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# Brexit & Employment Law

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# Brexit & Employment Law

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## The Brexit debate heats up but what would it mean for employment law?

You will not have been able to escape the fact that there is a referendum in the UK this week in relation to our membership of the European Union (EU).

There has been much media coverage about this impending “in-out” referendum but what would be the likely implications for employment law?

## Possible implications of a Brexit

Currently, as the polls stand it looks like we will remain in the EU. Clearly, if the “in” vote succeeds then little will change.

## But what if we do elect to Brexit?

A significant proportion of the UK’s employment law comes from the EU. This includes:

- Discrimination rights;
- Collective consultation obligations;
- TUPE;
- Family leave;
- Working time regulations; and
- Duties to agency workers.

In theory therefore, if the UK votes to leave the EU, the UK government could repeal all of this legislation. Clearly this would lead to massive changes to the landscape of employment law. However, even if we do Brexit, the Government is very unlikely to throw out all of our current laws on the above all in one go.

## What is likely to happen?

Instead, it is far more probable that EU law will continue to exercise a significant influence on us even after a potential Brexit.

**Why is this?** A common perception is that EU law can “tie us up in knots”, so why wouldn’t we abandon it if we were able to?

Some EU employment laws merely incorporated protections that were already provided by UK law. For example, UK equal pay, race and disability discrimination laws preceded EU anti-discrimination obligations. Similarly, there was a UK right to return to the same job following maternity leave before EU maternity leave rights were implemented. It is not likely that the Government would want to row back on these protections that they pioneered initially.

Some of our laws actually go further than the EU law on the same subject – such as our family friendly leave rights. It would seem odd for the Government to implement enhanced rights over and above the EU requirements, and then seek to repeal it.

An even more compelling reason for the UK to continue to observe EU law is the need to stay in a relationship with the EU. From what we are hearing at the moment, the price of a trade agreement with the EU is likely to be an adherence to a certain amount of EU employment and social protection.

## So, what, in reality may happen if we vote to Brexit?

- **Discrimination rights**

Any significant changes to the Equality Act 2010 would be highly unlikely.

Some commentators have suggested that, free from EU constraints, a cap could be imposed on discrimination compensation similar to that for unfair dismissal. Another possibility is that the Government could change the law to allow positive discrimination in favour of under-represented groups in a way that is currently impermissible under EU law.

- **Collective consultation obligations.**

Collective redundancy consultation obligations were reduced by the last government. The obligation is now not particularly onerous and trade unions are likely to fight any plan to remove it altogether.

Other collective consultation rights such as works councils and transnational works councils are possible candidates for removal, but the obligations imposed by them, especially on schools, are relatively light.

- **TUPE**

TUPE can attract a lot of negative press but the principle that employees in a transferring undertaking or service should transfer with it is often useful for schools and is factored into the transfer arrangements

Although there may be some schools that would like to get rid of TUPE, it seems more likely that, following a Brexit, the Government would make small changes to make it more user friendly. For example, it might choose to make it easier to harmonise terms following a TUPE transfer. This would be an advantage for multi academy trusts wanting to roll out their terms and conditions to staff in schools that join it.

- **Family leave**

Rights to parental and family-related leave in the UK are a mixture of rights deriving from the EU and rights originating in the UK.

UK maternity leave and pay preceded the EU rights and are more generous than those rights in some respects. The right to shared parental leave and the right to request flexible working are purely domestic in origin. Accordingly, although some critics consider these rights to be a burden on schools, there seems little political appetite for their repeal or even for watering them down.

- **Working time regulations**

The right to statutory paid holiday is now well established and it would be deeply unpopular with workers and trade unions if it was removed. This right is also now broadly accepted by most employers. For these reasons, a wholesale repeal of the Working Time Regulations 1998 (WTR) is unlikely.

However, there are aspects of the right to paid holiday and other rights under the WTR that the Government may want to amend if it was not prevented from doing so by membership of the EU. Various European decisions on holiday pay are unpopular with UK organisations, for example the right to keep accruing holiday while on sick leave and the fact that holiday pay should be based on all aspects of remuneration, not just basic pay.

Changes to rules about paid annual leave are most likely to impact upon those employees on 52 week contracts.

Following a Brexit, the Government may choose to deal with these unpopular elements by legislating to clarify the position.

- **Duties to agency workers**

The most obvious candidate for complete revocation is the Agency Workers Regulations 2010 which are complex, unpopular and

have not yet become embedded in a way that might make them politically difficult to remove.

Changes to these rules may impact upon the way schools are able to engage supply staff.

### **What does this mean for me?**

As an employer, your school will need to comply with any changes to employment law that result from the UK's exit from the EU. If we do Brexit, the process of disentangling the UK from its EU commitments will be a lengthy process.

The UK is required to give two years' notice of an intention to leave the EU. During this period, the parties would negotiate the terms of the departure and it is likely that new trade arrangements would be put in place. The Government could then gradually repeal EU-derived employment laws, if it chooses to, or modify them to make them more suitable to UK employers. Alternatively of course they may decide to take no action at all.

It is unlikely that the Government would want employers to deal with an avalanche of legal changes following a potential Brexit. What seems more likely is that they will take a piecemeal approach, keeping the majority of EU employment law but with minor modifications. Any changes that are made may take years to become law.

Ultimately, even if the UK were to leave the EU, it seems unlikely that UK employment law would be transformed in significant ways, at least in the short term.

If you want any advice in relation to how a potential Brexit may affect your school, or on any other aspect of employment law or HR, please do not hesitate to contact the Flint Bishop Education Team on 01332 227 596 for a confidential chat.

# Legal Services Overview

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## Commercial Services:

### Commercial Contracts:

- Agency & Distribution
- Bribery Act Compliance
- Data Protection
- IT & e-Commerce
- Intellectual Property
- Outsourcing & Supply Agreements
- Public Procurement
- Terms & Conditions

### Commercial Property:

- Conditional Sale Agreements
- Development Agreements
- Joint Ventures (*as part of a wider team construction & public procurement*)
- Land Acquisition & Disposals (*including options*)
- Leases
- Planning / Section Agreements
- Profit Sharing / Overage Agreements
- Property Acquisition & Disposals
- Property Management

### Construction & Engineering:

- Adjudication
- Alternative Dispute Resolution (ADR)
- Appointment Documents for Professional Consultants
- Arbitration
- Building Contracts
- Dispute Management
- Litigation
- Security Documentation

### Corporate Finance:

- Acquisitions & Disposals
- Acquisitions Finance
- Buy-outs
- Company Secretarial Services
- Corporate Governance
- Joint Ventures
- Loan & Security Arrangements
- Partnerships
- Property Finance
- Reorganisation & Restructuring
- Shareholder Relations

### Dispute Resolution / Debt:

- Commercial Contract Disputes
- Shareholder and Partnership Disputes
- Insurance Disputes
- Injunctions
- Professional Negligence
- Alternative Dispute Resolution
- Property Litigation
- Insolvency
- Debt Recovery

### Licensing & Entertainment:

- Alcohol & Entertainment Licensing
- Betting & Gaming Licensing
- Regulatory Advice & Prosecutions
- Reviews & Enforcement
- Training

## Employment Law & HR:

- Contracts and policies
- Disciplinary matters
- Sickness and absence
- Capability
- Redundancy / restructuring
- Unfair dismissal
- Discrimination
- Restrictive covenants / restraint of trade
- TUPE
- Settlement agreements

## Private Client Services:

## Family & Divorce Law:

- Divorce
- Financial Matters
- Children Issues
- Cohabitation
- Civil Partnerships
- Pre-nuptial Agreements

## Residential Conveyancing:

- Buying / Selling Property
- Re-mortgaging
- Transfer of Equity
- Right to Buy
- Probate Sales

## Wills, Probate, Tax & Trusts:

- Wills
- Probate
- Lasting Powers of Attorney
- Court of Protection
- Inheritance Tax Planning
- Trusts

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