

## Employment rights look safer post general election, though vigilance required as Brexit negotiations start in earnest

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**The hung Parliament resulting from the general election, should prove to be good news for the safeguarding of EU guaranteed employment rights during the Brexit negotiations.**

Previously, employment rights appeared under threat from a Tory majority government, set on ramming through the Great Repeal Bill using what were labelled authoritarian Henry VIII style powers.

The political terrain, though, has now changed, with the Tories operating as a minority administration, propped up by the Democratic Unionist Party.

A consultative White Paper for the Great Repeal Bill, which would enable various laws now governed by the EU to transfer into UK law was introduced by the Prime Minister back in March. **"We will ensure that workers' rights are fully protected and maintained. Indeed, under my leadership, the Government will not only protect the rights of workers but build on them,"** declared Theresa May.

Given past actions by Conservative governments, not least the recent passing of the Trade Union Act, caused many to take a sceptical view.

A major concern of trade unions is that employment rights could end up being another bargaining chip with the EU in Brexit negotiations.

This has already been seen to be the case with rights of residency regarding British and EU citizens.

The EU has already set out its position in the European Council's negotiating guidelines regarding any future trade deal with the UK. **"It must ensure a level playing field, notably in terms of competition and state aid, and in this regard encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices."**

### Employment rights could be under threat, upon leaving the EU

- \* **Working time regulations that have seen hours for most workers limited to 48 hours per week over the past couple of decades, could be subject to amendment.**
- \* **The Working Time Directive also makes time off a legal requirement, so employers have to give staff 48 hours off in every fortnight and rest time of at least 11 consecutive hours.**
- \* **Maternity, equality and parental leave rights are all underwritten in EU law.**
- \* **UK laws banning discrimination on the grounds of age, religion or sexual orientation come directly from the EU's Equal Treatment Directive. EU laws have also made it easier for people claiming discrimination to get justice, by placing the burden of proof in discrimination cases on the alleged perpetrator rather than the alleged victim. Under EU law there is no limit on the amount of compensation an employer can be made to pay in discrimination cases.**
- \* **The agency workers rules that put temporary workers on a par with directly employed "permanent" staff are underpinned by EU law.**
- \* **In the area of health and safety, the TUC says 41 of the 65 new health and safety regulations introduced in the UK between 1997 and 2009 came from EU laws.**



One danger identified in the original White Paper was the use of what have been called Henry VIII style powers. These would give ministers and civil servants practically a free hand to comb through legislation amending and removing elements at will. The resulting changes could then see secondary legislation used to wave them through Parliament. Whether these powers survive now in the new political terrain remains to be seen.

Another concern highlighted by the TUC concerns power being handed to UK judges to potentially water down employment rights. Once Brexit is completed the powers of the European Court of Justice will transfer to the UK Supreme Court, which could then interpret things differently on issues like employment legislation, without the underlying guarantees of EU law. **"Once we leave the EU, the UK Supreme Court could have the power to overturn key decisions from the European Court of Justice which protect workers' rights – without the need to secure Parliamentary approval,"** said Frances O'Grady, the TUC general secretary.

The TUC has called for a guarantee in the Great Reform Bill that existing employment rights will not be watered down and that any enhancements coming from the EU – such as new rights to paid parental leave – will be matched if not bettered by the UK government.

The big plus point on the whole question of the Great Repeal Bill and employment rights is the change in political terrain as a result of the general election result. The Tory led government is now in a much weaker position, so its feet can be held to the fire by the Labour Party on matters such as employment rights. Indeed, pressure can be applied to ensure that May really does deliver on her commitment to ensure that existing workers' rights are not only protected but built upon. There does though need to be vigilance regarding the dangers of employment rights being seen as subservient to trade priorities. But that said the election result means things look decidedly better regarding Brexit and employment rights than they did prior to 8 June.

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# Transgender Discrimination in the Workplace

Transgender people are those whose personal identity or gender does not correspond with their sex at birth.

**The discrimination and harassment of transgender workers in the workplace is outlawed under the Equality Act 2010 which states:**

*"A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment"*

A recruitment site TotalJobs undertook a survey - Trans employee survey report 2016 - which found a majority of the 435 participants had experienced discrimination:

- 29% at the recruitment stage
- 14% in respect of promotions
- 38% from their colleagues

## What employers can do to prevent Discrimination

In order to be "trans friendly" there are some simple steps an employer should take. For

example, modifying job application forms so instead of asking a prospective employee to identify as "male" or "female", also include the options of "other" or "prefer not to say".

Employers should provide staff with diversity training and ensure senior managers and HR have sufficient knowledge and awareness of transgender issues. Having an open and inclusive workplace where employees feel they can approach them is crucial in terms of supporting the individual as well as managing reactions from colleagues. Employers should always seek to offer all employees a supportive and fully inclusive working environment.

**If you feel you may have been discriminated at work call our advice line on: 0300 333 0303, we're here to help.**

## UK workers are cheated out of at least £1.5bn a year in holiday pay

**Employers are cheating British workers out of at least £1.5bn a year in holiday pay to which they are legally entitled, a study has found.**

One in 20 workers report not being given statutory holiday pay, while one in 12 workers does not receive a payslip as required by law. A further £1.2bn of wages owed for hours worked are unpaid each year, according to a research group at Middlesex University business school in a report called Unpaid Britain.

*"We've focused on the so-called gig economy and zero-hours contracts, but the much more pervasive practices of employers who simply pocket workers' wages have continued largely unremarked,"* Nick Clark, lead researcher, said.

The Unpaid Britain group suggested that two types of cheating were prevalent. Where workers have variable hours and no payslips, employers are able to make a significant financial

gain by cheating them a little and often, and it is hard for workers to keep track of hours worked or to prove what they are owed.

A separate pattern involved bosses deferring pay on the grounds that their business was struggling and then repeatedly going into administration before workers had been paid. The researchers found many phoenix businesses being wound up with debts owed to workers and HMRC but then reappearing with the same or related directors and premises under a different name.

The report also highlights the barriers, such as tribunal and court fees, cuts in legal aid, and protection offered to employers by limited liability, that very often prevent workers recovering unpaid wages.

The number of individual workers taking employers to tribunal has fallen by 67% since the government introduced fees in 2013. Even when workers win at tribunal, they may still have

to pay the costs of court enforcement orders and bailiffs where employers fail to pay up.

**There is no penalty on employers for failing to pay.**



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