

Brexit and employment law

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Whichever side of the Brexit fence you sit on, there is no doubt that Brexit has the potential for far reaching implications for the UK.

Some have advocated that the UK's involvement in the EU was always a bad marriage and it could prove to be that Brexit is a bad marriage ending in divorce. Like most divorces, this one could be messy, painful and expensive and worse still it's likely to take years to complete. Time will only tell if this is correct.

Looking specifically at the effect that Brexit will have on employment law, although much UK employment law is derived from EU law, the UK's withdrawal from the EU is unlikely to have an immediate impact. When the UK leaves the EU, the [European Union \(Withdrawal\) Act 2018](#) will repeal the [European Communities Act 1972](#) and existing EU law will be converted into domestic law.

Most EU Directives are already implemented in the UK by regulations or Acts of Parliament; for example, the EU Working Time Directives are implemented by the [Working Time Regulations 1998](#). It will be for Parliament to decide whether to retain, amend or repeal domestic legislation and the theory is that they can do this without EU input post EU membership.

Most of the impact of Brexit will be speculative. Commentators have identified the harmonisation of contracts after a TUPE transfer; the calculation of holiday pay; agency workers' rights; and the introduction of a cap on compensation in discrimination claims as examples of areas, currently governed by EU law, where changes could be made in the future by a Government looking to roll back employment regulation.

Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

It is possible that the UK will be required to continue to implement elements of EU legislation as a condition of a negotiated trade deal between the UK and EU.

Many areas of domestic law that are derived from EU law have been heavily influenced by decisions of the European Court of Justice (ECJ), for example working time, TUPE and discrimination law. Under the European Union (Withdrawal) Act 2018, UK courts will not be bound by decisions of the ECJ made on or after the exit date. However, ECJ decisions made before that date will continue to bind UK courts in the interpretation of relevant laws and will have the same precedent status as decisions of the Supreme Court.

If there is no negotiated Brexit deal, the Government has identified two areas that will be affected:

1. employees who work in some EU countries, employed by a UK employer, may not be protected on the insolvency of the employer; and
2. regulations will be amended so that it will not be possible to make a new request to set up a European Works Council or information and consultation procedure.

Such things are unlikely to be pivotal and it is therefore hoped that the impact of a no deal Brexit will not impact employment law to much of an extent.

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