

Expert Q&A on Brexit's Impact on US Employers

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An Expert Q&A with James Davies of Lewis Silkin regarding how the Brexit vote impacts US employers. On June 23, 2016, the UK voted to leave the EU. Practical Law's US Labor & Employment team reached out to Mr. Davies to better understand specific implications for US employers.

Practical Law Labor & Employment

It is no challenge to find information about Brexit results and implications for the UK and the EU, but US employers are also eager to understand what this historic event means for them. To better understand specific implications for US employers, Practical Law contacted James Davies, Divisional Managing Partner at Lewis Silkin, for his insight.

For US Employers with UK Operations:

What are the employment implications for their US citizen employees working in the UK?

US citizens working in the UK need to have permission to work here. There are various routes to acquiring this permission. In most cases, any change to EU freedom of movement rights will have no effect on US citizens employed in the UK. The one exception is where the US citizen benefits from another EU citizenship and has used this citizenship to work freely in the UK. This is not uncommon with US citizens often finding that they have rights to, say, Irish, Italian or Greek citizenship.

In this case, the US citizens' rights to continue to work in the UK may depend on which political scenario unfolds. There is already strong pressure across the political spectrum to guarantee permanent rights to those EU citizens already working in the UK even if the rights of new EU migrants may be curtailed.

One step for EU citizens in the UK is to consider if they already qualify to apply for permanent residence with rights to work indefinitely in the UK.

For US citizens who have relied on citizenship of an EU country to work in the UK and where free movement rights are ultimately curtailed, the US employer in the UK will need to obtain a work permit for the employee.

Employment laws will not change immediately. If the UK goes for the Canada or WTO option then it will be free to change those laws which derive from the EU. The most likely changes if a Conservative government remains in power would be the abolition of the agency workers laws, changes to the rules on working time, and, possibly, an upper limit on discrimination awards. In all likelihood, however, employment laws would not change greatly as the UK already has one of the least regulated employment markets amongst The Organisation for Economic Co-operation and Development (OECD) countries.

What about for their EU citizen employees working in the UK?

See What are the employment implications for their US citizen employees working in the UK?

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UK citizens' rights to work in the UK will, of course, not change. The major issue will be for multi-national employers who have historically benefitted from the free movement rights of their UK citizen employees throughout the EU (and non-EU EEA countries). The position here will depend on the agreement ultimately negotiated with the EU though it seems likely that any agreement reached will permit UK citizens currently working in the EU to remain in that EU country.

Should US employers modify their UK or EU hiring practices in light of the leave vote? If so, how?

Employers should hold off making any changes to their hiring practices. At first glance, an employer might be tempted to reject an EU national for a job on the grounds that they are not guaranteed a right to work indefinitely in light of uncertainty about future free movement rights. However, the UK and EU countries have enacted race and nationality discrimination laws and an employer is likely to fall foul of these in rejecting an EU citizen out of concern about their right to work in the future.

For US employers with UK employees working in the US, will there be a need to revisit their immigration status? What about their US staff working in the UK?

Brexit should not affect UK citizens working in the US, as permission to work in the US is governed by US federal law and bilateral treaties between the US and other individual countries. In this instance, US treaties affecting US immigration law are with the UK, not the EU. For the impact on US staff working in the UK see For US employers with UK Operations.

Are there any other practical implications for US employers?

Brexit poses many other questions for US employers unrelated to employment and immigration laws.

Two key areas of immediate concern are data protection and works councils.

Multinationals and domestic employers will still have to comply with the standards set out in the new General Data Protection Regulation (GDPR) whatever the UK decides about its domestic data protection laws.

The GDPR has wide territorial reach to anyone offering goods and services within the EU. EU data subjects of multinationals with UK operations may also complain to their local regulator about how their data is processed by a UK group entity, such as the feared CNIL in France, meaning effective compliance with GDPR standards across a group. It would be impractical to have a different set of rules just for the UK.

An immediate issue from the Brexit vote concerning multinationals is that under GDPR the lead data protection regulator within Europe will be determined by the location of a group's main establishment (the place of its central administration within the EU) and, where that is outside the EU, the group must appoint a representative within the EU. The option of choosing the UK to take advantage of the relatively benign data protection enforcement regime here will go post Brexit, leaving multinationals considering their choices and whether to restructure their data processing operations.

As far as European Works Councils are concerned, US companies can choose which EEA country laws will apply by appointing a "representative agent" in that country. If the UK does not become an EEA member and the US company currently has the UK as its representative agent then the US company will need to appoint a new representative agent in another EEA country (Ireland is a common choice).

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