



Brexit – The implications for UK employment law

The UK is in uncharted territory due to Brexit. Many UK employment rights derive from EU law, so what does Brexit mean for UK employment law? At times, this European influence has been very unpopular with UK employers. In theory, outside the membership of the EU, the UK Government would be free to repeal a large amount of its employment law although the likelihood is that this will not happen in practice.

The time to change

The exit of a member state as large as the UK from the EU is unprecedented and it is not possible to estimate with any certainty how long it will take. Greenland's departure from the EU in 1985 (when Article 50 was not in place) followed its EU referendum in 1982. The UK's departure is expected to be a much more lengthy and complicated process.

In accordance with Article 50, the UK is required to give two years' notice to leave the EU. First, a new conservative leader needs to be elected as David Cameron will not take the monumental step of giving notice. The EU's stance towards the UK has now hardened and it has said that there would be no negotiations between the UK and the EU about a new relationship, until the UK had invoked Article 50.

The employment law status quo is commonly expected to continue for at least the period of time that the UK takes to negotiate its exit. This is likely to be a long period despite Brussels telling the UK to act immediately.

Employment law following negotiations

One price that the UK may have to pay as part of the negotiation process is signing up to EU employment law. The remaining 27 members of the EU are unlikely to agree to favourable trade terms with a State that could undercut the competition through the implementation of employer friendly legislation, such as the use of cheap labour.

Assuming the UK does have the power to change the EU rooted employment laws following the negotiation, it is unlikely that there will be any major change as the majority of these laws have become workplace norms and, in certain circumstances, the UK law exceeds minimum EU requirements.

Potential change to UK law

The 2006 Government's decision to increase TUPE's scope beyond EU law requirements indicates that TUPE is here to stay. There may be slight changes to the operation of TUPE in areas that the UK was bound by European case decisions which did not fit comfortably with UK business practice. For example, the prohibition of post transfer harmonisation of terms and conditions may go.

The right to paid annual leave is not expected to change as UK law provides for 5.6 weeks' paid annual leave, which is more than the European minimum entitlement of four weeks'.

In the past six years or so there have been a number of very unpopular employee friendly European case decisions in relation to the accrual during absence and calculation of annual leave. This is the area of law most ripe for change and it is likely that some legislation may be passed to reverse some of these decisions.

The UK considers itself a world leader in equality and had laws prohibiting certain types of discrimination (sex, race and disability) before the EU required it. There is very little possibility of significant change to this area of the law although there is some discussion about implementing a cap on compensation in discrimination claims (which is currently uncapped due to EU law).

In addition, the UK is well ahead of EU requirements in respect of family friendly laws (shared parental leave and maternity leave) and these laws are highly likely to remain.

Movement of people

There is some concern among employers, particularly those involved in agriculture and the food industries within the local area, that Brexit would deprive employers of access to labour and that members of their workforce would be sent home.

In theory, the UK's exit from the EU would mean that citizens of other Member States would no longer have the automatic right to travel to work in the UK. In reality, however, this is likely to form a very large part of the negotiations referred to above, and the indications are that the EU will stand firm. The EU leaders have now issued a joint statement detailing that "access to the single market requires acceptance of all four freedoms", a reference to EU principles on the free movement of capital, labour (individuals), services and goods.

Conclusion

The changes to UK employment law are not going to arise overnight following Brexit and the status quo will remain for the short to medium term whilst the UK awaits the outcome of its exit negotiations. The implications for Brexit remain uncertain although ironically it is fairly certain any significant changes to employment law will not occur for a number of years.

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