

How will Brexit affect employment rights and obligations?

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Key

In the table below:

- Rights have a wholly domestic origin and will not be directly affected by Brexit.
- Rights existed before we joined the EU or were brought into force independently of EU legislation, but the existence of corresponding EU laws means that the EU case law has affected the way that domestic rights have evolved. The impact of leaving the EU on these rights is therefore more complex.
- Rights have been introduced wholly in response to EU legislation and could be wholly or substantially repealed in the wake of Brexit.

| Nature of right | Impact of Brexit |
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| Contractual rights and wages | |
| Written particulars of employment | The right to a written statement of terms of employment was originally a domestic right but since 1991 has been affected by the Contracts of Employment Directive. If the Directive no longer applies the Government could deregulate certain specific aspects of the content of employment contracts but is unlikely to prioritise this. |
| Right to a minimum period of notice Right to an itemised pay statement Right to be paid the national minimum wage and, if over 25, the national living wage Right to not have deductions made from wages unlawfully Right to pension contribution from employer under auto-enrolment scheme | Purely domestic rights – no equivalent in EU law |

| Termination of employment | |
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| Unfair dismissal | The right not to be unfairly dismissed is primarily a domestic right, but some of the circumstances in which dismissal (or selection for redundancy) is automatically unfair are based in, or protected, under European law, including dismissals related to Transfer of Undertaking (Protection of Employment) Regulations, also known as TUPE, pregnancy or maternity leave, parental leave, acting as an employee representative and asserting working time rights. TUPE dismissals might be a candidate for reform. |
| Written reasons for dismissal Right to a redundancy payment and to paid time off to look for alternative work in the event of redundancy | Purely domestic rights - no equivalent in EU law |
| Whistleblowing rights | |
| Right not to be dismissed or subjected to a detriment in relation to the making of protected disclosures (whistleblowing) | Purely domestic rights – no equivalent in EU law |
| TUPE and collective consultation | |
| Right for contract of employment to transfer from transferor to transferee in event of relevant transfer; Right not to be dismissed or subject to contractual changes in the event of a transfer (unless for an ETO reason) Information to and consultation with appropriate representatives over proposed transfer and its implications | These rights derive from the Acquired Rights Directive and could be repealed in the wake of Brexit. It is likely that some framework for dealing with the employment consequences of business transfers would remain in place. The Government might introduce more flexibility over changing terms and conditions and post transfer harmonization – an area that employers find particularly difficult. Mandatory information and consultation in the context of a business transfer could be abolished and would be a more likely target than individual rights. |
| Consultation with appropriate representatives over proposed redundancies of 20 or more employees within a 90 day period | These rights derive from the Collective Redundancies Directive and could be repealed or moderated in the wake of Brexit. They are considered by employers to be difficult to implement in practice and there is likely to be an appetite for reform. |

| Family rights | |
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| Paid time off for ante-natal care; 26 weeks' ordinary maternity leave and up to 26 weeks' additional maternity leave | EU law (the Pregnant Workers Directive) provides for paid time off for ante-natal care; compulsory two weeks leave after giving birth and a minimum period of 14 weeks leave in total. UK law provides for a far greater entitlement to time off than EU law requires. |
| Right to statutory maternity pay | The Pregnant Workers Directive requires that women on maternity leave receive at least the equivalent of what they would receive on sick leave (i.e. SSP). UK law provides for a more generous entitlement. |
| Right to 26 weeks' ordinary adoption leave, 26 weeks' additional adoption leave and statutory adoption pay Right to two weeks' paternity leave in connection with birth or adoption and statutory paternity pay | Purely domestic rights – no equivalent in EU law |
| Right to shared parental leave and shared parental pay Right to unpaid time off in connection with an emergency affecting a dependent Right to request a change to contractual terms for the purpose of working flexibly | Purely domestic rights – no equivalent in EU law |
| Right to eighteen weeks' unpaid parental leave | A wholly EU derived right. There is relatively little take-up of unpaid parental leave in the UK and reforming in this area is unlikely to be a high priority. |
| Fixed term and part time employees | |
| Right to be treated not less favourably than a comparable permanent or full time employee (and associated rights) | These are wholly EU derived rights and are possible targets for reform post Brexit. |

| Discrimination (1) | |
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| Protection from direct and indirect discrimination, victimisation and harassment: gender reassignment | Purely domestic rights – no equivalent in EU law |
| Protection from direct and indirect discrimination, victimisation and harassment: marriage and civil partnership | Purely domestic rights - no equivalent in EU law |
| The right to equal pay | <p>The right to equal pay has its origin in Labour party policy of the 1960s which culminated in the 1970 Equal Pay Act. It is also guaranteed by Article 119 of the Treaty of Rome (now Article 157 of the EU Treaty) and European law has had an enormous influence on the development of equal pay law in the UK.</p> <p>In the current climate of concern over the persistent gender pay gap it is very difficult to imagine any future Government repealing or watering down the protections in equal pay law. Mandatory gender pay reporting for larger employers is a purely domestic initiative.</p> |
| Protection from direct and indirect discrimination, victimisation and harassment: sex | <p>Although the UK brought the Sex Discrimination Act into force in 1975, UK sex discrimination law has evolved alongside EU law (the Treaties and the Equal Treatment Directive) from the outset. It is difficult to envisage any future Government substantially watering down actual rights in this area.</p> <p>However what a future government might try to do, which it has been prevented from doing before, is to introduce a cap on discrimination compensation. That would be true for any of the protected characteristics listed below.</p> |
| Protection from direct and indirect discrimination, victimisation and harassment and entitlement to reasonable adjustments: disability | <p>The UK introduced the Disability Discrimination Act some years before the EU Equal Treatment Directive came into force. UK disability law has been influenced by EU law decisions, but much of the case law is purely domestic. There is likely to be little appetite for reducing the rights of disabled people at work in the future.</p> |
| Protection from direct and indirect discrimination, victimisation and harassment: pregnancy or maternity | <p>Pregnant women and those on maternity leave are protected by several layers of both UK and domestic legislation. The sharp increase in reported instances of discrimination against them appears to be more related to practical issues of enforceability and access to redress than any gaps in the legislation itself.</p> |

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| | Any reduction in their rights would be contrary to current Government policy and any reduction in the future would be unlikely to gain widespread political support. |
| Discrimination (2) | |
| Protection from direct and indirect discrimination, victimisation and harassment: race | The UK introduced legislation on race relations in 1976, many years before the EU Race Directive was brought into force. Most of the case law is domestic and it is almost inconceivable that the laws protecting people from race discrimination at work would be limited by any future Government. |
| Protection from direct and indirect discrimination, victimisation and harassment: age, religion or belief and sexual orientation | EU law is responsible for the introduction in the UK of rights in respect of three protected characteristics: age, religion or belief and sexual orientation. In theory Brexit would enable the UK Government to withdraw protection for all or any of the three characteristics, but this would be likely to be unpalatable politically. Individuals are also protected by Article 14 of the European Convention on Human Rights which prohibits discrimination in the exercise of rights under the Convention. |
| Working time | |
| Right to 48 hour maximum working week (unless opted out) Right to daily and weekly rest and to rest breaks between period of work Right to compensatory rest in case where the above rights are modified or excluded Right to paid annual leave Right to payment in lieu of holiday on termination of employment | Rights in respect of working time are wholly derived from EU law and have been amongst the most controversial of all EU measures, in particular the limit on weekly working hours and the right to paid annual leave. The latter has given rise to a significant number of decisions on the details of holiday entitlement and holiday pay that employers have found expensive and difficult to apply in practice. Holiday rights would therefore be a likely early target for reform, but it is more likely that reform would be aimed at some of the more controversial decisions of the CJEU rather than a wholesale abolition of the statutory right to paid annual leave. |
| Agency workers | |
| The right to equivalent terms and conditions after 12 weeks continuous service and associated rights | The rights of Agency Workers are entirely a product of EU law and have been in the sights of the Government since the 2010 election. They are a likely target of the post Brexit Government. |

| Other rights | |
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| Right to belong to a trade union | The right to join a trade union is provided for in domestic law (the Trade Union and Labour Relations (Consolidation) Act 1992). It is also regarded as a fundamental right under Article 11 of the European Convention on Human Rights. |
| Right to be accompanied at a grievance or disciplinary hearing Right to time off for various statutory purposes including trade union duties and activities, jury service, public appointments, study or training and pension scheme trusteeships Protection in relation to Sunday trading | Purely domestic rights - no equivalent in EU law |
| Right to protection from detriment for exercising statutory rights which apply to employees | The right not to be subjected to a detriment is primarily a domestic right, but some of the circumstances in which an individual is protected are based in or protected under European law, including dismissals related to TUPE, pregnancy or maternity leave, parental leave, acting as an employee representative and asserting working time rights. |

The information and comments contained herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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