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K&L Gates Brexit Task Force

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BREXIT: Employment Law Implications

Although much of the UK's current employment law framework derives from the EU, it seems unlikely that the UK's exit from the EU would result in significant legal changes, at least in the short term. There are several reasons for this.

First, the UK Government would be concerned at the impact on the economy if sudden, wholesale changes to well-established employment principles were to be rushed through at once. This would create a period of uncertainty for businesses at a time when economic confidence is already fragile. Many employment rights that originated at EU level, such as paid holiday or the right not to be discriminated against, are generally considered to be good things. Even TUPE is now generally accepted (as shown by the recent Government consultation on proposed changes) and many commercial agreements have been priced, drafted and signed on the basis that it applies. Instantly abolishing TUPE would cause commercial havoc. The Government may identify a handful of less popular pieces of legislation which it considers could be removed without too much disruption, such as the Agency Workers Regulations 2010 and even the limits on bankers' pay contained in CRD IV, but it will be reluctant to implement a wholesale purge of any laws that have ever come from the EU.

Secondly, even if the UK leaves the EU, the desire to maintain some sort of free trade agreement with the EU (either by joining the EEA or negotiating bilateral agreements) will mean that the UK is still likely to be required by the EU to maintain minimum standards of employment protection to prevent the UK being able to undercut EU states through lower employment standards. Although the UK may be able to negotiate certain exemptions from the full range of EU laws, current EEA EFTA states (Norway, Iceland and Liechtenstein) are obliged to accept the majority of EU regulations without being part of the EU decision making process, and the UK is unlikely to be much different if this is the path it chooses to follow.

The one area where the impact of Brexit is likely to be felt most acutely is in relation to immigration. One consequence of Brexit could be that EU nationals lose the automatic right to work in the UK, and vice versa for British nationals in the EU. Companies should now be considering the demographic of their work force as well as their current recruitment practices to understand the extent to which this could cause problems for their business: the use of EU nationals is widespread in certain industries in the UK. Although it is likely that some form of freedom will be retained as part of any continuing trade deals, given the fundamental importance of the principle of free movement of workers to the EU, this is an area where businesses could sensibly carry out some form of planning for the worst case scenario.

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