Brexit Update

The aim of this regular newsletter is to inform our readers of interesting developments in labour and employment law around Europe. This month, one topic dominates—the possible withdrawal of the United Kingdom from the European Union.

It will be many months (probably even several years) before we know the final shape of the political settlement the UK reaches with the EU. The UK's possible exit raises many questions, and at the moment it is impossible to give precise answers. Here are a few Q&A that will give you a flavour of the issues.

Q: If the UK leaves the EU but negotiates a deal allowing it access to the single market, will it still be able to write its own employment laws?
A: Unlikely—Norway's membership in the European Economic Area (a looser arrangement than membership in the EU) provides it with single-market access. One condition of EEA membership is that Norway has to implement many EU laws, including many of the directives on employment-law matters.

Q: If the UK exits the EU without negotiating a single-market deal, do all EU-based employment laws simply cease to apply?
A: No. Nearly all EU employment laws have been adopted by EU-wide directive. Directives require national legislation in order to be implemented and the resulting UK statutes and regulations would survive any exit, unless and until amended or repealed. The UK has a large body of employment law that Parliament approved under both statute and statutory instrument. These will still be in place after any exit and would need to be specifically repealed or amended.

Q: So which employment laws are vulnerable to repeal and reform, assuming the UK does exit the EU?
A: The precise shape of the UK's future employment laws will be substantially determined by politics. If, at the time of any exit, the government is a Labour Party-led administration, it is highly unlikely that there will be any significant watering down of employment laws. If the governing party at the time is the Conservative Party, there is likely to be some change, but it is unlikely to be a bonfire of employment laws. There are a couple of notable reasons for this.

First, many key statutory employment rights pre-dated UK membership in the EU. Examples include unfair dismissal rights, sex and race discrimination and equal pay. The

UK also adopted disability discrimination laws years before there was an EU directive on that issue. Leaving the EU would not establish any rationale for abandoning such laws.

Second, the UK has gold-plated many laws that have come out of the EU. Examples include maternity and parental rights; Transfer of Undertakings laws, or TUPE; and minimum periods of annual holiday. So it is highly unlikely that these laws would be subject to significant change.

Other laws are more obvious candidates for review after exit. These include the following:

- Agency Worker Regulations, which are not popular and are seen as very bureaucratic.
- Specifically European-flavoured laws, e.g., the European Works Council and Posted Workers Directives, which would have little relevance if the UK was outside the EU.
- European Court of Justice case law concerning accrual of holiday while employees are sick, as well as the calculation of holiday pay on the basis of average rather than base pay.
- Some consultation obligations, e.g., collective consultation where 20 or more people are made redundant, which have always sat slightly uncomfortably with UK businesses.

Belgium

Proposed legislation has been filed in the Belgian Parliament that would oblige employers to provide to all rejected job applicants the reasons they were not hired. This explanation must be given in writing within 30 calendar days. If the employer does not provide the explanation within the above-mentioned period, the job applicant would have six months to file a claim in the Labour Court. If noncompliance is found, criminal sanctions could apply (imprisonment of eight days to one month for management), and/or fines of €156 to €3,000 may be applied. The matter will be debated by the Belgian Parliament. We will report again once a decision has been made.

Italy

In Italy, trade unions and labour offices must be notified of any proposed use of closed-circuit television in the workplace. The Labour Minister has issued a note of clarification on the relevant law, stating that this requirement applies even if the system is not operational when it is installed. Criminal sanctions apply to the managers responsible. So it is key to remember that notification must occur *before* any action is taken, not after the system is actually in operation.

The United Kingdom

It's back to the UK for the final piece in this edition. Employees might want to think twice before taking client records with them to the next workplace. In an interesting development that is potentially very helpful to employers, the Information Commissioner's Office, or ICO (the body responsible for the enforcement of the UK Data Protection Act 1998), recently prosecuted and fined a former employee who, prior to leaving the company to work for a competitor, emailed the details of 957 clients to his personal email address. The documents not only consisted of personal client data (including contact details and purchase history), but also contained commercially sensitive information.

This is a clear reminder that unlawfully obtaining personal data is a criminal offence under

section 55 of the Data Protection Act. Whilst the offence is currently punishable only by fine, the ICO continues to call for harsher sentencing, including imprisonment, to be made available to the courts as a deterrent to the unlawful use of personal information. The threat of such action, leading to a criminal record, may significantly improve the employer's hand in discussions when employees leave with the intention of causing problems.

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