



Brexit

The Brexit transition period is set to end on the 31st December 2020.



Whilst the outcome is still uncertain at this stage if you manage or own a business, it is important to consider what action points you may need to take.

Whilst it is difficult to predict what changes to existing employment law will take place until an agreement is made (if any), we do know that EU employment legislation will come to an end on 31st December.

A lot of UK employment law is taken from EU regulations and it is unlikely that there will be any significant change to employment law in the short term. The withdrawal agreement allows the conversion of current EU law into UK law with the existing legal framework remaining in place.

What does this mean for employers?

One of the biggest changes will be for those businesses who employ EU nationals. The rules regarding EEA nationals will be replaced by the new EU Settlement Scheme that will help establish residence rights of EU citizens.

GDPR – It is likely that GDPR will be incorporated into UK legislation to form a new UK GDPR. Depending upon negotiations between the UK and EU, after the transition period, you will need to ensure compliance with both UK and EU data protection regulations.

Review your contracts for IR35: Reforms to the IR35 rules on off-payroll working in the private sector come into force on 6 April 2021. It is vital employers review their contracts and put in place the necessary procedures to ensure compliance.

Other areas of employment legislation that could be amended post Brexit include The Working Time Regulations (rules and calculations around holiday pay), The Agency Workers Regulations 2010 (burdens on businesses), TUPE (easier processes), imposing a cap on discrimination compensation.

Details of the proposed Employment Bill mentioned in the Queen's Speech last year are also awaited which will protect workers' rights.

Employment law is constantly changing and increasingly complicated, but with two lockdowns, 30 issues of updated guidance (which always seemed to happen on a Friday evening!) and 3 Treasury Directions, this year has been unprecedented.

The government's Coronavirus Job Retention Scheme (the Scheme), also known as furlough was first announced on the 20th March to help support businesses and protect jobs during the Covid-19 pandemic. The Scheme which paid up to 80% of the wages of around 9.5 million people has been extended until the end of March 2021. The extension comes as the government recognises the long-term lasting effects of the coronavirus on businesses with their ability to trade safely, provide work for employees and make a profit. Of all businesses that have not permanently ceased trading, 14% said they had low or no confidence that their business would survive the next three months, meanwhile 40% of businesses said they had moderate confidence and 40% had high confidence their business would survive when surveyed between 19th October and 1st November 2020 (ONS)

Details of the Scheme, who can claim and how you can claim are regularly updated in our news section on our [website](#).

For employers using the scheme, it is vital that reporting requirements are followed and effective agreements are made with employees. We can help with the creation of policies to protect your employees and guide you through the processes and requirements of the furlough scheme.

In light of the recent extension to the scheme and important new updates ([see our article](#)), many employers may need to be carefully considering difficult decisions around redundancies and restructuring.



We have been advising many employers on issues arising out of the scheme as well as redundancy and other cost savings programmes. If we can help your business, contact **Lisa Aitken** on **07960 469988** or email: LisaA@moore-tibbits.co.uk.



To keep up-to-date with employment law and changes in legislation, sign up to our free newsletter by emailing Esme: esmeh@moore-tibbits.co.uk or [click here](#). You can opt-out at any time.

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Flexible Working Applications

Flexible working requests are on the rise as the coronavirus pandemic saw many employees adapting to remote working. As we ease out of the pandemic, a mixture of working from home and the office is likely to become the new normal. It is vital that employers understand their obligations in dealing with requests from employees so they remain compliant, can support their employees whilst also protecting their business interests.

The right to request flexible working was introduced under the Employment Act 2002 and came into force on April 6, 2003. Further regulations set out the eligibility and procedural requirements and together the legislation is known as the right to request legislation.

The right to request is:

- | A right to request to work flexibly
- | An obligation on the employer to properly consider applications reasonably
- | A limited number of grounds on which the employer can refuse a request

Who can request flexible working?

To make a request, you must:

- | Be employed
- | Have 26 weeks continuous employment at the date the application is made
- | Not be an agency worker or a member of the armed forces
- | Not have made another application to work flexibly under the right to request legislation during the preceding 12 months.

All employees who have 26 weeks service will be eligible to submit a flexible working request, regardless of whether they have caring responsibilities for children or an adult dependent. Guidance from ACAS makes it clear that employers should consider each case on its merits, the business case and possible impact of refusing a request. If an employer consistently gives more weight to requests from parents, they could face a claim for indirect discrimination by non-parent and carer employees.



What changes can be applied for?

Those employees who are eligible can request changes to:

- | Hours worked
- | Times worked
- | Location of work (eg. working from home)

Granting flexible working requests

There is no obligation for employers to grant flexible working requests, but they may only refuse on the grounds of a business reason as set out in the legislation. All requests should be considered objectively and in a "reasonable manner". Employers should notify employees of their decision within 3 months unless an extension has been agreed.

ACTIONS:

- | **Create a flexible working policy:** This will assist employees and ensure all requests are consistent. A separate document which sets out the process and any considerations employees will need to deal with will also be useful and will simplify the process.
- | **Consider any potential discriminatory issues:** Employees may still be able to bring discrimination claims against the employer if they believe their request was not dealt with fairly.
- | **Consider implementing a trial period:** Allowing employees to trial flexible working for a period of time demonstrates the business has taken all reasonable steps to accommodate the request.

We can help to create flexible working policies, assist with flexible working requests, and appeals along with any further employment documentation you may require eg. contracts.

Human Resources Advice

Whether you have your own HR department, or your business doesn't need a full or part-time HR employee, there may be times when you are unsure of how to deal with a particular issue or are struggling to cope with complex employee relations.

We are able to provide businesses with both legal and HR support in relation to:

| Contracts of employment

We can review and draft contracts of employment for all types of employees including casual staff and directors, ensuring they are legally compliant. From 6th April 2020, all new employees and new workers must be given a written statement of their main terms and conditions by their first day of working at the latest.

| Policies and procedures

Policies and procedures are essential for both the employer and employee to refer to should a situation arise. We can review your staff handbook or indeed develop one tailored to your business.

| HR Procedures

There may be times when you require guidance and support with a difficult situation. Our HR service is able to fit around your needs and deal with matters as and when they arise. This could be in relation to:

- | Disciplinary and grievances
- | Performance management
- | Managing sickness absence
- | Redundancy procedure
- | Terminating employment

We would suggest employment documentation is reviewed at least annually to ensure you remain compliant with the frequent changes to employment law. We can provide you with detailed guidance and highlight any areas that may need to be updated.

