Insights, News & Events

WHAT DOES BREXIT MEAN FOR INTERNATIONAL EMPLOYERS?

Insights
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On June 23, 2016, in a hotly contested referendum, British voters chose to leave the European Union in a contest dubbed “Brexit” (for “British exit”). It will take some time before the full implications of this decision become apparent to employers with operations in the UK.

Thankfully, very little is likely to change in the short term, providing employers time to plan and adapt to changes as new information becomes available. Exiting from the EU is governed by the Treaty on European Union Article 50, also known as the Lisbon Treaty. That Treaty provides a two year negotiation period (longer if agreed to by the parties) to determine the specifics of withdrawal. During the negotiation period, the UK will remain a member of the EU and continue to abide by EU laws and regulations. After Article 50 is triggered and during the ensuing negotiations, it is more likely that we will come to understand the long-term impacts of withdrawal.

While the results of negotiations will depend on a number of factors, there are several likely outcomes, with each scenario offering differing levels of connection between the EU and UK:

The Norwegian Model: This option might be called the “nearly but not quite” model. It would allow the UK to remain in the European Economic Area/European Free Trade Area, thus minimizing tariffs. This option will likely prove unpopular to “Brexiters” since it would require that the UK remain subject to EU legislation but with no voice in the legislative process.

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This option would also require the UK to remain subject to the European Court of Justice. Furthermore (and most likely to offend the "Leave" campaign), the Norwegian Model allows "in general terms" for the free movement of workers.

The Swiss Model: This model would keep the UK as a member of the European Free Trade Area by negotiating a series of bilateral treaties with the EU. This option leaves socio-political issues largely open, and depending on the strength of the UK's position during negotiations, may allow the UK to attempt unilateral action within those spheres.

The Turkish Model: In this scenario, the UK would remain part of the Customs Union without full membership in the EU, thus reducing cost and legislative oversight compared to remaining in the EU. However, doing so would severely limit the UK's ability to negotiate other international trade deals outside of the EU.

Total withdrawal from the EU: Should the UK decide to end any relationship with the EU, substantial changes could happen very quickly. If the British government repealed the European Communities Act of 1972 (the act which enables domestic implementation of EU Regulations), then all legislation made under it would be void. This would result in a great deal of uncertainty, and seems an unlikely outcome. However, if last week's vote taught us anything, it's to expect the unexpected.

What Does This Mean For International Employers?
Even with the general assurance provided by any of the above models, the impact on the rules governing employers will take time to become fully realized and uncertainty will remain for some time to come. Although the Brexit would not revoke EU derived legislation, the requirement for the existence of some laws would fall away.

The British government would then put forward proposals for consultation on which legislation it wishes to retain, amend or revoke. Given the host of issues which will need to be sorted out in the next two years, employers will have some time to prepare for any changes which may occur. Specific areas to be considered include:

Employee Mobility: One area of concern is the future of EU citizens currently working in the UK, as well as the ability to recruit EU citizens for British work sites. Employees who have resided in the UK for more than five years may be

eligible to apply for permanent residence, providing some certainty for employers. It is unlikely that others who have been in the UK for a shorter period will be affected during the two year negotiation period.

Employers should begin to monitor immigration status of employees, and begin planning what steps to take based on the outcome of negotiations. On a similar note, employers may, for the time being, continue to hire and recruit employees from EU countries as before. Employers should expect to see changes in this area and should pay particular attention to how talks address the status of recruits from the Eurozone.

Employment Litigation: While the UK has had its own discrimination laws since the 1970s, case law from the ECJ has directly influenced more recent laws such as The UK Equality Act of 2010. Europe's influence on the terms and conditions of employment in the UK has been seen in other areas including, but not limited to, working hours (the EU Working Time Directive), removing the cap on compensation claims, and expanding the boundaries of associative discrimination.

With so many rules having become enshrined in day-to-day business, it is most likely that we will see only the most unpopular regulations, such as legislation concerning working time, amended or revoked.

Transfer of Undertaking (Protection of Employment) Regulations of 2006 ("TUPE"): TUPE reflects the UK's implementation of the EU Business Transfers Directive and forms an important part of UK labor law, protecting employees whose business is being transferred. Many employers consider it especially complex and it may therefore come under scrutiny during negotiations. However, like other EU inspired pieces of legislation, TUPE has become ingrained within the workplace, and employers may only see piecemeal change in this area.

Employee Privacy: EU-derived data protection laws impact the transfer of employee data out of the EU. This area will see increased regulation when the General Data Protection Regulation (GDPR), adopted in April of this year, comes into force in 2018. The Brexit vote creates significant uncertainty over the future of this legislation in Britain, and will likely impact preparations by international employers in reaction to the GDPR.

In conclusion, there will inevitably be changes in British law now that a Brexit has occurred. In the short term while negotiations are taking place, very little is likely to change. Employers should take advantage of this “grace period” during negotiations, bearing in mind the possible models which may be adapted. International employers should pay specific attention to the areas listed above. These are likely to be hotly debated during negotiations, and will likely have important consequences for the multinational employer doing business in the UK.

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