

Brexit Through the HR Lens Webinar

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What we will cover

- ▶ Facts and current position as we know them
- ▶ How Brexit may impact HR
- ▶ How to become Brexit resilient
- ▶ Top Tips to prepare for Brexit now

Facts - Movement of Workers

- ▶ For the period April to June 2019 there were an estimated 2.27 million EU nationals working in the UK, 99,000 more than a year earlier
- ▶ Despite the lowest level of immigration since 2013 there are still more EU citizens moving to the UK than leaving:
 - ▶ 612,000 people moved to the UK
 - ▶ 385,000 people left
- ▶ Since the mid-2000s, the employment rate for EU nationals has been higher than that for UK nationals
- ▶ Work remains the main reason for EU citizens moving to the UK

Facts - HR Employment Legislation

- ▶ There are circa 12,000 EU regulations and 186 Acts currently in force in the UK
- ▶ The Repeal Bill White Paper sets out the government's proposals regards Legislation:
 - ▶ Repeal the European Communities Act (ECA) and return power to UK institutions
 - ▶ Convert EU law as it stands into UK law before we leave the EU
 - ▶ Create powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once we have left the EU

How may Brexit impact HR Employment Legislation and Treatment of Workers

Impact on - Employment Legislation

After Brexit Parliament will decide whether our employment laws continue as they are

However

Any future trade deal with the EU is likely to be dependent on established principles of employment protection, the government white paper indicates that UK and EU should commit to the “non-regression of employment law standards”

CIPD research on employment regulation shows that employers probably wouldn't want major changes to employment law post-Brexit, in any case

What Employment legislation could look like under the microscope?

If we were to look at Parliament's previous stance on EU influenced legislation, those under the greater threat of amendments could be:

Working practices:

- ▶ **Time off and limits on working hours** (Working Time Directive)
- ▶ **Agency Worker Protections** (Equal treatment to a worker that has been in continuous employment for 12 weeks or more regardless of official contract length)
- ▶ **Annual leave** (Holiday pay and annual leave carry-over for those on long-term sick leave)
- ▶ **TUPE** (Protection for those employees transferring from one company to another)
- ▶ **Health and Safety**

Principles:

- ▶ **Equal pay**
- ▶ **Maternity Rights, Parental Leave and Shared Parental Leave**
- ▶ **Anti-discrimination laws and compensation for discrimination victims** (Currently uncapped)

Impact on - Movement of Workers

Workers wishing to emigrate to the UK for work:

- ▶ Home Office state that EU citizens and their family members will continue to be able to enter, live and work in the UK without needing a visa until 31st December 2020
- ▶ From 1st January 2021, those without pre-settled / settled status or Euro Temporary Leave to Remain (TLR) will need to apply for a visa under the new immigration system to be able to stay in the UK legally and be in receipt by 1st July 2021

Impact on - Movement of Workers

Workers wishing to emigrate to the UK for work:

- ▶ Assuming free movement of EU nationals ends post-Brexit the UK's current Points Based System for immigration may be extended to cover EU migrants and altered so that more skilled, rather than lower-skilled, workers gain permits to work here.
- ▶ Proposed changes to the Tier 2 (General) category are:
 - ▶ Removal of permit cap and widened to include medium as well as highly skilled workers
 - ▶ £30,000 salary threshold remains, along with the charge of £1,000 per worker
 - ▶ More occupations would be eligible for sponsorship employers would not have to advertise non-shortage occupation roles domestically for 28 days before offering the job to a foreign worker

Impact on Movement of Workers

Workers already resident in the UK:

- ▶ EU nationals and their families already working in the UK can apply to remain indefinitely (called 'settled status') if they have been resident for five years or will have been by the end of 2020
- ▶ Those that have been resident for fewer than five years by 2020 can apply for pre-settled status, so they can accrue the necessary years to qualify for full settled status

How to become Brexit Resilient Current HR Practices

What to Consider - Recruitment process and Right To Work (RTW) Checks

The rules until 31st December 2020 are that passports and ID used for current checks will continue to be acceptable as RTW check - However,

Should someone arrive in the UK after 30th November 2020, and stays longer than 90 days, the rules also state they will need a TLR, which employers won't necessarily have had access to. Thus there is a slightly conflicting position

Points to watch:

- ▶ Be clear what documentation you need as part of the process not just at the time of recruitment but possibly during the workers employment with you (As requirements may transition or change)
- ▶ Will you need to check who else the Worker will be bring into the UK and what will be your responsibility to check

As:

From 1st January 2021 those starting a new job EU passports will no longer be proof of right to work. Instead, either pre-settled / settled status, Euro TLR or a visa under the new immigration system will be required

- ▶ Currently however employers will not have to carry out “retrospective checks” on existing EU citizen workers.

What to consider Workers working in the EU

▶ Indemnity insurance

Does your insurance cover your liability for working in an EU country?

▶ Earning money

Your worker and payroll might need to tell HMRC they will be working in an EU country

▶ If you're sending workers to the EU

Will they may need to make social security contributions in both the UK and the EU country? This will need to be factored into any costings

▶ Professional qualifications

Check any prerequisite qualifications the worker has will still be recognised in the EU

▶ Will they be required to drive if it is part of their job?

Will you provide support to help obtain the relevant local driving licence?

▶ Entry requirements

The country your worker is travelling to might have its own entry requirements or ask your worker to have certain documents

Top 6 things you can do now to prepare

1- Continue to or start to promote Diversity & Inclusion

- ▶ Diversity and inclusion has been under attack with an undercurrent of intolerance widely reported in the media
- ▶ EU nationals generally feel less welcome in the UK than they did prior to the vote, and this undoubtedly affects their engagement and productivity at work
- ▶ Make them know that they are a valued and integral part of your workforce

2- Undertake a Skills Risk Analysis

- ▶ Businesses may be at risk as a result of losing workers, either by virtue of the number of affected workers or because they occupy key roles
- ▶ Identify which of your staff who are EU nationals, who reside and work in the UK, have accumulated rights to remain in the UK/EU and those who could be vulnerable. The same exercise should apply to UK nationals living and working in the EU
- ▶ Establish who of these potentially affected workers occupy key positions by virtue of seniority, revenue generation or unique skill sets

This exercise will at least enable you to identify areas of risk and to consider contingency plans to retain or replace key affected workers if this proves necessary following Brexit.

3 -Upskilling and Relocating Workers

- ▶ Will you have a skills deficit as a result of Brexit?
- ▶ Is there a shortage of homegrown talent to fill this skills deficit?
- ▶ Identify key skills likely to be affected and begin planning how to provide the training and experience to plug the skills gap
- ▶ If this isn't possible, begin planning to ensure the retention, and facilitate possible relocation of such workers
- ▶ Understand the timescales for the above as you may be subject to existing or revised legislative processes

4 - Agree your Recruitment Strategy

- ▶ Will you be fishing in the same pond as your competitors or similar businesses?
- ▶ What is your employee value proposition, and will it make you more attractive than your competitors?
- ▶ What lead in times will you need to maintain production / service level performance levels and build these into your plan
 - ▶ Longer processes: in procuring a visa etc. for EU nationals in UK and vice versa
 - ▶ Higher costs: visas are expensive (circa £9,000 for a Tier 2 visa valid for 5 years). You need to make budgetary provision for this

5 - DON'T jump the Gun

- ▶ If you identify risks arising from possible immigration changes you may act to replace likely affected workers and to cease recruiting EU nationals to work in the UK and vice versa
- ▶ This approach might be objectively justified in some cases. However, until the UK leaves the EU, and likely through any transitional period, the UK will remain subject to applicable EU and current domestic laws and such an approach runs the risk of giving rise to discrimination claims

6 - Review your HR Policies and Documentation

- ▶ Do you make reference to specific EU law in your policies or HR documents. Be mindful of any contractual provisions
- ▶ Think about the future enforceability of your employment contractual protections, notably post-termination restrictions

And finally...
Hold tight on to the
Brexit Rollercoaster
until it has finished
the ride

Questions and Answers



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