



Do you employ staff?

February 2020 Employment Law Update

Brexit Implications

31st January 2020 – “Brexit Day”

At 11pm on Friday 31st January 2020, the United Kingdom formally left the European Union and entered a “transition period” that will last until 31st December 2020. During this time, whilst the nation is officially no longer a member of the European Union, very little has actually changed in practice and any noticeable changes are considered unlikely. This is because, whilst the Withdrawal Bill has been acted upon, there are still many aspects of our departure that need to be negotiated and agreed on, such as trade, national security and law enforcement, data protection, and access to fishing waters, etc. Even though many people would say we have now left the European Union, in reality, we have only left the political institutions. We are unable to vote on any new European laws that are put in place, but we are bound by them for the next eleven months, and the Court of European Justice still has the final say on all legal matters – including employment law changes and employment tribunal cases. During the “transition period” the UK will be required to design and implement many new systems that will be needed going forward, such as the handling of immigration.

The current “transition period” will end in one of three possible ways: by the UK and EU reaching a successful deal, by the UK and EU failing to reach a deal, or by the “transition period” being extended by up to twenty-four months.

Changes to the Right to Work

During the “transition period”, free movement is still in place. This means that UK nationals are currently free to live and work in the EU, and EU nationals are currently free to live and work in the UK, up until 31st December 2020.

During this time, there will be no changes to your responsibilities when it comes to checking the right to work. However, once freedom of movement comes to an end, this will change, as follows:

- Employees who have lived or worked in the UK for five years or more by 31st December 2020 will be able to apply for “Settled Status”. Once approved, this gives them the right to continue living and working within the UK indefinitely.
- Employees who have lived or worked in the UK for less than five years by 31st December 2020 will be able to apply for “Pre-Settled Status”. Once approved, this gives the employee the right to continue living and working within the UK long enough for them to reach the five-year requirement that will then allow them to apply for “Settled Status”.
- Irish employees’ right to work in the UK will remain unchanged. Irish employees can continue indefinitely living and working in the UK, both during and after the “transition period”.
- EU nationals who enter the UK after 1st January 2021 will be subject to a new skills-based immigration system, which is yet to be designed. We will provide more information on this in due course.

The application processes for both “Settled Status” and “Pre-Settled Status” are currently open and are entirely free. EU nationals have until 30th June 2021 to apply for either status, as long as they lived in the UK before 1st January 2020. However, it makes sense for people to apply for either status as soon as possible if it is their intention to stay. You cannot force your employees to apply for either status, but it makes sense to have open discussions with your employees so you can understand what their plans are, and advise them of what they need to do if they feel it is unclear.

The Home Office has created an “Employer’s Toolkit” that contains several helpful guides for you and your employees. If you wish to reassure and support your employees you may choose to provide these guides in the workplace, so everyone understands their rights and responsibilities as soon as possible. Follow this link to access the toolkit: www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit

Brexit and Other Employment Law

It’s difficult to clarify what Brexit will mean for employment law after the “transition period”, but throughout 2020 it’s unlikely anything will change, as the UK and EU are still negotiating the finer points of any future deal. However, we do know that once the “transition period” is over, our employment law will no longer be dictated by the European Court of Justice. After 31st December 2020, 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 after the “transition period”, 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.

- 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 concern 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.
- 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 Brexit, the UK will receive “third country status” under GDPR legislation. This classification means that the UK will need to maintain robust data laws that provide equivalent protections to those found within the EU, to ensure any personal data transferred between the EU and UK is provided adequate protection. This will be discussed during the “transition period”, but it may be 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 Can We Help?

If you have any queries relating to any of the above, please don't hesitate to contact us at hradvice@hasslefreehr.co.uk. Also, if you think we may be able to support you with outsourced HR Support then please get in touch.