

Brexit: What has changed in the world of Employment law since 1st January 2021?

Now that the UK has left the EU, some aspects of employment law will change – and some may. We explain the changes and predict what might happen elsewhere.

At present, within the UK, employment law has remained almost exactly the same since 1st January 2021, when the UK withdrew from the EU completely. The only areas which have been affected by withdrawal, at present, are:

- Employer insolvency for UK employees working in the EU;
- Membership of European Works Councils;
- Employing EU citizens;

The government has also released a checking tool known as "[Brexit Checker](#)". This helps individuals and businesses understand what they need to have in place given the transition.

Employer insolvency for UK employees working in the EU

When a company becomes insolvent, and as such is unable to pay employees statutory redundancy pay, the employer can seek to claim statutory payments from the national guarantee fund of the EU member state in which that employee lives in.

After 1st January 2021, where a UK employee who is working in an EU country on behalf of a UK employer is told the UK employer has become insolvent, that employee may still be protected by the national guarantee fund established in the EU country in which they work.

However, their individual rights may differ in each country depending on how that country has opted to extend its protection to non-EU employers and employees; in which case, local legal advice will need to be obtained around eligibility for the national guarantee fund.

Membership of European Works Councils (EWC)

From 1st January 2021, European Works Councils (EWCs) will not be able to operate as they did previously. Anyone employed in the UK is no longer able to ask their employer to set up a European Works Council. Only requests to set up a European

Works Council submitted before 1st January 2021 are permitted.

Multinational companies will need to decide what to do about the ongoing involvement of any UK reps in their EWC. Where a multinational company has a head office in the UK, or a UK rep in their EWC, a new rep that is based in an EU member state will need to be assigned instead.

Employing EU citizens

The EU Settlement Scheme fully opened on 30th March 2019 and the deadline for applicants is 30th June 2021. To be eligible for settled status, a person will typically need to:

- be an EU citizen, or a family member of an EU citizen;
- have started living in the UK by 31st December 2020;
- have lived in the UK for a continuous 5-year period (have 'continuous residence')

If a person is an EU citizen, they will be able to apply for either settled or pre-settled status to continue living in the UK after 31st December 2020. Employers may support EU citizen employees and non-EU citizen family members to apply to the EU Settlement Scheme by directing them to the Government information available. It is the responsibility of the individual (the employee) to make an application to the EU Settlement Scheme. There is no requirement for the employee to inform their employer that they have applied or the outcome of their application. Likewise, the employer should not check that an employee has applied. More employer guidance around this subject can be found [here](#).

From 1st January 2021, those who are not eligible to apply for the [EU Settlement Scheme](#) (EUSS), are subject to the new UK points-based immigration system. There will be no change to right to work checks until after 30th June 2021 and employers will not be required to undertake retrospective checks on existing EU employees. For more information, [click here](#).

Disclaimer:

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British citizens wishing to stay in Ireland

British citizens continue to have the right to live and work in Ireland as part of the [Common Travel Area](#). You can read about residence rights of UK citizens [here](#).

Irish citizens wishing to stay in the UK

If you are an Irish citizen and you want to continue living in the UK, you do not need to apply to the EU Settlement Scheme. Your rights to live, work and access public services in the UK are protected under the [Common Travel Area](#) arrangement. However, even though you do not need to apply to the scheme yourself, your family members from outside of the UK and Ireland will need to [apply](#).

Unofficial predictions of potential changes to come

At present, no UK government or political party has admitted to any intention to amend workers' rights in the UK after Brexit. However, the assumptions and speculations being made within the professional employment law arena are that there may well be some areas of employment law, in particular those which derive from EU law, where changes may occur such as:

- 1. TUPE collective consultations** – It is predicted that TUPE will fundamentally remain the same but with a potential relaxation of the requirement to collectively consult, regardless of how many people are affected by the transfer.
- 2. TUPE harmonisation restrictions** – It is predicted that the rule preventing harmonisation in TUPE post-transfer may be removed, which - if it does happen - will be a welcome change for many employers. The rules around harmonisation were brought in following a European Court of Justice case in Denmark of *Foreningen v Daddy's Dance Halls* in 1998.
- 3. Redundancy** – It is predicted that, as with TUPE collective consultation, there will also be a relaxation of compulsory collective consultation in redundancy situations, which at present involves either union reps or elected employee reps. However, even in the event that this is relaxed, we anticipate that the requirement to consult with individuals will still remain in place and will continue to apply regardless of the number of individuals at risk.

- 4. Working Time Regulations (WTR)** – It is predicted that there may be three potential changes to the WTR:
 - a) The rule which says workers without a fixed office should include in their working time any time they spend travelling to and from their first and last appointments may be removed to come into line with the rest of UK commuting law.
 - b) The 48-hour working week may be removed.
 - c) Holiday pay may revert back to the previous method of calculation, which did not include regular overtime, commission etc.
- 5. The Agency Worker Regulations 2010** - may potentially be removed completely.
- 6. Discrimination** - We anticipate there will be no changes to the current nine protected characteristics. However, it is likely that we may see a cap introduced for discrimination awards in the employment tribunals.
- 7. Family friendly laws** – At present under UK employment law, 'family friendly' rights, such as maternity, are actually more generous than other countries so we expect to see no changes to these laws.

It is important to note that all the above are potential changes which may or may not take place, but it certainly paints an interesting picture of what the possible future landscape of employment law will be.

Further guidance available:

- [EU Settlement Scheme: employer toolkit](#)
- [PBSI Employers Campaign](#)
- [EU Settlement Scheme - General Materials](#)
- [Frontier Worker Permit](#)



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