



No-deal Brexit: Impact on employment law

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While a range of outcomes, including [a departure under the terms of the current Withdrawal Agreement](#), remains possible, it is important for businesses to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement or other deal. Here we look at the potential impact of a no-deal Brexit on employment law.

Key issues

Free movement of workers: Notwithstanding the no-deal situation, the EU Settlement Scheme still stands and applies to all EU citizens wishing to live or work in the UK. However, there are some important modifications.

Employees who are living in the UK as of 12 April 2019 are able to continue working in the UK. However, the recruitment of any EU citizens who were not resident by 12 April 2019 is now more complicated, with both a new system of European Temporary Leave to Remain and a skills-based immigration system coming into play. Employers should take advice on the impact of these new regimes on the recruitment and retention of employees in their business, and consider how this affects future workforce planning.

Right-to-work checks: Employing illegal workers is a potentially serious issue for employers, with significant civil and criminal penalties. However, Brexit serves to muddy the waters of which EU citizens are lawfully entitled to work in the UK.

Employers will need to keep up to speed with government announcements on right-to-work checks and be aware that it is proposed that, as from 1 January 2021, new guidance will apply. Employers therefore need to watch out for this and ensure appropriate procedures are implemented timeously.

Future employment laws: With so much UK employment law deriving from Europe, employers could be excused for thinking that a no-deal Brexit means the end of any obligations resulting from European legislation. However, this is not the case. Even without a deal, on the UK's EU departure, all EU laws were automatically converted into UK law so that workers are entitled to the same rights they had before. What the future holds for the direction of UK employment law (and in particular its divergence from EU laws) is very much likely to depend on the future relationship the UK now carves out with the EU. Employers will need to watch this area carefully.

European Works Councils (EWCs): Unlike other aspects of employment rights, the protections applying to EWCs is an area where changes will apply post-Brexit. However, the exact impact is currently unclear, given the unsatisfactory drafting of the UK legislation implementing change. It appears that this was intended to allow UK EWCs to continue to operate - but, at the same time, it repeals the provisions which apply the UK's EWC laws to businesses located in the UK. In any event, these provisions are now at odds with a European Commission Withdrawal Notice and the Directive itself, which state that an EWC's central management must be situated in the EU. The practical impact is that it appears that employers will need to take steps to rehome any UK law-governed EWC to another EU state, otherwise it will not operate validly. Employers with UK EWCs should take immediate

advice on how to address this.

Online guidance is available from the UK Government and the European Commission.

How DLA Piper can help

Our Employment practice can assist you with all your Brexit-related workforce issues, including your employee communications strategy. For more information, please contact the author or your usual DLA Piper contact.

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