

Employment Law dispatches

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EU referendum outcome



Matthew Clayton
Partner and head
of employment –
Chambers UK rated:
*“He is responsive,
commercial,
understands where
employers are coming
from and gets right
to the point, with
meaningful and
practical advice.”*

Response to outcome of the EU referendum

With Matthew Clayton

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Brexit and employment law

For good or for bad, the people of Britain made the monumental decision yesterday to leave the EU. The referendum itself is not legally binding, but it is implausible that the government will ignore the will of the people. An exit from the EU is not likely to happen for at least 2 years.

Britain's exit from the EU raises many questions about the future of UK employment law, since much of it is derived from EU legislation.

Will we remain bound by EU laws?

In the short term, yes. Britain has implemented all EU employment law directives into its domestic law, meaning their enforceability is not dependent on our EU membership.

In the long term, Parliament could repeal the implemented EU directives and replace them with new 'British only' laws, which do not derive from EU regulations.

Prediction: What changes are likely to happen?

It is inconceivable that the government will repeal all of the implemented EU directives and replace them with new 'British' employment laws. They are too deeply entrenched, and many of the social measures such as family friendly rights, minimum paid holiday and the limits on working time would be politically too difficult to repeal. In many aspects the UK Parliament has already gone above and beyond EU requirements in these areas.

It is, however, likely that some of the more onerous provisions, derived from EU directives and case law, will be revisited, with the aim of limiting the burden on employers, for example:

- relaxing collective redundancy consultation requirements still further

- removing employees' right to be paid commission and overtime during annual leave (granted in recent European Court of Justice decisions)
- limiting the accrual of annual leave during long term sickness absence
- repealing the unpopular Agency Worker Regulations which offer equal terms to agency workers
- capping discrimination compensation
- relaxing TUPE consultation and post transfer harmonisation rules.

What do we know will happen?

No idea. We don't know anything. Employment law was not on the top of the agenda for the Brexit campaign, so no promises have been made.

Also, the future of employment law will depend, mostly, on the trade deals which Britain negotiates, so it really is a case of 'watch this space.' We will continue to keep you informed as the mist clears.

What should I do?

It would be advisable to review employment contracts and in particular non-compete restrictions. For instance, a restriction which prevents the employee from being involved in a competing business "anywhere within the European Union" would probably be construed by reference to the membership of the EU at the time the contract was signed, and would therefore include the UK if the contract is signed before Brexit actually occurs. However in order to avoid any doubt (which might render the whole restriction unenforceable), it may be wise to clarify whether or not the UK is intended to be included.

Please contact us if you would like any assistance.

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