

How Brexit is likely to alter UK employment law

24 June 2016 · By [Shané Schutte](#)

A significant proportion of the UK's employment law comes from Europe – including discrimination rights, holiday pay and maternity and paternity leave – so could our "out" vote bring drastic changes to the country?



Image: [Shutterstock](#)

The impact of our "out" vote depends on what is now decided between the EU and UK. EU leaders have made it clear that access to the European free trade area will require Britain to agree to similar regulations, particularly when it comes to employment. As such, unless the government chooses to repeal all EU-derived laws, the changes we'll soon be facing may not be as radical as you might think – it's unlikely Britain would want to completely separate itself from Europe.

Debbie Woskowiak OBE, CEO of Love Home Swap, said: "We are where we are – and now entrepreneurs need to draw on their ability to embrace change"

A Norwegian type model will see us likely stick with the status quo

One option we may soon be facing, according to Karen Bexley, head of employment law at MLP Law, could be to form a Norwegian-style relationship with the EU "by joining the European Economic Area (EEA) and the European Free Trade Area (EFTA). This would allow the UK to keep its economic ties and continue trading in the European single market."

She added: "But by remaining part of this trading block, the UK would still be bound

by some EU policies." As with other areas such as data protection, Britain will need to demonstrate that it has minimum employment protections in place in order to make it a viable trading partner for other European member states, such as TUPE and collective redundancies consultation.

However, "now it would no longer have a say when it actually came to making these laws, a major drawback that should be taken into account if the UK finds itself negotiating a new agreement with the EU," Bexley said.

Primary versus secondary legislation

Given that the majority of EU employment laws have been integrated into the UK as "primary legislation" via Acts of Parliament, they can only be changed or removed if the UK government specifically seeks to do so. "As laws, such as the Equality Act 2010 which comes from the EU's Equal Treatment Directive, are so well ingrained into the UK legal system, it's highly unlikely the government would look to amend them," Bexley added.

Other European laws, such as the Working Time Directive which gives employees rights to paid holiday and rest breaks, have been incorporated into UK law through "secondary legislation". These regulations are introduced by government ministers who have specific powers to do so, granted by the European Communities Act 1972. If the government removes the European Communities Act, it would take away this framework within which European and UK laws integrate and may mean that regulations passed under it also fall away.

Will anything stay the same?

But employers and employees alike will be elated to know that some areas of law will not be changing. The National Minimum Wage, including the National Living Wage, is set by the UK government and so would not be affected. And when it comes to other employee-friendly laws which do come from Europe, such as the right to maternity pay and leave and holiday pay, these are also unlikely to be altered dramatically in the future.

This is because the UK is relatively more generous with these policies – Britain's statutory minimum holiday entitlement currently sits at 28 days per year for a full time employee whilst the EU Working Time Directive requires member states to implement domestic legislation providing for a minimum of only 20 days annual leave.

The points system

In February 2008, the Labour government introduced the UK's first points-based immigration system heralded by ministers as being based on the Australian system, which would allow access to the UK only to those with the skills British firms needed. Thousands of EU migrants, currently in UK company roles, will potentially have to

exit in the future if they fail to qualify under the current system being used for workers outside the EU.

This was further explained by Claire Nilson, senior associate in the labour and employment department at Faegre Baker Daniels, who said: "There will be a period of transition during which bosses should take the time to know their workforce so that, when a new immigration system is determined, those businesses are already placed at that point to start making key decisions promptly and effectively.

"EU nationals (and their family members) in the UK now should consider if they currently qualify to apply for and wish to apply for confirmation of their permanent residence in the UK with a view to applying to naturalise as British. Processing times for these types of applications are likely to lengthen considerably. We are now entering a time of negotiations and, assuming that we do wish to have access to the single market, the cost of that might involve accepting free movement for nationals of EU member states. This is currently part of the deal for Norway, Iceland and Switzerland.

"For the 2m or so British citizens living outside the UK in EU member states and for the substantial number of British people who own properties in those countries, we are now entering a time of uncertainty and negotiations. For those who have resided in that state for more than five years and have maintained throughout that time health insurance and financial self-sufficiency, they should have acquired permanent residency automatically under EU rules. The future is less certain for those who don't meet the requirements."

Edward Wanambwa, partner and head of the immigration team at Russell-Cooke, further added that while there is little prospect of a viable alternative to extending the current points based system in the short to medium term, over time there may be reciprocal "special arrangement" immigration treaties reached with Western European countries such as Germany and France.

What we do know, however, is that we will all need to adapt in some way or another. In the words of Debbie Woskow OBE, CEO of Love Home Swap: "We are where we are – and now entrepreneurs need to draw on their ability to embrace change and deal with adversity by tackling these challenges and carving out a new way forward."

*From prime minister David Cameron suggesting London mayor Boris Johnson was a great friend albeit wrong in opinion, to former shadow business secretary Chuka Umunna and Johnson telling each other to man up, **the Brexit debate has caused a few UK politicians to squabble with each other.***

Edward Wanambwa

Partner

+44 (0)20 8394 6445

Edward.Wanambwa@russell-cooke.co.uk

www.russell-cooke.co.uk