

THE POTENTIAL EFFECTS OF BREXIT ON EMPLOYMENT LAW

Introduction

The referendum vote on 23rd June was a vote of principle. The result is not technically binding on the government, although it is inconceivable that the 'leave' vote can simply be ignored as some would wish. Following David Cameron's resignation the government will now have to negotiate a new trading relationship with a 27 member organisation, to allow British firms to sell goods and services to EU countries without being hit by excessive tariffs and other restrictions. This process will undoubtedly take at least two years, so nothing will happen fast. The results of those negotiations will be crucial and will no doubt be complicated by the fact that as Angel Merkel has said Britain cannot expect to "keep the privileges" of ties with the EU without any of the obligations, such as freedom of movement.

Possible agreements

We could follow the Norwegian model, giving us access to the single market but freeing us from certain EU rules on agriculture, fisheries, and home affairs. Or we could follow the Swiss model, negotiating with countries on a country by country basis. Or we can just rely on our membership of the World Trade Organisation. Depending on the model ultimately chosen, we may remain

bound by some of the European employment laws, as the EU countries will not enter into trade and other agreements with us if we were able to undercut them by allowing businesses to employ workers on less onerous (and so cheaper, thus undercutting the other country's businesses) terms. It is likely that in order to access the single market the UK will have to allow for the free movement of people. The two are indivisible.

If the Human Rights Act 1998 is replaced by a Bill of Rights, then the protection the European Convention on Human Rights offers to workers in their working life is likely to be diminished.

Possible employment law changes

Depending on the agreements reached about specific trading relationships between the UK and the EU a future government may have relatively unconstrained freedom of action in relation to those areas currently governed by EU Directives relevant to employment law. We will probably have to remain signed up to the main social framework laws, especially working time. Leaving the EU may make no immediate difference, because we have implemented all EU Directives into Regulations and so they remain binding UK regulations. Leaving the

EU will not repeal TUPE – we'd need to repeal TUPE itself!

Potential medium term changes

In the medium to long term, if the UK has freedom to repeal all European employment laws it may be that TUPE will remain. It's become part of accepted employment protection now, and the UK gold-plated it when introducing service provision change in 2006. But it is more than likely there would be tweaking, for example a relaxation of consultation provisions, and probably allowing post-transfer harmonisation of terms and conditions (which we can't do now because of a European case called Daddy's Dance Hall).

The UK 20+ redundancy collective consultation laws stem from an EU Directive. These are unpopular with employers and may be watered down, for example requiring collective consultation only if over, say, 100 people being made redundant (rather than 20, which is the current threshold). But this is unlikely to be a legislative priority.

Most of the Working Time Regulations may remain. Paid holiday will certainly stay, and of course we gold-plated the European four weeks' paid annual leave with 5.6 weeks in the UK. But legislation could be passed to reverse some of the holiday time cases, for example accruing holiday during long-term when sick leave. The issue of a 'weeks pay', which currently includes commission and overtime following ECJ rulings, could be pared back to the position it was a few years ago, with just basic salary being paid as holiday pay. The maximum average 48 hour working week is likely to be

abolished, as it is universally unpopular with business and commonly ignored.

The Agency Worker Regulations implement the EU Temporary Agency Workers Directive, which requires employers to offer equal terms and benefits to agency workers once they've been working for 12 weeks. These are massively unpopular with business and will probably be repealed.

The 2006 EU Equal Treatment Framework Directive currently binds the UK. As a result, we introduced protected characteristics including religion and belief. But we had already legislated to prohibit sex discrimination, race discrimination and disability discrimination (and others) long before Europe required us to do so. There is unlikely to be any appetite for removing any of the protected characteristics. However, compensation could be capped (as unfair dismissal compensation is capped). That couldn't be done previously because the EU forbade it.

There are unlikely to be any reduction to family friendly rights. We already exceed EU rights considerably with 52 weeks maternity and shared parental leave.

Health and Safety provisions are derived from EU Directives and Regulations and may be subject to revision and reduction.

Reps action

This bulletin is speculative at this early stage and so reps will need to watch for further information as it becomes available.

Further information on this and other employment rights matters are available from:

- Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- the TSSA Helpdesk – 0800 328 2673

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