



Employment Law Bulletin No. 104

BREXIT IN BRIEF – IMPACT OF A ‘NO DEAL’ ON THE WORKPLACE

The deadline for the UK’s withdrawal from the EU is **29 March 2019**. It is then that the two-year ‘*withdrawal period*’ as set out under the infamous Article 50 (TEU) will have ended. A formal withdrawal agreement has not been reached to date. It is possible that the period for negotiations may be extended; however, this would require unanimity on the part of the 27 EU Member States alongside an agreement with the UK. As a result, a no deal Brexit has become increasingly more possible. In preparing for a no-deal, a series of technical notices have been issued by the UK government, including a notice on workers’ rights.

In the event of a no deal on 29 March 2019 EU Treaties will no longer automatically apply to the UK. Businesses would have to respond immediately to changes. As a result, many have significant concerns over the no-deal scenario. Whilst changes to employment law are limited, awareness and preparation are crucial to ensure a smooth workforce transition whatever the future relationship with the EU.

No Deal FAQs:-

1. What will happen to employment law if there is a ‘no deal’ Brexit?

Not a lot would change immediately, or in the short to medium term.

The European Union (Withdrawal) Act 2018 allows for the transposition of directly applicable EU law into UK law. This would ensure legal continuity and no legislative ‘*hole*’ the day after Brexit. Under this legislation workers in the UK would continue to be entitled to the rights they currently have under UK law. Any legislative amendments would be stylistic to reflect the fact that the UK is no longer an EU Member State.

The following employment rights would remain unchanged:-

- Working Time Regulations (provisions for annual leave, holiday pay and rest breaks);
- Family leave entitlement (maternity and paternity provisions);
- Health and safety protections for workers;
- Protection from discrimination and harassment;
- TUPE regulations;
- Agency worker protections;
- Protection and consultation rights for workers, including for collective redundancies .

2. Will anything change?

There would be two elements of change:-

- a) **Employer insolvency** – UK/EU employees are currently protected by national guarantee funds in the event that their employer becomes insolvent. These funds enable employees to

claim redundancy related payments. In the event of a no deal whether or not this framework would remain will depend on the individual Member State. There are variations in how each Member State has implemented the guarantee funds. As a result, the rights of an employee working in an EU country for a UK employer that becomes insolvent may be affected.

- b) **European Works Councils** - These are bodies representing the European employees of a company. UK regulations will be amended so that: no new requests to set up a EWC could be made. However the government has stated that requests made before Brexit can complete, and any existing EWCs will continue to operate "*as far as possible*".

3. What will happen to EU citizens working in the UK?

The UK government has reached an agreement with the EU guaranteeing the rights of EU citizens living in the UK, and of UK nationals living in the EU after Brexit.

Under the EU Settlement Scheme, EU citizens living in the UK, along with their family members, would be able to stay and continue their lives with the same access to work, study, benefits and public services that they enjoy now. The Scheme will be fully operational by 30th March 2019. However in the event of a no deal it would only be applicable to those living in the UK before 29 March 2019.

4. Will there be future changes to employment law?

The long-term position for legislative change after Brexit is unclear and depends on a wide range of factors. Any major changes will depend on the government of the day and may be affected by changes in leadership, a general election or even a second referendum.

However employer associations and business groups have identified some areas as being potential targets for amendment, these include:-

- **Agency worker protection** – the right of agency workers to the same working conditions as permanent staff after 12 weeks.
- **Limiting tribunal awards for discrimination claims** - this could be done by introducing a cap similar to that of unfair dismissal.
- **TUPE** – in particular, the need to provide more flexibilities for transferring employers.
- **Holiday pay claims during sickness** – the entitlement of workers on long-term sick leave to carry over unused holiday leave into the next year; and the exclusion of commission and overtime from holiday pay calculations.

5. What should employers do now?

- Employers should examine the profile of their workforce and assess future needs and skills. Consider how many EU (but not UK) citizens you employ and how dependent the business is on them. Assess the impact of any loss of ability to retain or employ non-UK employees might have on the business.
- **Ensure that staff from the EU are familiar with the settled status procedure (currently open 30 March 2019 – 30 June 2021. In a no deal scenario the deadline will move forward to 31 December 2020).** Employers may consider financing these applications.

- Conduct a review of policies particularly those which refer to geographical limitations (for example non-compete provisions that refer to “*throughout the EU*”, as this language would no longer encompass the UK).
- HR teams should reinforce a message of inclusion in the workplace to ensure employees feel they are valued part of the workforce. With workplace intolerance being reported in the media employers should focus on maintaining good industrial relations policies, including with EU employees.

Should you require any further information or advice on dealing with Brexit related employment issues or employment matters generally, please contact any member of the Employment Law Unit:-

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Every care has been taken in the preparation of this bulletin; readers are advised however to seek legal advice in relation to specific issues.

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