

Potential Implications of Brexit

Insights

4.11.16

Britain and the EU have traditionally had a distant relationship, with Britain often choosing to keep an arm's length from its continental partners. This inclination may soon become a political reality when the UK votes on whether to stay in the EU this June. In spite of this historical distance, many labor and employment laws in the UK such as those relating to maternity and paternity leave, discrimination, and work time bear the imprimatur of EU directives. Given Britain's history with the European Union, it might appear that if the UK leaves the EU, changes in this area of the law will be broad and swift. However, the reality is that despite grumbling of bureaucratic red tape from Brussels, many of these laws have become integrated into British life, and should a "Brexit" occur, changes are likely to be gradual and narrowly tailored.

If the UK votes to leave the EU, British courts will no longer be required to follow the rulings of the Court of Justice of the European Union (CJEU). While seemingly simple on its face, complications are likely to arise. For example, it is unclear how British courts would be expected to interpret domestic law based on EU law while the UK plans its departure. It is much more likely that the British government will maintain the status quo, at least in the short term, in order to avoid uncertainty. With negotiations for the UK's exit from the EU likely to take some time, affected areas of employment law are unlikely to see much change.

Taking the long view, the impact on British law will largely depend on the parameters of the relationship between a non-member UK and the EU. If, for example, the UK were to remain part of the European Economic Area, little would change. It is more than likely however that whatever form a "Brexit" takes, the EU will require the UK to retain certain laws as part of any deal. What's more, even if the UK returns to setting its own laws, it is unlikely that government or industry would allow major changes over night. EU labor and employment laws have become the norm, and it would be politically undesirable to initiate large scale changes such as adjusting the minimum wage.

Rather than major changes, expect to see rules simplified and streamlined. For instance, holiday pay might be re-structured such that employers no longer need to take into account overtime, commission, and other allowances when calculating holiday pay. Other areas of employment law may not change at all, or could even be reinforced. Laws prohibiting discrimination in the workplace for instance will remain in force, while maternity/paternity leave requirements may be reinforced or even expanded given the recent drive to become "the most family-friendly country" in Europe.

One area that may see significant change however would be freedom of employee movement throughout member states. One of the founding principles of the EU is the freedom of individuals to move among member states, allowing individuals to reside and work throughout the EU with relative ease. A Brexit could fundamentally restrict employee mobility into and out of Britain, adversely impacting the ability of employers to hire from Continental Europe.

In conclusion, while there will inevitably be changes in British law should a “Brexit” occur, the consequences are likely to be minor adjustments rather than large-scale overhauls. Whatever changes occur will likely take place over time as both employers and government navigate the new order.

Related People



Robert Fallah
Attorney
610.230.2150
Email