In The Iowa Supreme Court
Supreme Court No. 17-0638

MATTHEW JAHNKE,

Plaintiff-Appellee,

vs.

DEERE & COMPANY, RICHARD CZARNECKI, and BERNHARD HAAS,

Defendants-Appellants.

Interlocutory Appeal from the District Court for Polk County

The Honorable David M. Porter

Appellants' Final Brief

(Oral Argument Requested)

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Statement of issues presented for review

Division I

Does the Iowa Civil Rights Act apply extraterritorially?

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Division II

Is a U.S. citizen working abroad in China within the Iowa Civil Rights Act's geographic reach?

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Routing statement

This case presents a substantial issue of first impression: whether the Iowa Civil Rights Act applies extraterritorially and the applicable legal analysis to determine if an employment practice is within the Iowa Act's geographic reach. *See* Iowa R. App. P. 6.1101(2)(c). Additionally, this case presents a substantial question asking the Court to enunciate legal principles outlining the extent to which the Iowa Civil Rights Act applies extraterritorially, if at all. *See* Iowa R. App. P. 6.1101(2)(f).

Statement of the case

A. Nature of the case.

While on an expatriate work assignment in China, Matthew Jahnke had sexual relationships with two younger, female, Chinese subordinates. (JA-I 55-61; JA-II 51 [54:6-9], 110-114). In June 2014, Jahnke's employer in China and its parent corporation, Deere & Company ("Deere"), determined that Jahnke failed to properly disclose these relationships in compliance with the company's work rules, and disciplined him by ending his expatriate assignment. (JA-I 55-61; JA-II 114-115, 231). Jahnke filed this lawsuit in April 2015, alleging employment discrimination under the Iowa Civil Rights Act[1] against Deere, his former supervisor, Richard Czarnecki, and Czarnecki's supervisor, Dr. Bernhard Haas. (JA-I 55-61). In June 2014, Jahnke was a 60-year old Caucasian male, born in the United States. (JA-II 63 [189:8-10], 173-174, 180).

[1] We refer to the Iowa Civil Rights Act as the "Iowa Act" and the "Act."

In January 2011, Jahnke commenced the expatriate work assignment in the People's Republic of China, working for Deere's China subsidiary. (JA-I 178, 197-198, 212). From January 2011 through June 2014, Jahnke's workplace was in Harbin, China. (JA-I 55-61, 197, 212). Initially, Jahnke was Project Manager, overseeing construction and startup of a new facility in Harbin, known as Harbin Works. (JA-I 56 ¶¶ 10-11). Once Harbin Works began production, Jahnke was Factory Manager. (JA-I 56¶¶ 10-11).

In June 2014, Deere and its China subsidiary disciplined Jahnke by removing him as the Harbin Works Factory Manager and repatriating him to the United States. (JA-II 115, 191). That discipline was based on a determination that Jahnke violated work rules developed at Deere's Illinois corporate headquarters, and administered by its China Compliance Committee, located in China. (JA-I 570-571; JA-II 114-115, 191). Czarnecki and Haas were directed to travel to Beijing, China, to communicate the disciplinary decision to Jahnke. (JA-I 159-160; JA-II 191, 205, 214, 224).

In August 2014, after the repatriation process was complete, Jahnke commenced his new assignment at Deere's Waterloo Works facility in Waterloo, Iowa. (JA-I 55-61; JA-II 186). Less than one week after starting his new work assignment, Jahnke signed an Iowa Civil Rights Commission administrative charge, complaining that the decision to remove him as Harbin Works Factory Manager and repatriate him to the United States was motivated by age, national origin, and sex. (JA-I 450-455). Jahnke later filed this lawsuit. (JA-I 55-56).

B. **Course of proceedings.**

On April 24, 2015, Jahnke filed suit in Polk County district court, alleging that Deere's decision to remove him from the Harbin Works Factory Manager position and repatriate him to the United States violated the Iowa Civil Rights Act. (JA-I 58-60 ¶¶ 27, 32, 34-38, 44). Jahnke pleaded a disparate-treatment discrimination claim based on age, national origin, and sex. (JA-I 59-60 ¶¶ 34-37). Jahnke alleges that he was disciplined more harshly than the two younger, female,

and Chinese subordinates with whom he had sexual relationships. (JA-I 59 ¶¶ 35-37). Jahnke also claims that he was disciplined more severely than other Chinese citizens who he believes engaged in comparable conduct. (JA-I 59-60 ¶ 38).

C. **Disposition of the case in the district court.**

On July 14, 2016, Deere, Czarnecki, and Haas filed a motion for summary judgment, arguing that the Iowa Civil Rights Act does not have extraterritorial effect. (JA-I 71-75).

On April 14, 2017, the district court issued an order denying the motion for summary judgment. (JA-I 676-680). In part, the district court reasoned that "both parties have sufficient contact with the State of Iowa in order for the Iowa Civil Rights Act to have territorial effect." (JA-I 677).

On April 21, 2017, Deere, Czarnecki, and Haas applied for an interlocutory appeal. (JA-I 681-702). On May 19, 2017, this Court granted the interlocutory appeal. (JA-I 703-705).

Statement of the facts

A. Deere's Moline, Illinois, and China operations.

Deere & Company, a publicly traded corporation, is incorporated in Delaware, with its corporate headquarters and principal place of business in Moline, Illinois. (JA-I 156, 212). Deere has global operations, and does business in the People's Republic of China through its subsidiary, John Deere (China) Investment Co., Ltd. (JA-I 212). The global business operations of Deere and its subsidiaries include nearly one hundred units across more than forty countries, including China, India, Germany, Russia, Brazil, and many other countries.[2] (JA-I 401, 474, 567; JA-II 330, 360).

In 2014, Richard Czarnecki was Deere's Global Director of Large Tractor Products. (JA-I 212). Czarnecki resided in Scott County, Iowa. (JA-I 55). In 2014, Dr. Bernhard Haas was Deere's Senior Vice President for Ag and Turf and Global Platform Tractors. (JA-I 212).

Haas, a citizen of Germany, worked at Deere's Moline, Illinois corporate headquarters and resided in Bettendorf, Iowa. (JA-II 32 [16:2-13, 21-22]).

B. Jahnke's expatriate assignment in Harbin, China.

On January 16, 2011, Jahnke commenced an expatriate work assignment in Harbin, a city located in the northeastern region of the People's Republic of China. (JA-I 56 ¶¶ 10-11, 178, 197-209, 212). Initially, Jahnke worked as Project Manager, overseeing the startup of Harbin Works, a new Deere factory in Harbin. (JA-I 56 ¶¶ 10-11). When the Harbin Works factory commenced manufacturing activities, Jahnke's position changed to Factory Manager. (JA-I 56; JA-II 13 [30:15-20, 32:2-7]). Jahnke resided in Harbin throughout the expatriate assignment, from January 2011 through July 2014. (JA-I 578; JA-II 421-423, 549, 608).

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[2] This information is outdated; it is based on materials in the summary-judgment record. For current information, *see* http://www.deere.com/en_US/corporate/our_company/about_us/worldwide_locations/worldwidelocations.page.

While he was on the expatriate work assignment, Jahnke's employer was John Deere (China) Investment Co., Ltd. (JA-I 197-209, 212). Jahnke signed an employment contract with John Deere (China) Investment Co., Ltd., that covered the expatriate assignment. (JA-I 197-209). Jahnke did not sign employment contracts when he was stationed in the U.S. for Deere work assignments. (JA-II 56 [115:15-116:11]).

Jahnke's "home unit," the unit where he was working when he accepted the expatriate assignment, initiated Jahnke's international assignment paperwork. (JA-I 567-568). Once the international assignment process was initiated, Deere's Global Mobility Services (located in Moline, Illinois) and the "host unit" (located in China) handled Jahnke's employment, including the expatriate compensation and benefits that Jahnke received. (JA-I 567-568; JA-II 301).

While on the expatriate assignment in Harbin, Jahnke was eligible for benefits and compensation that a U.S. citizen working the

United States would not have been eligible to receive. (JA-I 568, 578-579, 587). Jahnke received additional compensation due to his expatriate assignment, including an international premium allowance (15% monthly salary), a hardship allowance (20% monthly salary), and a goods and services differential allowance. (JA-I 177, 578-579, 587; JA-II 295, 301-317, 390). *See also In re Marriage of Jahnke*, 851 N.W.2d 854, 2014 WL 2432154, at *1 (Iowa Ct. App. May 29, 2014). As an expatriate, Jahnke was eligible for the United HealthCare International medical insurance plan, and received various other benefits only available to expatriate employees, including a temporary living allowance, housing at company expense, income tax equalization and tax preparation for U.S. and foreign tax returns, home leave, rest and relaxation trips, home sale incentive bonus, and company transportation services (car and driver) in the foreign country. (JA-I 578; JA-II 301-317).

During the duration of Jahnke's expatriate assignment in Harbin, Jahnke was placed on the Deere & Company International

Payroll. (JA-I 568). When a U.S. citizen is on an international assignment, that employee's payroll is administered by Deere & Company International Payroll, which is located in Moline, Illinois. (JA-I 568). International Payroll makes Social Security contributions for such an employee, consistent with U.S. law. (JA-I 568).

C. **Jahnke's workplace in Harbin, China.**

From January 2011 through June 2014, Jahnke's workplace was in Harbin, China. (JA-I 55-61, 197, 416; JA-II 56 [116:12-14]). As Project Manager, Jahnke oversaw the development, planning, construction, and opening of the new Harbin Works factory. (JA-I 56 ¶¶ 10-11, 416; JA-II 80-81). Once the Harbin Works factory started assembly, Jahnke served as its Factory Manager. (JA-I 56 ¶¶ 10-11; JA-II 73-75, 358-361). Jahnke agrees that during his expatriate assignment in Harbin, he "went to work every day in China when [he was] Project Manager and then Factory Manager." (JA-II 56 [116:12-14]). As the only Harbin Works factory manager at the time, Jahnke was the face of Deere in Harbin. (JA-II 36 [98:7-11], 60 [154:25-156:13], 66 [193:15-18]; 336, 358).

While on the expatriate assignment, Jahnke directly supervised and oversaw employees and workers at Harbin Works. (JA-II 73-75, 80-82, 358-360). In overseeing all Harbin Works operations, Jahnke planned "to develop our workforce and prepare them for the future . . . . includ[ing] the assimulation [sic] the John Deere culture and values, especially the HOW."[3] (JA-II 356).

Because Harbin Works planned assembly for three product platforms, Jahnke worked with people in locations around the world, including Mannheim, Germany; Montenegro, Brazil; and Monterrey, Mexico, as well as Deere's corporate headquarters in Moline, Illinois. (JA-I 474; JA-II 330-331, 334, 358-359).

After Jahnke accepted his expatriate position in Harbin, he sold his home in Urbandale, Iowa, to Deere. (JA-I 587; JA-II 420, 422, 426-

[3] In Jahnke's words, the "HOW" means "how [Deere] conducted business in some ways is more important than the results that we achieve." (JA-II 49 [46:17-23]).

434). In 2013, after his divorce, Jahnke purchased a condominium in Florida. (JA-I 588-593; JA-II 422). Jahnke stated in his condominium loan application that the Florida property would be his primary residence. (JA-I 593). Because he worked year-round in Harbin in 2012 and 2013, Jahnke did not pay Iowa income tax or file an Iowa income tax return for those years. (JA-I 621-622; JA-II 424-425). Jahnke had bank accounts in China and Australia, in addition to the Moline-based Deere Employees Credit Union. (JA-I 583, 592; JA-II 131-135, 523-534). In October 2013, Jahnke purchased a townhouse in Australia with Pei Feng, a Chinese citizen, stating in his mortgage application and purchase contract that his residence was Beijing, China. (JA-I 358 [7:17-8:4]), 595-603; JA-II 523-534).

D. **Deere's policies and Code of Business Conduct.**

Deere has conflict-reporting expectations of its employees and employees of Deere's subsidiaries. (JA-I 138, 444-445; JA-II 567). Throughout his employment with Deere and John Deere (China) Investment Co., Ltd., Jahnke received training on subjects including

conflict of interest and reporting policies, workplace harassment, business integrity, leadership, Business Conduct Guidelines, and the Code of Business Conduct. (JA-II 49-50 [48:1-50:19], 50 [51:5-17], 51 [53:9-12]). Jahnke was familiar with Deere's requirement to submit annual conflict-of-interest reporting and to report a potential or actual conflict of interest through the online reporting system at the time the conflict arises. (JA-I 138, 444-445; JA-II 45 [28:9-21], 51 [54:17-55:8], 52 [80:7-20], 54 [97:3-16], 55 [109:12-18], 279).

Jahnke's China employment contract addressed conflict-of-interest reporting and the Code of Business Conduct. (JA-I 205-208). Jahnke "agree[d] to avoid all kinds of circumstances that may cause any actual or potential conflict between his/her personal interest and the interest of the Company and its affiliates." (JA-I 205-206). The China employment contract outlined the mandatory process for reporting an actual or potential conflict of interest. (JA-I 206). In the contract, Jahnke agreed that: "[i]f the Employee is unable to decide whether a certain transaction, activity or relationship constitutes a

Conflict of Interest, the Employee shall also report to and communicate with, and obtain clarification from, his/her immediate supervisor." (JA-I 206). In the China employment contract, John Deere (China) Investment Company reserved the "sole discretion to decide whether a Conflict of Interest exists" and to decide whether to impose discipline for failing to report an actual or potential conflict. (JA-I 207). Both the Business Conduct Guidelines and the Code of Business Conduct mandated that an employee immediately disclose and report the existence of an actual or potential conflict of interest, including but not limited to intimate relationships with another employee. (JA-I 122, 138, 444-445; JA-II 45 [28:9-21], 114-115).

E. **April 2014 compliance report about Jahnke.**

Deere has a compliance reporting hotline that employees or others may use to report an actual or potential violation of the Code of Business Conduct or any other Deere policy or practice. (JA-I 128, 170-175).

In April 2014, Heather Bishop, a U.S. citizen on an expatriate assignment working in China, reported that she had heard Harbin Works employee Kelvin Wang "procured several very expensive luxury cars" for Jahnke, and helped Jahnke "find beautiful women" in exchange for favorable performance reviews. (JA-I 214; JA-II 61 [158:2-11], 93-94). On April 26, 2014, an anonymous caller made a report to the compliance hotline with similar allegations about Jahnke. (JA-II 88-89).

Deere opened compliance cases for these reports. (JA-II 84-92, 102).

F. **2014 compliance investigation regarding Jahnke.**

Danny Macdonald, an Australian citizen stationed in Beijing, China, was the lead investigator for the two compliance reports involving Jahnke. (JA-I 216; JA-II 102-115, 232). At the time, Macdonald was employed by John Deere (China) Investment Co., Ltd. (JA-I 213). Macdonald was assisted by Liang Wang and others

located in China, all employed by John Deere (China) Investment Co., Ltd. (JA-I 214-215; JA-II 102, 105).

G. Jahnke's sexual relationships with Pei Feng and Xu Meiduo.

During the investigation, Macdonald learned that Jahnke had sexual relationships with two female Chinese citizens who resided and worked in China: Pei Feng (also known as "Diana")[4] and Xu Meiduo (also known as "Elva").[5] (JA-I 55-61; JA-II 51 [54:6-9] 102-115, 231). Pei, a Chinese citizen, resided in China, worked in China, and was employed by John Deere (China) Investment Co., Ltd. (JA-I 163 [9:8-13], 210; JA-II 43 [9:11-13], 102-115). Xu, a Chinese citizen, was a contractor who worked at Harbin Works as a language tutor. (JA-I 220, 363 [30:8-18]; JA-II 107-108).

In October 2011, when Pei was in Harbin for a work-related meeting, Jahnke and Pei consummated a sexual relationship. (JA-I

[4]JA-I 161 [4:13-17].
[5] JA-II 46 [29:12-20].

360 [15:7-16:23]; JA-II 43 [10:5-22], 110-111). Pei had supported Harbin Works in a controller role from July 2011 through early 2012. (JA-I 165 [63:2-65:22]; JA-II 59 [130:11-20], 102-115, 122-123, 136-154, 435-522). Jahnke's sexual relationship with Xu started in 2013. (JA-II 46 [30:19-32:19], 111-112, 114). Both Pei and Xu, as Chinese citizens working in China, were subject to China employment laws. (JA-II 288-290, 292).

Macdonald performed the investigation while in China. (JA-I 216-218). On approximately June 17, 2014, as part of the investigation, Macdonald personally interviewed Jahnke in Jahnke's office at Harbin Works. (JA-I 55-61; JA-II 110-112). Contemporaneously with Macdonald's interview, Liang Wang interviewed Pei at her office at Deere's Ningbo Works facility in Ningbo, China. (JA-I 55-61, 213, 217; JA-II 111-112). Macdonald also interviewed Xu at Harbin Works. (JA-II 114).

H. **The China Compliance Committee.**

The China Compliance Committee is a structured committee with individuals who reside and work in China. (JA-I 569). Generally, the China Compliance Committee makes decisions about persons working in China. (JA-I 569). For a compliance case involving individuals working in China, the China Compliance Committee would decide whether a policy violation occurred, and if a substantiated policy violation occurred, the Committee would decide the appropriate outcome for the employee who had engaged in the conduct. (JA-I 569). In some cases, the China Compliance Committee would consult with corporate compliance (at Deere's corporate headquarters in Moline, Illinois) before making a final decision. (JA-I 569-570).

In June 2014, the China Compliance Committee members were Andrew Jackson, Jinghui Liu, Kara Fischer, Joanne Wang, and Macdonald (investigator). (JA-I 569; JA-II 232). At the time, the China Compliance Committee members lived in China and worked for John

Deere (China) Investment Company, Ltd. (JA-I 213). In June 2014, Laurie Simpson, Vice President and Chief Compliance Officer, and Steve Brockway, Manager, Enterprise Special Global Investigations, were responsible for corporate compliance at Deere's headquarters in Moline. (JA-I 213-214, 570).

I. The China Compliance Committee's decision: remove Jahnke from the Factory Manager role and repatriate.

Following the compliance investigation, the China Compliance Committee, consulting with Simpson in Moline, determined that Jahnke violated the Code of Business Conduct because he failed to timely disclose two sexual relationships he had with females who were within his span of control—Pei and Xu. (JA-I 570-571; JA-II 102-115).

On June 17, 2014, after the Jahnke, Pei, and Xu interviews were completed, Macdonald emailed the interview notes to the China Compliance Committee. (JA-II 258-262, 406-414). Later that same day, the China Compliance Committee held a conference call to discuss the compliance case. (JA-I 217; JA-II 275, 406). After the call,

Macdonald sent an email to the China Compliance Committee summarizing the agreed-to actions they had decided during the call:

> – We will aim to repatriate Matt as soon as possible.
> – Laurie will liaise with Robin[6] and confirm what would be appropriate as a non-compete in the event that Matt decides to quit and wants to join a competitor
> – Laurie will liaise with Rich Czarnecki and provide details of the interviews. Rich will be asked to have a face to face meeting with Matt next week (and possibly a call in the interim to inform Matt that he will be meeting with him next week to discuss).
> – Laurie will provide an update to Andrew on the conversation with Rich.
> – After the situation with Matt has been finalized, Kara will have a serious conversation/coaching session with Pei regarding concerns about her behavior related to this matter.

(JA-II 263, 407-408).

As reflected in Macdonald's written report, the China Compliance Committee made the following conclusions regarding Jahnke and Pei:

> **4. Conclusions**

[6] "Robin" refers to Robin Singh, who at the time was Global Human Resources Director for the Ag & Turf Division, based in Moline, Illinois. (JA-I 215).

> While this investigation did not substantiate the original allegations, it did identify additional information to indicate that Matt Jahnke and Diana Pei have been involved in Code of Business Conduct violations.
>
> The conclusion of the China Compliance Committee, in conjunction with the US Compliance Team was as follows:
>
> 1. Matt Jahnke would be removed from his position as JDHW factory manager with immediate effect.
> 2. Matt Jahnke would be repatriated back to the US and placed in a position of lesser authority.
> 3. Diana Pei would be provided with a warning and counselling.
>
> **5. Actions Taken**
>
> The above actions have been implemented.

(JA-I 570-571; JA-II 115).

The China Compliance Committee's conclusions, reflected in Macdonald's written report, were final conclusions. (JA-I 571). They were not recommendations. (JA-I 571).

Czarnecki and Haas did not provide information or support to Macdonald in the compliance investigation. (JA-I 217; JA-II 15-16 [47:6-51:1], 102). They did not participate in the interviews of Jahnke,

Pei, or Xu. (JA-II 102, 110-115). They did not receive Macdonald's June 17 email summarizing the interviews. (JA-II 258-262). They did not participate in the June 17 China Compliance Committee call in which the final decision was made to remove Jahnke as the Harbin Works Factory Manager and repatriate him to the United States. (JA-I 217; JA-II 28 [150:4-11], 34 [73:2-10], 406). They did not receive Macdonald's written report. (JA-II 14 [44:19-23], 34 [75:20-76:3], 35 [96:2-10]). They had absolutely no involvement regarding Pei or Xu. (JA-II 16-17 [52:18-53:9], 26 [137:23-138:8], 37-38 [104:22-105:8]).

Because they had supervisory responsibility over Jahnke and the Harbin Works facility, Czarnecki and Haas were directed to travel to Beijing, China, to communicate the disciplinary decision to Jahnke. (JA-II 25 [135:20-25], 37 [101:1-102:3], 205, 214, 224). Czarnecki, Haas, and Philip Hao, a China citizen employed by John Deere (China) Investment Co., Ltd., communicated the disciplinary decision to Jahnke in Beijing, China. (JA-I 159-160; JA-II 18 [77:5-9], 26 [138:9-21], 28 [150:4-20], 278).

J. On repatriation, Jahnke is assigned to work in Waterloo, Iowa.

In August 2014, after Jahnke was removed as the Harbin Works Factory Manager and repatriated to the United States, Jahnke began a new work assignment at Deere's Waterloo Works facility, in Waterloo, Iowa. (JA-I 55-61; JA-II 608). Jahnke became Program Manager for the 9RX project, one of Deere's most important projects at the time. (JA-I 194-196; JA-II 69 [221:9-13]). Upon repatriation, Jahnke asked Deere to ship his belongings from Harbin to his Florida "home." (JA-II 315, 422).

Argument

Division I

The Iowa Civil Rights Act does not apply extraterritorially.

A. Error preservation.

The issues raised in this appeal were presented to the district court in a motion for summary judgment, filed July 14, 2016. (JA-I 71-175). On April 14, 2017, the district court issued a ruling denying the summary-judgment motion. (JA-I 676-680). This issue was raised in an application for interlocutory appeal, filed April 21, 2017. (JA-I 681-

702). In a May 19, 2017 Order, this Court granted the application for interlocutory appeal. (JA-I 703-705).

B. Standard of review.

This Court reviews a district court's ruling on a summary-judgment motion to correct errors at law. *Homan v. Branstad*, 887 N.W.2d 153, 163 (Iowa 2016). When an appeal of a district court's ruling on a summary-judgment motion raises "a legal question involving statutory interpretation," this Court reviews the statutory interpretation issue to correct errors at law. *Id*. at 164.

C. The Iowa Act contains no clear and affirmative indication that the Act applies extraterritorially to employment abroad.

This Court recognizes the presumption that an Iowa statute applies only within Iowa's geographic boundaries and has no effect beyond Iowa's state borders, unless the legislature clearly and affirmatively provided otherwise in the statutory text.[7] *State Sur. Co.*

[7] The legal maxim is: *Statuta suo clauduntur territorio nec ultra territorium disponunt*. Black's Law Dictionary 1961 (10th ed. 2014).

v. Lensing, 249 N.W.2d 608, 611 (Iowa 1977); *see also Griffen v. State*, 767 N.W.2d 633, 636 (Iowa 2009); *Powell v. Khodari-Intergreen Co*., 334 N.W.2d 127, 131 (Iowa 1983); *Beach v. Youngblood*, 247 N.W. 545, 549-50 (Iowa 1933). This Court explained the principle:

> Unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter, or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it. Thus, an extraterritorial effect is not to be given statutes by implication. Accordingly, a statute is prima facie operative only as to persons or things within the territorial jurisdiction of the lawmaking power which enacted it. These rules apply to a statute using general words, such as "any" or "all," in describing the persons or acts to which the statute applies. They are also applicable where the statute would be declared invalid if given an interpretation resulting in its extraterritorial operation.

Lensing, 249 N.W.2d at 611 (citation omitted).

The presumption is based on a practical rationale. States, and countries, seek to avoid subjecting people to conflicting laws and disrupting one another's legal systems. *See Lensing*, 249 N.W.2d at

611. Because the presumption exists, the legislature does not need to include language in every statute clarifying that it applies only within Iowa's borders. Unless the General Assembly clearly and affirmatively provides otherwise, Iowa statutes regulate conduct in Iowa and do not have extraterritorial reach. *Lensing*, 249 N.W.2d at 611.

This presumption is not unique to Iowa. The Supreme Court recognizes the presumption that unless Congress clearly and affirmatively provides otherwise, federal statutes apply domestically and do not have extraterritorial reach. *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991).[8] "When a statute gives no clear indication of an extraterritorial application, it has none." *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010). The question is not whether the legislature intended that the statute apply extraterritorially, but

[8] *Superseded by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, § 109(a), 105 Stat. 1071, 1077.

whether the legislature "has affirmatively and unmistakably instructed that the statute will do so." *RJR Nabisco*, 136 S. Ct. at 2100.

The Iowa Civil Rights Act regulates employment in Iowa, not employment abroad. Nothing in the Iowa Act's statutory text gives an affirmative indication that it applies to employment outside Iowa's borders. *See* Iowa Code § 216.6(1)(a).[9] Although the Iowa Act includes some relatively broad terms and definitions, that general language is insufficient to overcome the presumption against extraterritoriality. *See EEOC v. CRST Van Expedited, Inc.*, No. 07-CV-95-LRR, 2009 WL 1586193, at *20 (N.D. Iowa June 2, 2009), rev'd on other grounds, *EEOC v. CRST Van Expedited, Inc.*, 679 F.3d 657 (8th Cir. 2012). *See also Lensing*, 249 N.W.2d at 611-12 (describing the "well-settled rule that statutes are not presumed to have any extraterritorial effect and the mere use of the words 'any fraud' and 'any person' are insufficient to overcome the presumption").

[9] Unless otherwise specified, we refer to the 2015 Iowa Code.

Indeed, when the General Assembly intends for a statute to apply extraterritorially, it has made its intent clear and definite. For example, the legislature affirmatively extended Iowa's workers' compensation law to cover injuries occurring outside Iowa's borders. The statute, in a subchapter titled "Extraterritorial Injuries and Benefit Claims," states that the law governs employees "while working outside the territorial limits of this state." Iowa Code § 85.71. It also specifies the circumstances when such Iowa benefits are available. *Id*. The Iowa Act contains no comparable language.

The presumption against extraterritoriality respects principles of interstate and international comity and the desire to avoid difficult choice-of-law issues. *See CRST Van Expedited, Inc*, 2009 WL 1586193, at *20. The presumption acknowledges that if the General Assembly intended to regulate employment in a state outside Iowa or overseas, it would have clearly and affirmatively expressed such intent in the statutory text.

The Iowa Civil Rights Act contains no clear and affirmative statement that the Act applies to employment outside the state of Iowa. Consequently, the Court should apply its presumption that the General Assembly did not intend the Iowa Act to have extraterritorial reach.

D. The Iowa Act's statutory language, purpose, subject matter, and history demonstrate that the Act regulates employment in Iowa, not employment abroad.

As already discussed, the statutory text contains no clear and affirmative indication that the Iowa Act applies extraterritorially. One federal court in Iowa has considered the Iowa Act and concluded that the Iowa Act's statutory language, purpose, subject matter, and history demonstrate that the General Assembly intended the Act to apply only to employment in the state of Iowa. *See CRST Van Expedited, Inc.*, 2009 WL 1586193, at *20. *See also Lensing*, 249 N.W.2d at 411 (statute does not operate outside state's geographic boundaries unless clear and affirmative intent to operate beyond state borders indicated by statute's language, purpose, subject matter, or history).

1. Circumstances surrounding the Iowa Act's enactment demonstrate the General Assembly's intent to regulate employment within Iowa's borders.

When the General Assembly enacted the Iowa Civil Rights Act of 1965, Congress had already enacted Title VII of the Civil Rights Act of 1964 ("Title VII"). This Court has recognized the statutes are "similar" but "not identical" in regulating employment practices. *Pippen v. State of Iowa*, 854 N.W.2d 1, 27 (Iowa 2014). In 1965, the new Iowa Act regulated Iowa employers that Title VII did not cover. *See* Arthur E. Bonfield, *The Origin and Development of American Fair Employment Legislation*, 52 Iowa L. Rev. 1043, 1083-84, 1087 (1967); Arthur E. Bonfield, *The Origin and Rationale of the Iowa Civil Rights Act*, Iowa Advocate, Spring/Summer 1990, 21, 24.

Title VII excepted the state of Iowa and its political subdivisions.[10] Bonfield, 52 Iowa L. Rev. at 1083-84, 1087. Also, under Title VII, a covered employer was one "in an industry affecting

commerce."[11] *Id*. Title VII's employee-numerosity requirement started at 100 employees and gradually decreased, over four years, to twenty-five. *Id*.

Iowa's Act covered Iowa employers left unregulated by Title VII. Bonfield, Iowa Advocate at 24. First, the Iowa Act defined "[e]mployer" as "the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees *within the state*." 1965 Iowa Acts ch. 121 § 2(5), codified at Iowa Code § 105A.2(5) (1966) (emphasis added).[12] Since 1965, the General Assembly has not altered the Act's definition of "employer." *See* Iowa Code § 216.2(7).

Second, the Iowa Act established a smaller numerosity requirement than Title VII. *See Simon Seeding & Sod, Inc. v. Dubuque*

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[10] Title VII, Civil Rights Act of 1964, Pub. L. No. 88-352, § 701(b), 78 Stat. 241, 253.
[11] Title VII, Pub. L. No. 88-352, § 701(b), 78 Stat. 241, 253.
[12] The Iowa Act "employee" definition is repetitive: "any person employed by an employer." Iowa Code § 216.2(6).

Human Rights Comm'n, 895 N.W.2d 446, 457-58 (Iowa 2017). Under the Iowa Act, the section regulating unfair employment practices is inapplicable to an "employer" who "regularly employs less than four individuals" within the state. *See* 1965 Iowa Acts ch. 121, § 7(2)(a); Iowa Code § 216.6(6)(a).

Although enacted after Title VII and several other states' employment-practice laws, the Iowa Act was neither redundant nor superfluous. For many people who worked within the state of Iowa, the Iowa Act provided an administrative process to seek redress for discrimination in employment that was not otherwise available, under federal law or the law of other states.

2. **The Iowa Act creates and enables an Iowa agency, the Iowa Civil Rights Commission, to administer and enforce the Act within Iowa's state borders.**

Since 1965, the Iowa Civil Rights Commission ("Commission") has held an integral role in supporting and accomplishing the Iowa Act's purposes. From the onset, the Iowa Act confined the

Commission's duties to Iowa and conferred no authority over extraterritorial employment practices abroad or in other states.

In Iowa, agency authority is "limited to the power granted by statute." *Brakke v. Iowa Dep't Natural Resources*, 897 N.W.2d 522, 533 (Iowa 2017); *see also* Iowa Code § 17A.23(3). The legislature granted the Iowa Commission authority to investigate acts of discrimination "*in this state*." Iowa Code § 216.5(3) (emphasis added); *see also* Iowa Code § 105A.5(3) (1966). Consistent with that statutory text, in *Rent-A-Center, Inc. v. Iowa Civil Rights Commission*, this Court recognized "the ICRC has been authorized by the legislature to interpret, administer, and enforce the Iowa Civil Rights Act to eliminate discriminatory and unfair practices in *employment in Iowa*." 843 N.W.2d 727, 734 (Iowa 2014) (emphasis added).

The Iowa Act's geographic reach corresponds with the Commission's authority. The Iowa Civil Rights Act of 1965 created a new, independent state agency, the Iowa Civil Rights Commission, to administer and enforce the Act. 1965 Iowa Acts ch. 121, codified at

Iowa Code ch. 105A (1966). The Act's Preamble described an "act to establish a civil rights commission to eliminate unfair and discriminatory practices in . . . employment . . . ." 1965 Iowa Acts ch. 121. *See also Estabrook v. Iowa Civil Rights Comm'n*, 283 N.W.2d 306, 308-09 (Iowa 1979).

As had been advocated by Professor Bonfield, the Iowa Act's initial structure authorized administrative enforcement—through the newly created Commission—instead of criminal prosecution or private civil suits for damages. Arthur Bonfield, *State Civil Rights Statutes: Some Proposals*, 49 Iowa L. Rev. 1067, 1110-20 (1964). Under the Iowa Act, the Commission investigated employment-practice complaints and attempted conciliation. Iowa Code § 105A.9 (1966); *Iron Workers Local No. 67 v. Hart*, 191 N.W.2d 758, 766 (Iowa 1971). The Commission decided which complaints would proceed to hearing. Iowa Code § 105A.9 (1966); *Iron Workers Local No. 67*, 191 N.W.2d at 766. A complainant or respondent could petition an Iowa district court to challenge a final Commission order, but the Iowa Act did not

allow a complainant to pursue a civil action in court. Iowa Code § 105A.10 (1966). Several years later, in 1978, the General Assembly amended the Iowa Act to establish a process for a complainant to exhaust administrative remedies with the Commission before proceeding to court. *Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 681 (Iowa 2013).

The Commission's statutorily delineated powers and duties demonstrate the General Assembly's intent that the Iowa Act would regulate employment within Iowa's borders. The Act charges the Commission with issuing publications, preparing reports, and conducting research that the Commission believes will "tend to promote goodwill among the various racial, religious, and ethnic groups *of the state*." Iowa Code § 216.5(6) (emphasis added); *see also* Iowa Code § 105A.5(5) (1966).

The Commission itself consists of individuals appointed by the Governor, subject to confirmation by the Iowa Senate. Iowa Code § 216.3. Under the Act, "[a]ppointments shall be made to provide

geographical area representation insofar as practicable." Iowa Code § 216.3. Commissioners are reimbursed for expenses by funds appropriated to the Commission by the State of Iowa. Iowa Code § 216.4.

The Commission is accountable to the Governor and General Assembly. At least once a year, the Commission must prepare and transmit to the Governor and General Assembly "reports describing its proceedings, investigations, hearings conducted . . . decisions rendered, and the other work performed by the commission." Iowa Code § 216.5(7). The Commission is charged to "make recommendations to the general assembly" for further Iowa legislation concerning discrimination. Iowa Code § 216.5(8).

While the Iowa Act establishes procedures for hearings, remedies, and enforcement relating to a covered employment practice within Iowa, no statutory provisions affirmatively reach outside Iowa's borders. *See* Iowa Code §§ 216.15, 216.16. The Iowa Commission's investigative and prosecutorial authority is necessarily

limited to employment in the state of Iowa. The Commission may hold hearings and issue subpoenas. Iowa Code § 216.5(5). To compel obedience with its subpoenas, the Commission must turn to a different forum, an Iowa district court. Iowa Code § 216.5(5); Iowa Code § 216.2(3) (defining "[c]ourt" as "any judicial district of the state of Iowa").

Agency proceedings before the Commission are governed by the Iowa Administrative Procedure Act for contested cases. *See* Iowa Code § 216.5(8). If the Commission determines, after a hearing, that a respondent engaged in a discriminatory or unfair practice, the Commission is authorized to order remedial action. Iowa Code § 216.15(9). Because the Commission's authority is limited to Iowa's geographic borders, the Commission would not be able to order remedies outside the state or in a foreign country.

The Iowa Act authorizes local governments to enact laws implementing the Act. Iowa Code § 216.19. Although the statute does not expressly state that "local government" means a local

government within the state of Iowa, this Court recognizes it means local governments within the state. *See Simon Seeding & Sod*, 895 N.W.2d at 456-57; *Cedar Rapids Human Rights Comm'n v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 399 (Iowa 1974).

Even the Commission's administrative rules relating to the publication of employment advertisements recognize geographic limitations within the state of Iowa. *See, e.g.*, Iowa Admin. Code. r. 161-8.15(3) ("[n]o newspaper or other publication published within the state of Iowa"); Iowa Admin. Code r. 161-8.56(1) ("[a]ll newspapers within the state of Iowa shall cease to use sex-segregated want ads"); Iowa Admin. Code r. 161-8.56(3) ("[t]he commission will regard any publication of sex preference for a job to be in violation of the Act and . . . suggests that all Iowa newspapers refrain . . . .").

In the fifty-two years since the legislature enacted the Iowa Act, the General Assembly has amended the Iowa Act many times,

strengthening the Act's enforcement mechanisms,[13] expanding protected classes,[14] enhancing remedies,[15] and recognizing additional unfair or discriminatory practices.[16] But the General Assembly has never disassociated the Iowa Act from the Iowa Commission.

Today, the Commission continues to serve an integral role in administering the Iowa Act. A complainant who wishes to pursue an Iowa Act employment-practice claim must first file a charge with the Commission. Iowa Code § 216.16(1); Iowa Code § 216.15(1). A complainant may commence a lawsuit only after the Commission issues an administrative release. Iowa Code § 216.16(1)-(2). It would be nonsensical to interpret the Act as applying extraterritorially, to cover employment abroad or in a different state, when the

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[13] 1978 Iowa Acts ch. 1179.

[14] *See, e.g.,* 1970 Iowa Acts ch. 1058 (sex); 1972 Iowa Acts ch. 1031 (disability); 1972 Iowa Acts ch. 1032 (age); 1988 Iowa Acts ch. 1236 (person with acquired immune deficiency syndrome); 2007 Iowa Acts ch. 191 (sexual orientation and gender identity).

[15] *See, e.g.*, 1991 Iowa Acts ch. 184 (housing); 2009 Iowa Acts ch. 96 (pay).

Commission does not have extraterritorial investigative or enforcement authority.

3. The General Assembly expressly declared an intent for the Act to regulate employment practices within Iowa.

The Iowa Act contains legislative declarations that elucidate the General Assembly's intent in regulating employment practices. In 2009, the legislature amended the Act to add wage discrimination as an additional unfair or discriminatory employment practice. 2009 Iowa Acts ch. 96, codified at Iowa Code § 216.6A. The new statutory language expressed concerns about employment practices within Iowa's borders. The legislature found that wage discrimination "[p]revents optimum utilization of the state's available labor resources" and "[t]hreatens the well-being of citizens of this state and adversely affects the general welfare." *Id*.

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[16] *See, e.g.*, 1967 Iowa Acts ch. 122 (housing); 1974 Iowa Acts ch. 1265 (credit); 2009 Iowa Acts ch. 96 (pay).

Like the other employment-practice provisions in the Iowa Act, the Iowa equal pay amendment did not expressly define the scope of its geographic reach. Yet the General Assembly's express findings confirm the Iowa Act's geographic reach is employment within Iowa's state borders.

E. For sound policy reasons, courts interpreting federal and state employment-practice statutes apply the presumption against extraterritoriality.

1. Extraterritoriality would result in conflicts with foreign law and the law of other states.

Extraterritorial application of the Iowa Act would inevitably create situations involving conflicting state or foreign law. When reasonable, this Court interprets Iowa legislation in a manner that upholds the Act's constitutional validity. *See Adair Benev. Soc'y v. State Ins. Div.*, 489 N.W.2d 1, 3 (Iowa 1992); Iowa Code § 4.4. The Court should conclude the General Assembly did not intend the Iowa Act to raise constitutional concerns under the Commerce Clause by regulating commerce that takes place outside Iowa's state borders. *See Campbell v. Arco Marine, Inc.*, 50 Cal. Rptr. 2d 626, 631-32 (Cal. Ct.

App. 1996) (citations omitted); *Union Underwear Co. v. Barnhart*, 50 S.W.3d 188, 193 (Ky. 2001). Similarly, the Court should not ascribe to the General Assembly an intent to violate the Constitution's Due Process Clause or Full Faith and Credit Clause. *See Campbell*, 50 Cal. Rptr. 2d at 631-32; *Union Underwear Co.*, 50 S.W.3d at 193.

In some respects, the Iowa Act materially differs from employment-practice statutes in nearby states. The Iowa Act, for example, defines an "unfair discriminatory practice" in employment to include discrimination based on sexual orientation and gender identity. Iowa Code § 216.6(1)(a). Some Iowa border states, including Missouri, Nebraska, and South Dakota, do not recognize sexual orientation or gender identity as a protected class under the respective state statutory scheme prohibiting discrimination in employment. *See* Mo. Rev. Stat. § 213.010(5), (18); *Pittman v. Cook Paper Recycling Corp.*, 478 S.W.3d 479, 482-85 (Mo. Ct. App. 2015); Neb. Rev. Stat. § 48-1104; S.D. Codified Laws § 20-13-10; *see also LaBore v. Muth*, 473 N.W.2d 485, 489 (S.D. 1991).

Accepting Jahnke's apparent view, an individual whose regular workplace is located in Missouri, Nebraska, or South Dakota would potentially have a viable sexual orientation or gender identity discrimination claim under the Iowa Act based on an adverse employment action impacting the out-of-state employment relationship. That could occur, under Jahnke's view, if the complainant resided in Iowa (or even expressed an intention to reside in Iowa), if a supervisor involved in the adverse decision lived in Iowa, or if the complainant had business contacts by email or telephone (unrelated to the alleged conduct or injury) with coworkers who worked in Iowa.

State laws also reflect different approaches to age discrimination in employment. For example, Iowa and Illinois have state statutes that regulate age discrimination differently. Generally, under the Iowa Act, age discrimination in employment may be asserted by anyone age 18 and over. *Hulme v. Barrett*, 449 N.W.2d 629, 632 (Iowa 1989); Iowa Code § 216.6(1), (3). In contrast, the Illinois

Human Rights Act regulates age discrimination in employment for persons age 40 and over, with exceptions for training or apprenticeship programs. 775 Ill. Comp. Stat. § 5/1-103(A); 775 Ill. Comp. Stat. § 5/2-102(A). If a manager supervises a workplace in Moline, Illinois, and fires an eighteen-year-old employee who worked at the Illinois workplace, under Jahnke's apparent view, the terminated person could pursue an Iowa Act claim against the manager, if the manager resides in Iowa—even if the manager's actions did not take place in Iowa and had no material impact in Iowa.

These differences illustrate the interstate comity concerns that could arise if the Iowa Act is interpreted to have extraterritorial reach so that it regulates employment practices outside Iowa's state borders. In the interest of comity, the General Assembly could not have intended to impose its policy choices on other states. The Iowa Act is not a gap-filler for people who do not work in Iowa.

Jahnke's interpretation would not benefit the state of Iowa and its citizens. It would encourage forum-shopping and establish Iowa's Act as an alternative for complaining parties who may be dissatisfied with the procedure, practices, and remedies associated with federal, state, and local employment practice laws governing their out-of-state workplaces.

2. **Federal statutes expressly authorize extraterritorial application to U.S. citizens working abroad, with an exemption that respects conflicting foreign law.**

Federal employment-practice statutes expressly regulate the employment practices of a U.S. employer that employs a U.S. citizen working abroad. 29 U.S.C. § 630(f); 42 U.S.C. § 2000e(f); 42 U.S.C. § 12111(4). They also contain exemptions for situations in which an employer may be obligated to comply with the law of a foreign country, yet in doing so, would violate U.S. employment law. 29 U.S.C. § 623(f)(l); 42 U.S.C. § 2000e-1; 42 U.S.C. § 12112(c)(1). A

foreign country, for example, may have a mandatory retirement age. *See Pfeiffer v. Wm. Wrigley Jr. Co.*, 755 F.2d 554, 556-57 (7th Cir. 1985).[17]

In contrast to these federal statutes, the Iowa Act contains no statutory language expressly regulating workers in foreign countries or other states. Also, the Iowa Act contains no statutory language creating an exemption for a situation where the Iowa Act would conflict with a foreign country's law or a different state's law.

As originally enacted, the Age Discrimination in Employment Act of 1967 ("ADEA") was silent regarding its extraterritorial reach. Pub. L. No. 90-202, 81 Stat. 602. In 1984, Congress amended the ADEA to expressly cover a U.S. citizen working abroad. *See* Older Americans Act Amendments of 1984, Pub. L. No. 98-459, § 802(a), 98 Stat. 1767, 1792.

With that amendment, the ADEA's definition of "employee" includes "any individual who is a citizen of the United States

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[17] *Superseded by statute*, Older Americans Act Amendments of 1984, Pub. L. No. 98-459, § 802(a), 98 Stat. 1767, 1792.

employed by an employer in a workplace in a foreign country." 29 U.S.C. § 630(f).

Also, Congress included a critical exemption to avoid encroaching on conflicting foreign law. As amended, the ADEA stated:

> It shall not be unlawful for an employer, employment agency, or labor organization--
>
> > to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, *or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located*;

29 U.S.C. § 623(f)(1) (emphasis added).[18] At the time, Congress made no comparable amendment to Title VII.

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[18] *See* Pub. L. No. 98-459, § 802(b), 98 Stat. 1767, 1792.

In *EEOC v. Arabian American Oil Company*, the Supreme Court held that Title VII, as then composed, did not apply to a United States employee working abroad for a United States employer. 499 U.S. at 246-47. At the time, Title VII contained broad jurisdictional language, but, in contrast to the ADEA, contained no affirmative reference stating the statute applied to actions occurring overseas. *Id.* at 251.

In 1991, Congress amended Title VII and the Americans with Disabilities Act of 1990 ("ADA") to specifically extend these acts' coverage to U.S. citizens working abroad. *See* Civil Rights Act of 1991, Pub. L. No. 102-166, § 109(a), 105 Stat. 1071, 1077, codified at 42 U.S.C. § 2000e(f) and 42 U.S.C. § 12111(4). The amendments added the following language to the statutory definition of "employee" under Title VII and the ADA: "With respect to employment in a foreign country," [the term 'employee'] includes an individual who is a citizen of the United States." *Id*.

Like the ADEA amendment, the 1991 Title VII and ADA amendments included an exemption to avoid encroaching on a

foreign country's conflicting law. *See* Civil Rights Act of 1991, Pub. L. No. 102-166, § 109(b), 105 Stat. 1071, 1077, codified at 42 U.S.C. § 2000e-1 and 42 U.S.C. § 12112(c)(1). Generally, the amendments tracked the statutory language of the ADEA's exemption. *Id*.

In contrast to Title VII, the ADA, and the ADEA, the Iowa Act contains no statutory language that explicitly regulates a U.S. citizen working abroad. Also, the Iowa Act contains no language explicitly recognizing that a worker's employment is subject to the Iowa Act if the person's workplace is in a state other than Iowa.

3. **Courts interpreting other states' employment-practice statutes apply the presumption against extraterritoriality to limit the statutes' geographic reach.**

For all of these reasons, courts interpreting anti-discrimination employment-practice statutes in other states have limited the statutes' geographic reach. *See*, *e.g*., *Blackman v. Lincoln Nat'l Corp*., No. 10-6946, 2012 WL 6151732, at *4 (E.D. Pa. Dec. 10, 2012) (Pennsylvania Human Relations Act); *Albert v. DRS Techs., Inc*., No. 2:10-cv-03886, 2011 WL 2036965, at *2 (D.N.J. May 23, 2011) (New Jersey Law

Against Discrimination); *Judkins v. St. Joseph's Coll. of Me.*, 483 F. Supp. 2d 60, 65-66 (D. Me. 2007) (Maine Human Rights Act); *Longaker v. Boston Scientific Corp.*, 872 F. Supp. 2d 816, 819-21 (D. Minn. 2012) (Minnesota Human Rights Act); *Arnold v. Cargill, Inc.*, No. Civ. 012086, 2002 WL 1576141, at **2-4 (D. Minn. Jul. 15, 2002) (same); *Campbell*, 50 Cal. Rptr. 2d at 631-32 (California Fair Employment Act); *Union Underwear Co.*, 50 S.W.3d at 193 (Kentucky Human Rights Act).

The Iowa Civil Rights Act applies to employment within Iowa. The Iowa Act does not have extraterritorial reach, to other states or to foreign countries.

Division II

As a U.S. Citizen working abroad, Jahnke was not within the Iowa Civil Rights Act's geographic reach.

A. **Error preservation.**

As noted, the issues raised in this appeal were presented to the district court in a motion for summary judgment; the district court issued a ruling denying the motion; and the issue was raised in an application for interlocutory appeal. (JA-I 171-175, 676-702). In a May

19, 2017 Order, this Court granted the application for interlocutory appeal. (JA-I 703-705).

B. Standard of review.

This Court reviews a district court's ruling on a summary-judgment motion to correct errors at law. *Homan*, 887 N.W.2d at 163.

C. For a disparate-treatment employment discrimination claim, the alleged discriminatory practice occurs at the complainant's geographic workplace.

The Iowa Act regulates "unfair employment practices." Iowa Code § 216.6. To establish a disparate-treatment discrimination claim under the Iowa Act, a complainant must show a discrete adverse employment action. *See Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 571-72 (Iowa 2015). Based on the plain language of the Iowa Act, an "unfair employment practice" means a discrete act that took place within Iowa's geographic borders. *See Rent-A-Center, Inc*., 843 N.W.2d at 734; Iowa Code § 216.6.

This approach is common sense, consistent with the Iowa Act's plain language and purpose. An employment practice that the Iowa

Act regulates—a discrete adverse employment action—takes place at the impacted employee's regular geographic workplace. Not the employee's home. Not the employee's supervisor's home. Not another place where the employer does business, if it wasn't the impacted employee's regular workplace.

In practice, the Iowa Act applies to workplaces within Iowa's state borders. For example, in the section on "unfair employment practices," the Iowa Act "requires employers to grant employees who are disabled by pregnancy a leave of absence for up to eight weeks if adequate leave is not otherwise available under an available health, temporary disability, or sick leave plan." *McQuistion v. City of Clinton*, 872 N.W.2d 817, 825 (Iowa 2015) (citing Iowa Code § 216.6(2)(e)). It makes sense to require Iowa employers to comply with this requirement as to employees whose primary workplace is geographically located in Iowa. But some Iowa employers are also employers in other states. The legislature could not have intended to require Iowa employers to comply with this requirement for

employees whose primary workplace is in a different state or a different country. And if that subsection, included in the statute titled "unfair employment practices," Iowa Code § 216.6, regulates employment based on geographic workplace, it stands to reason that the rest of the section should follow the same approach.

This is consistent with the approach taken by local civil rights commissions within Iowa. The legislature mandated that each city with a population exceeding 29,000 maintain a local civil rights commission. Iowa Code § 216.19(2). Local commissions have jurisdiction over employment practices that occur within the boundaries of the authorizing city, and a complainant may not file a charge with both the Commission and a local commission that has jurisdiction. Iowa Code § 216.19(6). *See also* City Code of Iowa City 2-4-1.A ("All persons claiming to be aggrieved by a discriminatory or unfair practice *within this city* may, by themselves or by counsel make, sign and file with the commission a verified, written complaint. . . .") (emphasis added).

In the employment-practice context, other jurisdictions have taken a comparable approach, focusing on the complaining party's geographic workplace. Federal courts interpreting the ADEA considered the location of the plaintiff's workplace to decide whether a U.S. citizen working abroad was covered by the statute. At that time, the ADEA did not have clear and affirmative statutory language authorizing extraterritorial application. These courts reasoned that to evaluate extraterritoriality, the pertinent factor was the plaintiff's geographic workplace when the adverse employment decision occurred. Because the ADEA did not have extraterritorial effect, these courts dismissed ADEA claims asserted by U.S. Citizens working abroad. *See, e.g.*, *Ralis v. RFE/RL, Inc.*, 770 F.2d 1121, 1130 (D.C. Cir. 1985) (workplace in Europe); *Pfeiffer v. Wm. Wrigley Jr. Co.*, 573 F. Supp. 458, 461 (N.D. Ill. 1983), *aff'd*, *Pfeiffer*, 755 F.2d at 559 (Munich, Germany workplace); *Zahourek v. Arthur Young & Co.*, 750 F.2d 827, 828 (10th Cir. 1984) (workplace in Honduras); *Cleary v. United States Lines, Inc.*, 728 F.2d 607, 610 (3d Cir. 1984) (London, England

workplace). Similarly, the Supreme Court interpreted Title VII to apply based on the complainant's geographic workplace. *See Arabian Am. Oil Co.*, 499 U.S. at 247-249 (Saudi Arabia workplace).

These federal decisions reflect an effort to interpret the statutes in a manner consistent with the presumption against extraterritoriality. While this Court has at times expressed reluctance to follow decisions analyzing federal employment-practice statutes, this Court faces the same interpretive issue in analyzing the Iowa Act and applying the presumption against extraterritoriality. Additionally, this appeal raises comparable concerns regarding comity and conflicting laws, although this Court considers those issues on both an international and interstate basis. This Court also faces constitutional considerations.

Courts interpreting other states' employment-practice statutes have taken a comparable approach, focusing on the complaining party's geographic workplace. *See, e.g.*, *Union Underwear Co.*, 50 S.W.3d at 192-93 (Kentucky Civil Rights Act does not cover claim

where the plaintiff's workplace was in Alabama and South Carolina); *Peikin v. Kimmel & Silverman, P.C.*, 576 F. Supp. 2d 654, 657-58 (D.N.J. 2008) (New Jersey Law Against Discrimination[19] does not cover claim where the plaintiff's workplace was in Pennsylvania, even though the plaintiff claimed her legal practice frequently took her to New Jersey); *Judkins*, 483 F. Supp. 2d at 64-66 (Maine Human Rights Act does not cover employment conditions or termination where plaintiff's workplace was in Cayman Islands); *Blackman*, 2012 WL 6151732, at **3-7 (Pennsylvania Human Relations Act does not apply to plaintiff who worked in Illinois); *Buccilli v. Timby, Brown & Timby*, 660 A.2d 1261, 1263-65 (N.J. Super. Ct. App. Div. 1995) (Pennsylvania law governs plaintiff's employment at Pennsylvania workplace).

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[19] *See also Kelman v. Foot Locker*, No. CIV A 05-CV-2069 PGS, 2006 WL 3333506, at **6-7 (D.N.J. Nov. 16, 2006); *Satz v. Taipina*, No. CIV A 01-5921(JBS), 2003 WL 22207205, at *16 (D.N.J. Apr. 15, 2003).

The Iowa Civil Rights Act's provision governing venue contemplates an employment practice that occurred within Iowa's borders. The venue provision authorizes a civil action in the Iowa county "in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred." Iowa Code § 216.16(5).

Jahnke's Petition doesn't plead any ground for venue. His pleading didn't identify a single unfair or discriminatory practice that occurred in Polk County, Iowa—or in Iowa at all. The mere fact that in June 2014, Deere employed people (but not Jahnke) in Polk County, Iowa workplaces should not be sufficient to transform Jahnke's dispute over his employment in China to an employment claim in Iowa.

This view avoids burdening a would-be complainant with technical formalities. An employee knows where he or she went to work each day. But an employee may not know a supervisor's residential address. An employee may not know the employer's state

of incorporation or principal place of business. An employee may not know who made the adverse employment decision or where the decisionmakers were geographically located when the decision was made. This approach allows a complaining party to proceed with an administrative charge asserting an unfair employment practice claim based on basic knowledge regarding the geographic location of his or her workplace.

The Iowa Act regulates "unfair employment practices." Iowa Code § 216.6. For a disparate-treatment claim, an unfair employment practice occurs at an employee's geographic workplace when an adverse employment action occurs. This reflects a commonsense approach that is consistent with the Iowa Act's statutory text, purpose, and structure.

Jahnke does not complain about "unfair practices in employment in Iowa." *See Rent-A-Center, Inc.*, 843 N.W.2d at 734. Jahnke alleges that he experienced an unfair employment practice in China. (JA-I 55-61). His claim focuses on an employment decision

that occurred outside the state of Iowa: removing Jahnke from the Harbin Works Factory Manager position, ending Jahnke's expatriate assignment, and repatriating Jahnke to the United States. (JA-II 115, 263). The decision was made by the China Compliance Committee (comprising individuals working in the People's Republic of China), in consultation with the U.S. Compliance Team (comprising people working at Deere's corporate headquarters in Moline, Illinois). (JA-I 570-571; JA-II 115). The decision was communicated to Jahnke in China. (JA-I 55-61). Jahnke's connection to Iowa arose after the repatriation process was complete, when he was assigned to a job in Waterloo, Iowa.

D. The Iowa Act does not recognize a complainant's residence or domicile as a relevant consideration.

Before the district court, Jahnke argued that his domicile or residence served as an appropriate factor in determining whether the Iowa Act covered his claim. More specifically, Jahnke pointed to his domicile or residence before and after—but not during—his expatriate assignment in China.

No authority supports Jahnke's argument that domicile or residence is a relevant factor in evaluating whether his claim falls within the Iowa Act's geographic reach. In fact, the Iowa Act's statutory text suggests that for employment practice claims, a complainant's domicile or residence is not a factor. The Iowa Act neither requires an employment-practice complainant to have an Iowa residence or domicile, nor excludes from coverage a complainant that does not have an Iowa residence or domicile. Treating residency or domicile (past, present, or intended) as a conclusive factor to override Iowa's geographic borders would lead to an odd outcome. The Iowa Act would not have uniform application to people working side by side in the same workplace located outside Iowa's borders. It would apply to people who lived in Iowa, but not to their coworkers who lived in a different state. Applying this rationale, some courts interpreting employment-practice statutes in other states have rejected the complainant's state of residence as a factor, favoring a geographic workplace approach. *See, e.g., Guillory v.*

Princess Cruise Lines, Ltd., No. 8192233, 2007 WL 102851, at *3 (Cal. Ct. App. Jan. 17, 2007); *Buccilli*, 660 A.2d at 1263-65; *Satz*, 2003 WL 22207205, at *16.

Furthermore, the Iowa Act's provision governing venue for an employment-practice claim does not recognize a complaining party's residence or domicile within Iowa as a basis for venue. Iowa Code § 216.16(5). If anything, residence or domicile is simply one fact that might shed light on establishing the complainant party's geographic workplace.

In *Runyon v. Kubota Tractor Corp.*, this Court addressed whether the Iowa Wage Payment Collection Act applied to a nonresident of Iowa. 653 N.W.2d 582, 858 (Iowa 2002). In reaching a conclusion that the Iowa Wage Payment Collection Act applied to a nonresident of Iowa, this Court focused on whether the plaintiff transacted business within the boundaries of the state—not whether the plaintiff resided in or was domiciled in Iowa. *Id*. ("[T]he statute's focus is not on an individual employee's state of residence or an employer's home office

but whether the employee is 'employed in this state for wages by an employer.'").

As already discussed, while on the expatriate assignment, Jahnke did not transact Deere business in Iowa. He purchased property in Florida and Australia. (JA-I 583, 592; JA-II 131-135, 523-534). Jahnke didn't pay any Iowa income taxes on the compensation he received for his work performed in China. (JA-I 621-622; JA-II 424-425).

Runyon supports the principle that the Iowa Act is not dependent on whether the complaining party was domiciled in or resided in Iowa. The Iowa Act's statutory text differs from the Iowa Wage Payment Collection Act's language that this Court interpreted in *Runyon*. That statute directly covered the wage-payment dispute, authorizing an action for an employee that is "employed in this state for wages by an employer." *Id*. at 585. The Iowa Act has no such comparable statutory language.

In any event, this Court need not determine the outer limits of the Iowa Act's coverage for Iowa residents who work elsewhere. There is no dispute that even considering a residency standard, Jahnke was *not* a resident of Iowa when the alleged discriminatory conduct occurred. Effectively, Jahnke contends he experienced the effects of an alleged discriminatory employment decision because he was assigned to Iowa after he was repatriated to the United States. That rationale focuses on alleged effects of a discrete employment action rather than the discrete employment action itself. The Iowa Act regulates discrete employment actions, not the alleged "effects" of a discrete employment practice. *See Dindinger*, 860 N.W.2d at 571-72.

E. The General Assembly could not have intended the Iowa Act to authorize an employment-practice claim against an Iowa business or an Iowa resident based only on a presence or residence in Iowa.

Jahnke believes that individual Defendants Czarnecki and Haas, both Iowa residents, made the decision to remove Jahnke as Harbin Works Factory Manager and repatriate him to the United States. Defendants disagree, but even accepting Jahnke's view, the

state of residence of alleged decision-makers is insufficient to place this claim within the Iowa Act's geographic reach.

This case is about workplace decisions impacting Jahnke's employment in China. Jahnke resided and worked in China. *See, e.g.*, JA-I 55-61, 578; JA-II 549, 421-423, 608. Jahnke supervised the day-to-day operations of a factory in China. *Id*. He worked for a China corporate entity, under a China employment contract. (JA-I 197-209, 212). The fact that in 2014, Czarnecki and Haas chose to maintain their residence in Iowa is immaterial to Jahnke's employment-practice claim under the Iowa Act. The General Assembly could not have intended the Iowa Act to subject Iowa residents and taxpayers to an Iowa Act employment-practice claim just because they live in Iowa.

Similarly, many national and global businesses have a business presence in Iowa, as well as other states and other countries. The General Assembly could not have intended the Iowa Act to subject businesses that have a presence in Iowa to an Iowa Act employment-practice claim based solely on that presence. Something more is

required—a discrete discriminatory or unfair practice occurring within the state's borders.

Interpreting other state and local employment-practice statutes, courts have concluded that when the plaintiff's workplace was out of state, an employer's presence in a state or the decision-makers' presence within a state are insufficient to bring the plaintiff's claims within the state law's geographic reach. *See, e.g.*, *Union Underwear Co.*, 50 S.W.3d at 190-91, 193 (employer's corporate headquarters in Kentucky insufficient under Kentucky Civil Rights Act); *Judkins*, 483 F. Supp. 2d at 64-66 (employer's location in Maine and decisions made in Maine insufficient under Maine Human Rights Act); *Blackman*, 2012 WL 6151732, at *6 (location of corporate offices in Pennsylvania insufficient under Pennsylvania Human Relations Act); *Satz*, 2003 WL 22207205, at *16 (corporate offices in New Jersey and location of decision-makers in New Jersey insufficient under New Jersey Law Against Discrimination); *Hoffman v. Parade Publ'ns*, 933 N.E.2d 744, 747-48 (N.Y. 2010) (corporate offices and location of

decision-makers in New York insufficient under New York State Human Rights Law and New York City Human Rights Law).

F. Contacts with Iowa, such as business travel and workplace communications with people located in Iowa, do not establish "employment in Iowa" under the Iowa Act.

The district court applied a "contacts" analysis, finding that Jahnke had sufficient contacts with Iowa to support an Iowa Civil Rights Act claim. The district court's contacts analysis conflated personal jurisdiction and the Iowa Act's geographic limits. Jahnke's occasional contacts with the state of Iowa, including communications with persons assigned to workplaces geographically located in Iowa, fail to support an Iowa Act claim.

Federal and state courts interpreting other states' employment-practice statutes uniformly recognize that mere "contacts" with the United States, or a particular state, are insufficient to overcome extraterritoriality. Occasional business trips to a particular venue do not suffice. *See Blackman*, 2012 WL 6151732, at **7-8. Having substantial client business in a state that is different from the state

where the complaining party's workplace is located does not overcome extraterritoriality. *See Peikin*, 576 F. Supp. 2d at 657-58. Telephone contacts with individuals located within the territory are insufficient to overcome extraterritoriality. *Vangas v. Montefiore Med. Ctr.*, 823 F.3d 174, 182 (2d Cir. 2016).

Conclusion

Jahnke asks this Court to extend the reach of the Iowa Civil Rights Act to employment abroad. Because the undisputed and material facts demonstrate Jahnke's discrimination claim falls outside of the Iowa Civil Rights Act's geographic reach, it should have been dismissed on summary judgment.

If this Court finds disputed facts on this record, Defendants request that the Court remand the case without prejudice to Defendants' ability to file a renewed summary judgment motion on extraterritoriality, addressing the proper legal standard established by this Court, and presenting additional material uncovered in discovery.

In July 2016, Defendants filed a summary-judgment motion. The next month, the district court continued the trial date, on Jahnke's motion, which Defendants resisted. In November 2016, the district court heard argument on the motion and closed the summary-judgment record. Since then, discovery continued, and additional evidence likely relevant to the extraterritoriality issue has been exchanged in discovery. *See, e.g.*, Defendant's Motion for a Preliminary Ruling Under Iowa Rule of Evidence 5.104 (filed May 3, 2017).

Deere & Company, Richard Czarnecki, and Bernhard Haas respectfully request that the Court reverse the judgment of the district court.

Request for oral submission

Defendants-Appellants Deere & Company, Richard Czarnecki, and Bernhard Haas respectfully request oral argument regarding the issues presented in this appeal.

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September 25, 2017

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I hereby certify that on September 25, 2017, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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