

ALLEN & OVERY



Brexit – employment contingency planning steps

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A vote in favour of Brexit is unlikely to mean immediate changes to employment laws and practices, but here are ten practical steps that in-house counsel and HR teams should consider **now** in order to be prepared; some will be valuable from a planning, compliance and industrial relations perspective even if the outcome is that Britain remains in the EU.

Work with your in-house Brexit team

Secure your place on the Brexit team or communicate with those who are planning your organisation's response to a Brexit. You should be engaged from an early stage with the employee implications of the business strategy, particularly if relocations, restructurings or downsizings are a possibility.

Plan your communications strategy

Decide whether to take a proactive or a reactive approach to employee communication, depending on the level of speculation and employee concern, what is actually known and what, if any, comfort can be given on operations, relocations and jobs. Prepare communications in advance and consider timing, target audience (eg. affected individuals, groups or everyone) and communication channels.

Check expenditure control systems

Check what systems are in place to keep spending on any activities that might influence a referendum vote within the strict limits imposed by UK election laws and to make employees aware of these limits. Exceeding the limits is a criminal offence. Clear proposed employee communications with your Legal and/or Compliance teams to ensure that related costs do not count towards the threshold.

Audit your workforce

Identify UK nationals working for you elsewhere in the EU, and EU nationals working in the UK, to plan for the labour mobility restrictions and labour shortages that could result from a Brexit. If necessary, extend your audit to other employees who could be affected by restructuring proposals.

Review EU-based expatriate arrangements

Check termination and repatriation provisions in expatriate and secondment arrangements between the UK and other Member States. Reconsider pending arrangements, and possibly delay them, if there is doubt as to whether the arrangement can be honoured.

Track your EU expatriate workers' immigration status

Check the immigration status of UK inbound and outbound expatriate workers, the duration of their stay abroad or in the UK and the date on which they can apply for permanent residence (which would require a minimum five-year stay in the UK). Consider encouraging those who are eligible, or will shortly become eligible, to apply for permanent residence to avoid any immigration restrictions that could follow a Brexit. Applying for citizenship may also be an option for some, subject to dual nationality restrictions.

Anticipate skills and service gaps

Identify any skills and service gaps which could be exposed if a Brexit affects customer demand for your products or services, or if restrictions on labour mobility or recognition of qualifications around the EU mean that employees are prevented from working temporarily or that their jobs could be put at risk. Consider how the business could fill these gaps and anticipate the need for possible redundancies.

Identify any minor contract or policy redrafting

Consider whether specific provisions, for example, restrictive covenants, confidentiality or IP obligations with geographical restraints linked to the European Union or European Economic Area might need to be amended if a Brexit is confirmed. Consider updating these provisions in new contracts to address any unenforceability risks that could arise from a Brexit.

Check your European Works Council (“EWC”) agreement

Check any EWC arrangement (whether UK-based or not) to identify whether a Brexit, or any measures proposed in response to a Brexit, could trigger structural change provisions or a duty to inform and consult the EWC.

Consider risks for benefit plans

Check that your in-house Benefits team, as well as trustees, are considering the possible market risks of a Brexit for any occupational pension (particularly defined benefit) schemes and putting contingency plans in place. The initial legal and day-to-day operational implications would be relatively minimal for pension schemes and employee share incentive arrangements. Consider the pension cost implications of any significant restructuring or downsizing (eg. funding enhanced pension rights on redundancy).



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