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3HR Legal Weekly

Employment

How will Brexit Affect UK Employment Law?

On 23rd June 2016 the British public voted to leave the EU in a historic referendum; so what will this mean for UK Employment Law?

Employers need not panic as the two years' notice period required by the Treaty of Lisbon for the government to implement this decision means that the actual 'Brexit' date is unlikely to occur before June 2018.

Whilst a significant proportion of the UK's employment laws derive from the EU, the general consensus is that, although leaving the EU will in theory allow the Government to amend our laws (if it gained Parliamentary approval), in reality the evolution of employment law is likely to be much slower than it will perhaps be in other areas (e.g. immigration).

The government will face legal and practical challenges to any attempt to remove or amend EU-derived employment rights and obligations from those that are non-EU-derived. Theoretically, the government would have freedom to repeal and amend EU-derived employment legislation and the UK courts would not be bound by the decisions of the ECJ. Due to the significant legal and commercial disruption that this would cause, however, it is more likely that changes will be addressed in stages. Similarly, it is likely that the UK courts will continue to treat any ECJ decisions as persuasive if not legally binding, at least in the short-term.

Some areas of UK employment law - such as the law relating to (unfair) dismissal - are regulated by UK legislation, not the EU, and are unlikely to be affected by a Brexit. However, other areas - including unlawful discrimination, certain family-friendly rights, working time, collective redundancy consultation and business transfers - are often based on EU legislation or case law. It is also important to note that, although the EU provides a legislative benchmark, in many instances the UK law goes beyond the EU minimum requirement, offering additional protection or greater rights than the EU provides for.

How our employment law will look in the future will depend heavily on the specific arrangements agreed to formalise a Brexit. Any agreement that the UK negotiates with the EU could require the UK to still accept the majority of EU regulations (similar to the Norwegian or Swiss models).

Although changes to employment law may not be imminent, the UK Government may look to reform and deregulate certain areas, particularly those laws from the EU that are considered to be more restrictive. For example, the Government has previously considered removing the prohibition under TUPE on changing employee terms of employment following a business transfer, which may be reconsidered. There is also the ongoing issue of how to calculate holiday pay, which has been regularly debated in the courts recently, so the UK government may use Brexit to simplify this once more.

For the time being, it seems that any employment law changes are unlikely to take place in the near future, and almost certainly not until the Brexit arrangements have been agreed. It is also quite possible that they will only be implemented following a consultation process, where employers and other interest groups will be able to have their say.

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