The future for UK employment law post-Brexit

John Pritchard
Consultant
01622 690691
johnpritchard@brachers.co.uk

The European Union is now arguably the leading source of UK employment law and it is impossible to accurately predict the future direction of travel of UK employment law following Brexit.

What follows reflects our current views on the future of UK employment law based on our understanding of the relevant legal principles and the political circumstances.

When will changes be made to UK employment law?

It is highly unlikely that there will be any immediate change, not least because we have implemented all the EU Directives into domestic regulations which remain binding. Simply leaving the EU will not repeal those regulations, the regulations themselves would have to be repealed.

It is likely that the UK courts will continue to treat any decisions of the European Court of Justice as persuasive if not legally binding, at least in the short-term.

Will the UK still have to comply with European Employment Law?

Possibly. The shape of UK employment law is likely to be dictated by the trading model we adopt, whether it is Norwegian model or the Swiss model, or whether we simply rely on our membership of the World Trade Organisation. Depending on the model ultimately chosen, we may remain bound by European employment law in any event.

If, for example, the UK followed the Norwegian model and joined the EEA, the UK would still be subject to most aspects of European employment law.

The Swiss model, involving access to the single market and many bilateral agreements, could also restrict the sovereignty of employment law due to the need to satisfy trading partners.

If we end up with complete freedom from the EU, will UK employment rights be swept away?

This is highly unlikely. Even if we were to adopt a model giving us full freedom, it is unlikely that there would be root and branch reform of UK employment law.

Employment protection in its current form reflects what have become accepted standards of good employee relations practices. The anti-discrimination legislation in particular is commonly understood to reflect fundamental rights. Nor is it likely that the Government would wish to cause any significant disruption to industrial relations.

If changes are made, what are they likely to be?

It can be envisaged that some changes will be made to those unpopular EU-derived laws which are considered intrusive to UK workplace relations and unnecessary red

Continued >

The future for UK employment law post-Brexit

tape for British businesses.

For example, there is every chance that legislation will be introduced to reverse the rulings of the European Court of Justice relating to the continued accrual of holiday entitlement during sick leave and the inclusion of commission and overtime in holiday pay.

There might also be some relaxation of the consultation requirements relating to collective redundancies and transfers of undertakings. It is possible that the 48 hour week will be repealed. Similarly, the unpopular Agency Worker Regulations might be repealed in their entirety.

"Its '*highly professional and knowledgeable*' team is led by the '*thorough and friendly*' Catherine Daw."

The Legal 500

Brachers
With you all the way

www.brachers.co.uk
01622 690691

Head Office
Somerfield House
59 London Road
Maidstone
Kent ME16 8JH

@brachersllp

Brachers LLP