



Employment

What are the legal issues for the application of employment law in the UK following a Brexit?

Issue	Impact	Areas of law affected
Ease of employing workers across borders.	It remains to be seen whether, following Brexit, free movement of workers between the existing EU and EEA states will continue. If not work permits will ordinarily be required.	 All
Working hours.	The UK has traditionally been opposed to the 48 hour working week. In the UK it is subject to individual opt-out which an employee can withdraw at any time without adverse consequence. It is possible that the 48 hour working week will be scrapped or amended.	 All
Business transfers.	The long established Transfer of Undertakings (Protection of Employment) Regulations enshrine the EU Acquired Rights Directive. They protect employees on any business transfer. The current regulations 'gold plate' the EU directive with express provisions dealing with service provision changes. Many states outside the EU have similar laws and it may be inherently unlikely there will be any major change following Brexit. The limitation on harmonising terms and conditions of employment post transfer might go.	 All
Removal or amendment to bonus cap and other CRD requirements.	The UK would have a free hand on bonus caps if the Capital Requirements Directive no longer applies. It can be anticipated that CRD requirements in particular (and many other employment measures) would have to remain in place as an EU imposed price for continued access to the single market. The UK has been reluctant to cap remuneration particularly in the finance sector.	 All
Collective redundancy consultation.	Collective redundancy consultation could be reduced or scrapped. But it has become less onerous since the maximum period was reduced from 90 to 45 days in 2013 and it may be doubtful as to whether this would be high on the priority list of any conservative administration free from EU constraints.	 All

Discrimination.

Uncapped discrimination was as the result of a ECJ decision in 1993. Originally UK law had a low cap. The Beecroft report of 2011 commissioned by the then coalition government recommended a cap on discrimination claims. It is inconceivable that discrimination laws would be repealed wholesale but a cap on compensation could be reintroduced.



All

Accrual of holiday on maternity leave or whilst sick during booked.

Controversial ECJ decisions have established the right to accrue holiday whilst on maternity leave and that time spent on holiday sick should not count towards annual holiday allowance. There would be scope to reverse both outside the EU.



All

Agency workers.

Regulations protecting agency workers and notably establishing equal pay rights subject to a twelve week qualifying service could go.



All

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