

Employment Rights post Boris and Brexit

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For the most part EU employment law has been brought into effect via UK legislation and in any event, the EU Withdrawal Act 2018 effectively converts EU law into UK law. This means that there should be no 'legislative hole' immediately following Brexit and most rights will be preserved.

Furthermore, in March the Government issued a technical note concerning workers' rights post-Brexit and, in essence, stated that regardless of whether or not a deal is achieved workers will continue to enjoy the level of protection they are currently entitled to under EU law.

In the longer term, however, we may see amendments to this legislation (dependent on which political party is in power). At the time of writing, it is not clear whether a general election is imminent.

Potential future amendments

There are certain aspects of our current employment law protections which are already unpopular with Government, employers and/or business groups and may be more likely to post-Brexit change.

By way of example:

Working time regulation – The British Government resisted the working time rules (which impose a 48 hour working week) at the point of EU negotiation. The UK is already well-known for its opt-out provisions and a future Government may wish to remove the limit altogether.

TUPE - The Government may look to review and revise the laws that affect employment protection in TUPE scenarios. Having said this, the UK itself extended TUPE rights to 'service provision changes' through domestic law (not because it was obliged to do so by the EU).

Family rights - Some businesses, particularly smaller ones, highlight EU contend that family friendly legislation is disruptive for their business, although the current direction of travel appears to be favour of the family, not the employer.

Effect of loss of ability to refer to CJEU

Leaving the EU will have the secondary effect of ending the jurisdiction of the Court of Justice of the European Union (the CJEU). Many will see this as a blessed relief and end the perceived interference of Europe with our domestic matters.

'No deal' scenario

If, which in the last week has become increasingly unlikely, there is no negotiated Brexit deal, the Government has identified two areas that will be affected:

1. Employees who work in some EU countries, who are employed by a UK employer, may not be protected in the event of the employer's insolvency; and

2. Regulations will be amended so that it will not be possible to make a new request to set up a European Works Council or information and consultation procedure.

Free movement

Arguably there are also some areas in which employers should seek to have an increased focus on as Brexit progresses - a key potential issue being free movement and right to work checks.

Brexit confuses the issue of which EU citizens are lawfully entitled to work in the UK. Whilst employees who were living in the UK as of 12 April 2019 are able to continue working in the UK the recruitment of any who were not is now more complicated and a new system now applies. Employers will need to have an increased focus on any Government announcements on right-to-work. It is currently proposed that, as of January 2021, new guidance on the issue will apply.

Keep looking for updates though – the unexpected seems to keep happening.

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