



Do you employ staff?

## November Employment Law Update 2019

### New Brexit Deadline

In our October Employment Law Update we wrote about how the Brexit deadline, previously scheduled for 31<sup>st</sup> October 2019, could be extended after Government wrote to the EU asking for an extension to allow a deal to be agreed in Parliament. On 28<sup>th</sup> October 2019 Donald Tusk tweeted to confirm that the EU has agreed to an extension, meaning the Brexit deadline has now been moved again, and is now scheduled for 31<sup>st</sup> January 2020. It should be noted that this extension has been referred to as a “Flexextension”, meaning that Brexit could happen / the UK could leave the EU before the deadline of 31<sup>st</sup> January 2020 if a deal is agreed before then.

### How May Brexit Affect Employment Law?

Until a deal is announced, it is difficult to clarify what Brexit will mean for employment law. Some guidance has been published, but the majority of this is subject to change depending upon when we leave and whether we leave with or without a deal. However, we do know that once we leave the European Union our employment law will no longer be dictated by the European Court of Justice, and it is possible that some of our current employment laws will be amended to reflect this. Here we will address what we do currently know, and what may be changed in the future, based upon up to date information:

- In response to concerns that employment rights will change after Brexit, the Government has confirmed that whilst the UK will no longer be bound to implement new EU rules or laws, the following commitments will be acted upon:
  - MPs will be provided with the opportunity to vote on whether future EU worker rules and laws will be implemented in the UK
  - Any future worker changes will be consulted with Trade Unions in advance

- A single enforcement body to protect agency and vulnerable workers will be introduced

If MPs vote in favour of introducing a new EU law, the Government will be bound by this vote. This is the current situation – this may change based upon whether the Withdrawal Agreement will be passed by Parliament or not.

- Once all employment rights are transposed into domestic law, the Government would be able to review each individual law and amend these if they wish. However, despite this being a fear for many people across the country, it is unlikely that many employment laws will be amended or removed. For example:
  - The 5.6 weeks holiday entitlement offered in the UK is already in excess of what is required in EU law (4 weeks) and will therefore remain the same. However, recent case law that states commission and overtime should be considered in “normal pay” for holiday pay calculations may be reviewed, as this is a new amendment to this section of employment law.
  - The government may consider reviewing the 48 hour working week restriction as the UK already offers an “opt out” which is considered positive by many employees within the UK
  - Equality laws are unlikely to be amended as the UK had its own equality laws before the introduction of the Equality Act 2010, however, it is possible that the Government will want to introduce a “cap” to discrimination compensation which, under EU law, is currently unlimited
  - The UK rules on protecting employees after a Transfer of Undertaking exceed the EU directive and are unlikely to be repealed. However, the Government may wish to review restrictions on harmonising terms and conditions following a TUPE transfer as these originate in EU case law and are seen as overly restrictive by many UK organisations, a feeling the Government is likely to respond to.
- Right to work checks on EU and EEA nationals will continue to be as they currently are until January 2021. During this time, employers should use the “Prevention of Illegal Working” guidance that was published by the Government in January 2019. EU and EEA nationals who plan to remain working and living within the UK will need to apply for “settled status”, which they have until December 2020 to do.
- Irish citizens are entitled to remain living and working within the UK after Brexit under the “Common Travel Area” agreement.
- A no-deal Brexit will end free movement as soon as possible, which means that free movement could end on 31<sup>st</sup> January 2020. A transitional period will be offered for EU workers up until January 2021, wherein EU citizens will be able to freely travel to the UK for work for a period of 3 months only. Any EU citizen who wishes to stay longer than the 3 months will be required to apply (and be approved) for Temporary Leave to Remain, which will give them the ability to remain living and working in the UK for up to 3 years. After this period of 3 years, the individual would be required to apply for leave to remain under the new skills-based immigration system that will be introduced from 2021, detailed information on this is yet to be provided.
- A new skills-based immigration system will be introduced in 2021, but what this will mean in practice is currently unclear. More information will be announced once Brexit is finalised.
- The Data Protection Act 2018 will remain in effect as the law was passed before Brexit, but there may be changes to the transfer of personal data from the EU to UK organisations as following the UK will be classed as a third country under the GDPR. This will receive more focus from the Government after Brexit is finalised, but it may that organisations will be required to work with the EU organisations they receive personal data from to identify a legal basis for the data transfer, so the transfer of data can continue and be legally compliant.

## How We Can Help

We understand that Brexit and the uncertainty surrounding its implications are frustrating for many employers. The lack of information or certainty on how this will affect employment law understandably impacts employers' ability to prepare for Brexit and ensure that employees are managed appropriately. We will endeavour to provide updated information as soon as it becomes available. If you have any questions related to the content of this newsletter, please don't hesitate to contact us via [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk)