



Solutions

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Hot Topics

The retained EU law bill - what will it mean for employers and workers' rights?

In this month's newsletter, we take a more in depth look at the possible implications of the of the Retained EU Law (Revocation and Reform) Bill, focusing on what this could mean for employment law and our clients. The bill has received little attention so far amid the recent political and economic turmoil, but it is set to play a profound role in the government's economic agenda, with potentially favourable outcomes for employers and their businesses. The bill seeks to impose a "sunset" on most retained EU law by the end of 2023, meaning that all retained EU law contained in domestic secondary legislation and retained direct EU legislation will be revoked on 31 December 2023 (or a later date before 23 June 2026, if agreed) unless a decision has been made to preserve it. This includes law that we deal with daily, such as TUPE, Part-Time and Fixed Terms Workers Regulations, Equal Pay, Agency Worker rights, Gig workers, IR35, and the Working Time Regulations.

This means that over the next few months, government departments and the devolved administrations, will need to decide which retained EU law can expire, and which should be incorporated into domestic law.

The government has stated that it *"will ensure that only regulation that is fit for purpose and suited for the UK will remain on the statute book"*. The Bill aims to *"enable the UK government to create regulations tailor-made to the UK's own needs, cutting red tape and supporting businesses to invest"*.

Ministers will be given the freedom to make major changes to EU-derived employment protections through statutory instruments, rather than acts of parliament, meaning they can get the job done with far less scrutiny.

An important ideology for proponents of Brexit was for the UK to reclaim its Parliamentary sovereignty. Currently, if there is a conflict between UK and EU law, EU law takes priority. Any EU decision reached before 1 January 2021 is binding, except on the Supreme Court and Court of Appeal. This stops on 1st January 2024, and will impact, for example, on how the courts look at "normal pay", which under EU law, is interpreted to include all aspects of remuneration, such as commission, bonuses, and overtime, and not just basic pay. This has been the source of a controversial raft of holiday pay litigation over the years.

Since Brexit, the government has maintained its intention to preserve and enhance workers' rights. Whilst it is difficult to predict the implications with accuracy, there will certainly be significant upheaval in the employment law arena. It will be interesting to see if the bill is used as an opportunity to implement the government's promise, to preserve and enhance workers rights, or whether they will deregulate some areas of employment law in favour of employers. The Working Time Regulations, and regulations in relation to agency workers, part-time workers and fixed-term employees are all likely to be subject to some measure of reform, as are the Information and Consultation of Employees Regulations and various health and safety regulations.

TUPE could also be subject to change; it is expected that TUPE reform will focus on simplification and making things more business friendly. For example, it might choose to make it easier to harmonise terms following a TUPE transfer, which is currently unlawful under corresponding EU law. This would surely be met with a welcome sigh of relief for employers involved in business transactions, where navigating their obligations under TUPE can be particularly problematic, expensive, and administratively cumbersome.



Hot Topics

Continuation

When employers propose largescale redundancies or changes to terms and conditions, they must comply with the collective consultation requirements contained in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULCRA”). Commentators have speculated that this is another area of law derived from the EU which may see changes under the bill. This may involve reducing “red tape” and implementing less prescriptive obligations and penalties for noncompliance, although any far-reaching changes would be extremely unlikely given the Trade Unions’ interests and effectiveness in protecting such rights.

The Working Time Regulations 1998, imposed positive obligations on employers to ensure that working hours were not excessive and mandated rest breaks and minimum annual leave. But how likely is it that these rights will be scrapped? The statutory minimum entitlement to 5.6 weeks’ paid holiday for all full-time employees is generally accepted by employers, and a shift away from this is unlikely. However, we may well see changes in the way that holiday pay is calculated, particularly given recent cases that, by many, are seen to be unduly favourable to employees. We may also see the scrapping of the 48-hour working week, given that opt-out agreements are a common feature in the UK workplace.

Employment laws contained in primary legislation will, by and large, be unaffected. The Equality Act 2010, for example, will remain in force even if the legislation that incorporates EU law is repealed. The Employment protections under the Employment Rights Act 1996 will also continue.

Whilst discrimination law reform is unlikely, the government has previously considered reform focussed on capping the upper limit for discrimination awards in the Employment Tribunal. This was not possible at the time due to EU law, but the new bill means that a compensation cap for on discrimination awards could now be back on the agenda.

In the present socio-political and economic climate, businesses are struggling with the post-pandemic recovery, an unprecedented rise in energy prices, soaring inflation, and a collapse in the pound. Who knows if this government may take a gamble to deregulate some areas of employment law to benefit businesses with a view to increasing productivity and the free market. In times that are already uncertain enough, employers will not relish the prospect of also having to keep on top of changing employment rights.

HR Solutions can provide advice to you on all aspects of HR and employment related issues.

If you have any queries you would like us to assist you with, please email the team: hrosolutions@mhllp.co.uk

In order to continue to raise awareness and promote HR Solutions, please see below some examples of the work that we have done recently.

Office

Type of work

London

Helping our client manage a long term capability matter involving an employee who has had numerous episodes of long term absence, and has been on light duties and reduced hours for over 2 years. Our client has made reasonable adjustments as required by the Equality Act, and we are now guiding them through the formal capability procedure; including attendance at capability meetings with the employee, helping to draft scripts for meetings, reviewing related documents, medical reports and evidence, and advising on due process to minimise the risk of disability related discrimination claims.

London

Drafting offer letter and contract of employment for newly recruited Head of UK Operations and providing generalist Employment Law and HR advice in relation to statutory holiday, sick pay and redundancy pay entitlements.

London

Representing our client in a pre action claim for injunctive relief for allegedly procuring breaches of contract relating to their newly appointed regional sales manager, whose former employer was threatening legal action against him for alleged breaches of confidentiality and post termination restrictive covenants in his contract of employment.

If you have any clients who you think may require HR support, please contact us at HRsolutions@mhllp.co.uk to discuss how we could assist them (please do not send enquiries to our individual email addresses).

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available for clients according to their needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



Caz and Stephanie

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Now, for tomorrow