

Workers' Rights: EU (Withdrawal Bill)

Post Brexit: Government announces new measures for workers' rights

On 6 March 2019, the Prime Minister's Office (The Department for Exiting the European Union) announced new protection for workers' right after Brexit to be introduced in the Withdrawal Agreement Bill. The measures comprise:

- Commitment not to reduce the standards of workers' rights from EU laws retained in UK law
- Parliament will be given the right to consider any future changes in EU law that strengthen workers' rights or workplace health and safety standards and vote to adopt them into UK law.

We have reproduced extracts from the publication below:

Workers' rights The UK has a long-standing record of ensuring that workers' rights are protected. This includes employment and equality rights and protections for health and safety at work. The decision to leave the EU does not change this. This Government has made a firm commitment to protect workers' rights, and to maintain protections covered in the Equality Acts. In a number of areas, UK employment law already goes further than the minimum standards set out in EU legislation. This Government has committed to protect the rights people have at work and ensure that they keep pace with the changing labour market. The Withdrawal Bill will ensure that EU-derived employment rights will continue to be available in domestic law after the UK has left the EU. This includes rights derived from EU law, such as the Working Time Directive and the Agency Workers' Directive. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive. Where protections are provided by the EU treaties they will also be retained by the Bill. And where rights have been interpreted by CJEU judgments, those judgments will have the same precedent status as the Supreme Court's own judgments. On Monday 11 December 2017, the Government published two pieces of draft secondary legislation (here and here) and an explanatory note on employment rights. These two draft SIs are illustrative examples to show how the powers in the Bill may be used to correct retained law relating to employment rights. They should not be taken as the final version. This Government is also committed to ensuring that equalities are properly protected in UK legislation following our withdrawal from the EU. All the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU.

Any future changes to domestic legislation will be subject to the appropriate parliamentary scrutiny. As part of this, following an amendment made in the House of Commons, ministers will be required to make statements about the impact on equalities legislation of any secondary legislation made under key powers in the Bill.

The Key facts set out in the publication are as follows:

Key facts Employment

- The UK labour market is one of the most flexible in the world. We define minimum standards in the workplace but employers and individuals are free to agree terms and conditions which go beyond the statutory minimum.
- Our labour market is strong, and above the EU and OECD averages, with an employment rate at 75.3% (September - November 2017), the joint-highest since comparable records began in 1971.
- Our domestic legislation exceeds EU-required levels of employment protections in a number of ways, including:
 - o 5.6 weeks of annual leave in the UK as compared to the EU requirement of 4 weeks;
 - o The right to request flexible working for all employees, as against the EU requirement for the right to request flexible working for parents on return from parental leave;
 - o 52 weeks of maternity leave, of which 39 weeks are paid – as compared to the 14 weeks of paid maternity leave required by the Pregnant Workers' Directive. The same rules apply to those who adopt;
 - o Paternity leave and pay for new dads or a mother's partner where there are currently no protections from the EU;
 - o Shared Parental Leave and Pay helps promote a greater attachment to the labour market for working parents, particularly women, as it gives working families more choice and flexibility – enabling them to combine work with childcare

responsibilities; o 18 weeks of parental leave per parent per child up to a child's 18th birthday, compared to the EU's requirement to the age of 8. Health and safety at work

- The Health and Safety at Work etc. Act 1974 is not reliant on our membership of the EU. It places a comprehensive set of duties on employers to protect employees and those who might be affected by work activities from risks in the workplace. The Act is supported by a set of regulations, including ones that implement EU directives and which will be preserved by the Withdrawal Bill.
- The UK is one of the safest places to work in the EU. In 2014, the standardised rate of fatal injuries to employees in the UK was 0.55 per 100,000 employees, the lowest of those published by Eurostat.

The measures put an obligation on Parliament to regularly update on changes to EU legislation.

The government proposes:

- To consult with trade unions, businesses and relevant select committees on these updates.
- Introduce new measures to strengthen the enforcement of workers' rights.
- The creation of a single labour market enforcement body.
- To progress these proposals in the coming months.

We have reproduced extracts from the publication below:

Equalities

- Decades of domestic legislation and implemented EU law have already been consolidated into the Equality Act 2010 in Britain, and in equivalent legislation in Northern Ireland; these are the cornerstone of domestic equality law.
- The Government is committed to ensuring that all the protections in the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once we have left the EU. This will ensure the continued protection of people's rights not to be discriminated against, harassed or victimised in the provision of goods, services and public functions, housing, transport and education.
- One of these ongoing protections is the public sector Equality Duty, and its equivalent in Northern Ireland. During the process of EU exit, the public sector equality duty will continue to apply to all relevant policy changes, as it does now. Public authorities will therefore need to give due regard to the potential equality implications of any changes that are being introduced as a result of the UK's exit from the EU, keeping equality at the heart of UK public policy.
- Following an amendment made in the House of Commons, ministers will now be required to make statements about the impact on equalities legislation of any secondary legislation under key powers in the Bill.
- The Government is similarly committed to maintaining the continued role of the Equality and Human Rights Commission (EHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI), which all have important roles in enforcing and monitoring equalities and rights law within the UK.

We have reproduced extracts from the publication below:

Frequently Asked Questions Will the powers provided by the Withdrawal Bill be used to amend employment protections?

- The secondary legislation we intend to bring forward will not make changes to the rights that workers have in the UK, but will instead correct legislation to ensure it is fit for purpose after exit.
- In December 2017, we published draft statutory instruments ([here](#) and [here](#)) to illustrate how the proposed amendments will ensure the legal framework that provides for employment rights continues to operate effectively after exiting the EU.
- Furthermore, following an amendment to the Bill, Ministers are required to make statements about impacts on equality legislation under key powers in the Bill. Will the Withdrawal Bill preserve the employment rights given to individuals by CJEU case law where these extend beyond those set out in EU legislation?
- Yes. To maximise certainty and continuity, retained EU law will continue to be interpreted in accordance with the pre-exit case law of the Court of Justice. If the Supreme Court is able to overrule CJEU judgments in the future, surely all the rights that are enshrined in CJEU case law are no longer safe?
- It is very rare for the Supreme Court to depart from one of its own decisions or that of its predecessor, the House of Lords. Will you commit to staying in line with EU legislation in this area, even after withdrawal, to ensure that UK workers will not be getting a raw deal compared to their counterparts in EU member states?
- We do not need to be part of the EU, nor bound by EU legislation, to have strong protections for workers. According to statistics on health and safety at work, the UK is one of the safest places to work in the EU.
- The UK already goes beyond EU minimum standards in a number of areas, such as entitlement to annual leave and provisions for shared parental leave and flexible working.
- The Government has shown its commitment to extending workers' rights when this is the right choice for the UK, and will continue to do so as we leave the EU.

Please visit our website for any advice on [Settlement Agreements](#) or you may contact us by email enquiries@rtcooperssolicitors.com.

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