Tracey Diamond:

Yeah, then it becomes an issue of what is actually a personnel file and what should go in that file or not. And some state laws are not all that clear as to what should be in the file.

Emily Schifter:

It's a tricky area, but ultimately the Crawley stand by Bates's hire and he's offered a position with a formal letter outlining all the terms of his employment and of course in the US this is pretty different from how most employees are typically offered their role. Generally there's in the absence of a written contract stating otherwise an employee is employed at will, which means the employer or the employee can end the relationship at any time for any reason, so long as it's not an illegal reason. So while it's pretty common for an employee to get something like an offer letter outlining potential terms of employment, there's no contractual right most of the time to any of those things or to continued employment at all. So how does that compare? Is modern English employment law still as contract bound as Downton Abbey?

Nick Elwell-Sutton:

Well, it has moved on over time as you'd expect. There's no longer quite the sort of master servant distinction that we can see in the clip, but every employer must still provide a written statement containing basic terms within two months of an employee commencing work. However, the requirements in that are not terribly onerous. It needs to set out just the very basics like legal identity of the employer, work, location, paying benefits, vacation and argument as work and notice periods and because that's actually quite limited in most cases employers supplement this and have something much fuller covering things such as intellectual property, confidentiality, garden leave, non-compete restrictions and so on because the source of the employer's rights against the employee is pretty much just limited to what's in the contract, whereas the employee typically has a full range of statutory rights against the employer. So it's very much in the employer's interest to try and set out their best position in the contract as that gives them usually the best protection.

Nick Elwell-Sutton:

Moving on slightly, an employer is generally free to terminate employment for convenience at any time within the first two years simply by giving the notice the contract requires. There are obviously exceptions to that most commonly discrimination whistle blowing that there's a few others as you would expect. However, from two years onwards it becomes really a lot more involved and an employer has to both provide a fair

reason and follow a fair process. I'll come a little later on what the fair reasons and processes are, but if they don't do that then the penalties can be pretty significant. Employee's able to cost loss of earnings up to about $160,000 equivalent or 12 months basic salary if less. So again, there's quite a strong incentive there to keep employers on the straight and narrow. It is all quite process driven. There are lots of things you need to look at in determining what a fair process is.

Nick Elwell-Sutton:

That's likely to be any requirements in a disciplinary policy or procedure the employer has in place and there are general standards of fairness issued under a sort of governmental code of practice. So in terms of fair reasons for termination, we have misconduct, fairly self-explanatory, bad behavior, capability that's either not able to do the job to the standard required so bad at the job or capability in terms of ill health. They simply can't do it because they're no longer able to do it. Redundancy illegality or a sweep up of what's called some other substantial reason and that covers other areas that you couldn't fit into. The other one's common examples might there be the expiry of a fixed term contract or where you have a breakdown in trust, so it's not quite misconduct, but there's a serious enough trust issue there to justify that. In terms of how much notice needs to be given, assuming we're not talking a for cause dismissal notice periods are either one week for each completed year of service up to a maximum of 12 weeks or any longer period.

Nick Elwell-Sutton:

The contract itself specifies and of course the employer is the one that tends to dictate that. Mandatory termination benefits are modest to best and only required when an employee is terminated due to redundancy. So if it's conduct reason, you don't need provide any benefits there. In terms of how it's calculated, it's set by a formula which captures both age length of service and a capped weekly pay amount, but it's really not very generous and employers quite commonly voluntarily enhance this quite often in return for a release of claims, which makes a lot of sense in many cases.

Emily Schifter:

One question I have in hearing this is knowing that the protections become so much greater once you hit that two year mark, do you see a lot of activity as employees approach that with either employers looking to come up with a reason to terminate or employees saying, I'm going to raise a protected claim, or is that me being too cynical?

Nick Elwell-Sutton:

You would tend to think so, wouldn't you? It happens less commonly than you think. It tends to be more employers will take a decision maybe at the end of a probationary period of a few months and after that what you tend to find is that they don't act before the two years mark perhaps having some reservations or being reluctant to do so, they then hit that two year threshold and suddenly it's like, oh, crikey, I wish I'd acted beforehand, but now I've got to go through all the process. So it actually tends to work out the other way.

Tracey Diamond:

Very interesting. I was kind of smiling when you were saying how the mandatory termination benefits are modest because here, honestly, first of all, severance is never required and oftentimes it's pretty typical for a company's severance package in exchange for a release to be one week for every year of service up to 12 weeks, which I think our clients believes to be very generous rather than to be modest. So very different and what we've heard from some of our guests from other countries like Canada comes to mind in terms of this concept of mandatory termination benefits that are just not a thing here in the United States other than with the caveat, if it's a group termination that rises to the level of a WARN Act that reaches the threshold for the number of staff, then 60 days notice might be required or a certain state laws have other notice periods that would have even mandatory severance such as in New Jersey. What about larger terminations in the UK like a layoff or a reduction in force in the show? The Crowley family is contemplating a reduction in force among their staff and the wake of World War I other than the WARN Act, are there any special rules for those types of situations? In the UK

Nick Elwell-Sutton:

It's not dissimilar. It's done by threshold. So if an employer proposes to dismiss 20 or more employees at a single establishment that's typically an office, factory, other place of work in a rolling 90 day period, then it must offer collective consultation in advance to the affected employees or any recognized union if there happens to be one. And that consultation period must last for a minimum of 30 days. And if you have a larger threshold, if you get to 99 or more, then the period of consultation is extended to 45 days and the dismissals can't take place before those consultation periods have expired. So it's elongates matters quite significantly. It's one of the very few areas where the employer can actually get into criminal trouble. If there's a required filing called an HR1, that must be sent to the government in advance of that. And if you don't do that, that's actually a personal criminal offense for anybody found at fault. So that's one of the very few areas where an employer can get into proper hot water. In addition, there are quite

significant penalties for failure to comply. The idea is that you should comply and if you don't, then there can be an award of up to 90 days' pay per employee. And of course if you start multiplying that out by any number of employees, that number gets pretty big pretty quickly.

Emily Schifter:

Absolutely. Turning to the topic of wages and hours, and we'll listen in our next clip where we get a little bit of a behind the scenes look at some of the Downton Abbey characters describing a day in the life of the Crawley family's staff where they wake before dawn and work all day and through the night with no days off. Let's take a listen.

[BEGIN CLIP]

Daisy:

My typical day, I wake up at about five, I have to go and do all the fires in the whole house. I have to sneak into everyone's bedrooms and try and do their fires. Well, they're asleep. How awful is that? Then after I've snuck into everyone's bedrooms upstairs and made the fire so they're nice and warm when they wake up, I have to come downstairs and wake all the servants up, which is not a good job because everyone hates you when you're banging to wake them up.

Gwen:

Well, she gets woken up, first of all at about six o'clock in the morning. Get dressed, look presentable, before I head downstairs and we would go to the drawing room or the library and we'd open up the shutters, we'd plump up the cushions. We'd make it look lovely and presentable for the family.

Anna:

We get ready very quickly, go and oversee a bit of cleaning and making sure the rooms were ready and the dusting and wait for one of the bells to ring, which means one of the girls has woken up.

Thomas:

And they're off.

Mrs. Patmore:

I come down to the kitchen because the main thing is we've got to feed the servants first... Are the tea trays ready?

Anna:

All ready, Mrs. Patmore.

Mrs. Patmore:

... and then we have to make sure that everyone's prepared and ready for the big breakfast for upstairs.

Mrs. Hughes:

Mrs. Hughes gets up to make sure all the housemaids are doing their duties properly whilst the family are down having their brekky. That's very late in the day - it's practically brunch by the time they all get up!

[END CLIP]

Emily Schifter:

In the US. A Federal Fair Labor Standards Act sets minimum wage and overtime rules, at least for workers who are not exempt from the laws coverage. And some state laws also set requirements in this area for things like mandatory meal and rest breaks and some states even overtime pay for working more than eight hours in a day or restrictions on working consecutive days without a break. Also here in the US, while many employers do offer vacation or paid time off just as a matter of policy, there's actually not a legal requirement to offer paid vacation or holidays here in the US though certainly many states are starting to step in to fill the gap, for example, Illinois, and it's a leave for any reason law. And of course many states require leaves paid or unpaid for other reasons such as illness, voting, jury service, blood donation and et cetera. How does

that work in England and the UK??

Nick Elwell-Sutton:

In terms of hours of work? We have what I call the Working Time Regulations that've been around for a long time now and they cover much of this in terms of hours. So they provide a minimum of paid 28 days of vacation per year. That's inclusive of our 8 public holidays. So for a full-time worker that's 20 days paid vacation plus holidays.

Tracey Diamond:

All right, that's it, Emily, we're moving to London, we got to move.

Nick Elwell-Sutton:

Well, you are welcome here. Anytime. They also set down the hours of work and there's a maximum 48 hour working week unless the employee opts out of that, but that's got to be a voluntary freely given opt out. They also set down daily and weekly rest breaks. So broadly 20 minutes break every six hours, 11 rest hours a day and 24 hours in any seven day period. There's lots of other rights to time off as well, but most of that is either unpaid or paid at a very low rate. So for example, for sick pay, it's unpaid for the first three days and from day four onwards, it's paid at about $150 a week. So not really even subsistence level even when taken against a national minimum wage. So for that reason, many employers supplement this under the employment contract and to pay more. Something more typical would maybe be four weeks in any rolling 12-month period at either full salary or half salary. That would be much more typical. Of course, the government is very much more generous if you work for a main government department, you get six months at full pay and then six months at half pay, which is quite a change to the private sector.

Tracey Diamond:

Wow. Those rules that you were just talking about with the mandatory vacation days and daily and weekly rest breaks, do they apply across the board to all employees or just to certain categories of employees? Like here in the US

Nick Elwell-Sutton:

They apply to all employees, but there are some exceptions. If you are a chief executive or a C-suite, you may be what's called an autonomous managing executive that you are able to set your own work hours, in which case they're exempt from the bulk of that. They're also further exceptions for special cases for things like defense, doctors in training and pilots where it's much more difficult to manage the working hours. So there are some exceptions that are either full exceptions or partial exceptions, but usually it's the case that they, you are required to give compensatory rest if and when you go above that.

Tracey Diamond:

So professional employees beyond the C-suite, generally speaking, have a maximum 48 hour work week unless they opt out. Is that how it works?

Nick Elwell-Sutton:

That's right, yes. In practice, in almost every professional environment, banking, accountancy, financial services, law, people do it as a matter of routine. It's part of the deal of working in a professional environment. It is always possible you can opt back into that if having you opted out, you can then freely opt back into it at any point on three months notice. But as a matter of practice, most people accept it as part of the work deal.

Tracey Diamond:

So one area where other countries are famously more generous than the US is parental and family leave here in the US under federal law, larger employers, those with more than 50 employees within a 75 mile radius may have to offer, but job protected leave under the Family and Medical Leave Act. But otherwise there is no requirement for leave under federal law, though of course, again, as Emily mentioned earlier, some states have stepped in to fill the gaps. How does that compare to the UK?

Nick Elwell-Sutton:

We are very comprehensive Family leave rights.

Tracey Diamond:

Of course, you do.

Nick Elwell-Sutton:

Cover a range of scenarios, maternity as you would expect, but also paternity. That's for the father of the child, adoption leave. So if you are adopting a child, you get effectively the equivalent of maternity leave. We have parental leave, we have emergency caring leave. So if you are caring, for example, an elderly relative or a child and the existing care arrangements break down, you are entitled to emergency time off for that. And we have a concept of what's called shared parental leave, and that is I think perhaps a bit more unique. And that's where a mother who has had a baby can shorten her 12-month maternity period and give that to the father instead. The idea being that they want to encourage as a matter of the policy fathers to bring up or have more involvement in a child's early development. And so for that reason, the mother can choose to go back to work and effectively gift what would've been the rest of a maternity leave to the father. Sounds great. In theory, in practice, the takeup rate is about two or 3%.

Tracey Diamond:

Is that only when the parents both work at the same company or is that

Nick Elwell-Sutton:

No, they can work across companies. So if my wife works at another law firm around the corner and she had a baby, she'd be entitled to give the rest of her maternity leave to me provided she returns to work.

Tracey Diamond:

Interesting.

Nick Elwell-Sutton:

We also have some quite new developments in this area. We have recently introduced a parental bereavement leave for where you have the death of a child or stillborn baby and also neonatal leave where there's a premature baby and it requires special care on an ongoing basis is quite sadly often the case. The entitlements of those are a bit

patchwork, depending whether you are an employee or have other status and what the qualification periods are and whether it's paid or unpaid and how long it lasts for. So it's all there, but whether you might qualify for it's perhaps a different matter in some cases.

Emily Schifter:

Makes sense. Shifting gears to one more topic, discrimination and harassment and employment claims. So in our last clip, our next clip, we'll hear a tough conversation between the character Thomas Barrow and the head butler, Mr. Carson, and of course Thomas Barrow is noted in this show Downton Abbey for struggling with the fact that due to the times he lives in, he must keep his homosexuality a secret. At the time it could have even been considered a criminal offense. So let's listen in.

[BEGIN CLIP]

Thomas:

I hope you're not planning to hit me with that.

Carson:

No, but I will not beat about the bush either. Mr. Barrow, someone has reported that you seem to have a private understanding with Andrew.

Thomas:

Not this, again.

Carson:

I might not have given it much mind, but I was upstairs last night quite late and I saw him leave your room.

Thomas:

Mr. Carson, how long do I have to work in this house before I'm given any credit?

Carson:

That is all very well, but we are talking about a vulnerable young man and I must look to his welfare.

Thomas:

Yes. And if I were to give you my word of honor that nothing took place of which you would disapprove?

Carson:

If I could just be sure.

Thomas:

So my word is still not good enough. Mr. Carson, after so many years.

Carson:

I only wish it were.

[END CLIP]

Emily Schifter:

The show has some other examples of discrimination, including for example, and not really in employment related, but the fact that under the laws at the time, male primogeniture, I'll see if I pronounced that correctly, Tracey, for hereditary titles that Earl of Grantham's estate could only be inherited by a distant male relative and not by any of his daughters. And that is of course a major source of conflict on the show. But in the employment setting today, of course, discrimination on the basis of a protected class, including sex, gender, sexual orientation is illegal. So how are those laws enforced? In England and the UK?

Nick Elwell-Sutton:

The onus has historically been very much on individuals to bring claims if they felt they'd been discriminated against. But from April next year, we will have the creation of what's called the Fair Work Agency, and that will have a remit to bring claims on behalf of employees rather oddly whether or not the employee wants the claim to proceed. So it remains to see how that's going to work out, but it is a significant change, although quite how active it will be and what its funding arrangements will be is a bit of an unknown factor at the moment. The primary legislation we have here is they call the Equality Act, and that sets out very similar protected characteristics to those that you have in the US age, disability, sex, pregnancy, maternity, so on and so forth. But there are a few slightly more unusual ones. We have what's called race, religion, and protected philosophical belief and the protected philosophical belief has developed through case law over the last decade or so, and it's really developed into some interesting, surprising, and perhaps slightly controversial areas.

Nick Elwell-Sutton:

So some examples are environmentalism and climate change, ethical veganism, generally critical belief that sex is immutable and even indeed quite extraordinarily anti-Zionism. So it's fair to say that these are not without their controversies and quite often they end up in disputes between different types of protected characteristics. So one we see played out fairly regularly at the moment is the gender reassignment and the protected belief of sex being immutable and cannot be changed. So you can see in those circumstances that creates not quite an immovable object and unstoppable object, but you can see that that sets out a real tension between two different but equally protected characteristics. That said, most matters are very much more mundane sex and disability being by far the most, at the most common. What we do see though is because you don't have termination protection for the first two years of your employment, it's quite common to see discrimination claims used as a proxy for that, oh, I got fired because I'm a woman, I got fired because I have a disability. There is a fairly common pattern to that that people see that that is a way to try and gain a remedy when they might not otherwise have a claim, but the true concern is actually they were terminated.

Tracey Diamond:

That's actually very similar to here, where you'll see, even though there's a concept of employment at will, you'll help employees claiming discrimination as a way to try to get some kind of cash settlement or severance where they ordinarily wouldn't necessarily be entitled to it.

Nick Elwell-Sutton:

Absolutely. It's very much the same here, and particularly if you see people who are highly paid employees because claims of that nature are not limited in financial terms, it's very easy to come along to an employer and say, oh, I've been discriminated against. I'm not now going to work for a year, 18 months, 2, 3, 4, 5 years, and therefore I want compensation for that period. We also have the issue that discrimination claims by their nature are very much more difficult because nobody ever admits discrimination. So you look at all the circumstances and you have drawing inferences as to who said what and why. Going back to the earlier topic about the subject access requests, looking at how language is used in those behind the scenes can be quite interesting. But that said, most awards are very much more modest than that. The three-year median is around $15,000, but about 90% of cases are settled. So perhaps that's not the full story.

Tracey Diamond:

So I think that if we were to sum up our discussion, what we're seeing is that there are some similarities and then some real marked differences. Frankly, UK being more generous to employees than the US is in many instances. But the bottom line being that employers who have employees in both countries should really take care to be mindful of the laws of their applicable jurisdiction and consult with counsel as appropriate. Nick, we really want to thank you for joining us today. It's been a really interesting discussion about our country's laws, and we want to thank our listeners for listening in. Check out our blog *Hiring to Firing Law* and send us an email. Let us know what you think and suggest topics for future episodes. Thanks so much for listening.