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Brexit and the threat to recruiting from the continent

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Difficulties in hiring low-skilled workers from a British labour market and transitional periods for employees are real concerns for the UK employer not in the EU, writes Kathryn Bradbury

Immigration is once again at the forefront of the political agenda as the EU referendum approaches. In the first quarter of 2015, just over three million EU citizens were recorded as living in the UK, approximately 1.9 million of whom were employed. The potential immigration consequences of a withdrawal from the EU are a subject of concern for employers and EU national employees alike.

When it comes to hiring individuals, a worker falls into one of three categories: British citizen, EU national, or non-EU national. The latter category requires permission to live and work in the UK from the UK immigration authorities. The benefit of EU free movement is that EU nationals (with the exception of Croatia, which has slightly different restrictions) are currently treated the same as British citizens and enjoy full access to the UK labour market. However, should Britain leave the EU, free movement could be lost and EU nationals might need to satisfy the stringent requirements of the immigration rules to live in the UK, and possibly even to visit, although the latter seems unlikely.

Since 2008, the UK has operated the points-based system for investors, entrepreneurs, and workers coming to the UK. Workers sponsored by a UK company licensed by the Home Office must meet salary requirements, in most cases a resident labour market test (where the role must be advertised first to resident workers), and an English language test. This is a complex process, which is subject to frequent changes.

In March 2016 the Home Office announced plans to make it even more costly to hire migrant workers with the introduction of an immigration skills charge of £1,000 per certificate of sponsorship per year of employment, to be paid by employers and to be brought in from 2017. Migrant workers are also expected to contribute to the NHS through the immigration health surcharge, a compulsory payment of £200 per migrant per year. Withdrawal from the EU could deter highly skilled EU nationals from relocating to the UK if they are faced by similar charges in addition to the strict visa requirements.

Transitional provisions

Uncertainty surrounds the status of existing EU migrants living and working in the UK. While it is impossible to predict the outcome of the EU referendum and the potential ramifications for the existing EU workforce in the UK, to avoid significant losses for UK businesses the government may need to agree transitional provisions, whereby EU migrants could stay for a period in return for permission for UK citizens in other EU countries to benefit from the same provisions. These individuals could be given sufficient time to obtain citizenship of the country in which they are residing and to return home if they fail to do so.

Businesses reliant on low-skilled workers report they will have real difficulty filling positions from the domestic UK labour force if the UK withdraws from the EU. The immigration rules do not currently make provision for low-skilled foreign workers and the government may have to implement new rules quickly to prevent businesses suffering substantial losses.

Race to stay

As a result of the uncertainty, EU migrants living in the UK are applying for British citizenship if they qualify to do so. The press is reporting that the sales of the 'Life in the UK Test: Handbook' (the book used to prepare for the English test necessary to achieve British citizenship) have increased significantly in recent months, mirrored by an increase in British citizenship applications.

To qualify for British citizenship, an EU national must have lived in the UK for six continuous years, exercised Treaty rights by demonstrating they have been working, self-employed, or self-sufficient for at least the first five of these years, sit an English language and knowledge of life in the UK test, and satisfy strict residence requirements. Those who do not qualify for permanent residence or British citizenship could apply for a registration certificate from the Home Office evidencing their right of residence, which may put them in a stronger position in the event of withdrawal. The likelihood is, though, that there will be a transition period for those already in the UK.

While the outcome of the referendum is unpredictable, what is already clear is that the uncertainty coupled with the constant restrictions to UK immigration laws is making the recruitment of overseas workers more challenging. Employers are, in some cases, suspending overseas recruitment until the outcome of the referendum is clear. Others are pushing ahead with recruitment to try to get in ahead of any proposed changes.

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