

Article by **Chris Weaver, Associate** and **Orla Bingham, Solicitor in Employment** at **Payne Hicks Beach** first published online in Growth Business UK on 21 June 2016
<http://www.growthbusiness.co.uk/comment-and-analysis/2532296/brexit-and-employment-law.html>



Chris Weaver
Associate, Employment



Orla Bingham
Solicitor, Employment

Brexit and employment law

Chris Weaver and **Orla Bingham**, employment solicitors at Payne Hicks Beach outline the impact of a post-Brexit scenario on employment law and UK's workforce



Chris Weaver and **Orla Bingham**

Date: 21 June 2016

The highly anticipated EU Referendum is fast approaching. In two days, we will find out whether Britain votes to keep its place at the EU table or make its exit, or 'Brexit', the implications of which are being hotly debated.

From an employment law perspective, EU law is the source of many UK employment rights. Brexit would result in Parliament reclaiming sovereignty so that national laws would no longer need to reflect EU legislation.

However, in reality, it will be slightly more complicated than that. Any exit from the EU would not happen overnight. It is forecasted to take a minimum of two years for Britain to make transition arrangements and changes are not expected during this time. Brexit is therefore unlikely to have any immediate impact on UK employment law.

Britain is also expected to maintain a mutually beneficial relationship with the EU following a vote to leave. It is unknown what form this relationship would take, there has been some discussion that it may follow the Norwegian or Swiss models, but a bespoke arrangement is perhaps more likely. As part of this arrangement there may be an expectation for Britain to abide by most (if not all) EU employment laws to ensure its employment regulations remain on a par with those of the rest of the EU for trade purposes. However, the precise dynamics of any such relationship are yet to be established.

In any event, it is unlikely there will be widespread changes to existing employment laws for various reasons, not least because drastic changes would lead to confusion and ambiguity for both employers and employees.

Furthermore, some UK employment rights stemming from Europe have become so fundamentally engrained in workplace cultures that their repeal would be highly unwelcome, for example, rights related to discrimination, part time and fixed term workers and rest breaks. Additionally, some UK employment rights already surpass EU minimum requirements, (e.g. family leave rights) and are therefore unlikely to change.

It is more probable that changes will be applied individually over time, by incorporating minor piecemeal adjustments to specific legislation rather than wholesale abolition of EU derived rights. It is anticipated that only more unpopular and burdensome laws for employers will be likely targets for reform, for example:

- Aspects of the Agency Workers Regulations
- Restrictions on harmonisation following TUPE transfers
- Certain rules under the Working Time Regulations
- Rules on collective redundancies
- Unlimited compensation in discrimination claims

In terms of pre-existing EU case law, UK Employment Tribunals will not be able to immediately disregard this. Many of these judgments have already been incorporated in UK law by UK courts following a European decision. Past decisions will therefore remain binding on Employment Tribunals even if there is an exit from the EU. This will only change gradually over time if higher courts choose to change their position and deviate from EU decisions. Furthermore, in the future, Tribunals are still likely to look to EU cases as persuasive authority, even if they are no longer binding.

As such, whilst Brexit would be heralded as a significant political event in UK history, from an employment law perspective, it is unlikely to have a substantial impact. Certainly in the short term, very little is likely to change at all. In the longer term, whilst some changes would seem inevitable, these are likely to be limited and take place gradually. However, the reality is that much will depend on the nature of Britain's ongoing relationship with the EU and that is far from certain, so it may be some time before Brexit's actual impact on UK employment law becomes clear.