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Brexit: What will it mean for employment?

Following the outcome of yesterday's referendum, what will a British exit from the EU mean for UK employment law and immigration?

Whilst it will be some time before the impact is clear, there are four key considerations in terms of employment and immigration law:

1. some UK employment law does not arise from, and is not "backed" by, EU law. For example, unfair dismissal and minimum wage rights. These exist independently from the EU. There is no indication these rights would be altered as a result of Brexit;
2. some UK employment law derives from EU law, for example, some discrimination protections, working time rights, family-friendly rights, fixed term protections and TUPE. Would the UK government look to change or withdraw these laws following Brexit? Given some of these rights have become embedded in the UK and reflect modern values (and in the case of discrimination, some pre-dated the UK joining the EU), in many cases there are more likely to be tweaks made rather than wholesale changes;
3. in the Court system, the ultimate court of decision making for EU-derived rights is the European Court of Justice (ECJ). Logically, following Brexit, this would no longer be the case. It remains to be seen whether UK courts will re-open previous ECJ decisions which have been followed in the EU, particularly those relating to holiday pay and the interaction between holiday and sickness absence; and
4. in relation to immigration: it is likely that the right of EU migrants to live and work freely in the UK will be altered following Brexit. The most likely alternative would be a move towards an "Australian-style points based system" where visas are points-tested based on personal attributes and ability to contribute to society. It is far from clear how EU citizens already working the UK would be affected but there is no indication of any short-term impact and, even in the longer term, it is possible transitional protections would apply.

There is likely to be a protracted period of negotiations on Britain's exit from the EU before the long-term position is settled. Any changes to UK employment or immigration rights are, therefore, unlikely in the short-term.

TRAVERS SMITH

Please speak to your usual Employment Department contact if you wish to discuss the implications of Brexit on your workforce, or if you would like a copy of our more detailed note on the employment and immigration law implications.

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