

# Bird & Bird Satellite Bulletin

September 2016

## *Brexit - Employment issues for the Space Industry*



We have been contacted by several companies working in the satellite industry concerned as to employment issues post Brexit, and in particular immigration issues when companies seek to recruit skilled employees from, or where UK workers seek to take jobs in, the EU.

Many aspects of UK employment law are outside the scope of EU law or in excess of EU requirements, including minimum wage legislation, unfair dismissal rights and certain holiday and parental leave rights. However, numerous EU concepts have become entrenched in the workplace such as TUPE, and many aspects of discrimination law and collective redundancy requirements. It is unlikely that we will see drastic changes to long-standing employment concepts following Brexit. There are however some areas of the law that have been influenced by EU directives/case law, that may be susceptible to change in favour of employers as follows:

- Recent ECJ decisions have established that workers must accrue holiday during sick leave and that holiday pay should include certain variable elements of pay, beyond an employee's basic pay. The government may seek to restrict employee rights in relation to these aspects of holiday pay.
- There are restrictions under TUPE on harmonising terms and conditions after a transfer of a business or outsourcing. These can cause employers real difficulty so they could be the subject of change, although it is unlikely that TUPE would be repealed in its entirety.
- We might see a cap introduced on compensation for discrimination claims which is something that most employers would welcome. Age discrimination is a protected characteristic which could also be subject to change.
- It is possible that the Agency Workers Regulations 2010 may be repealed following Brexit. They currently provide that agency

workers must receive the same working terms and conditions as permanent employees after a 12 week period.

The UK Government has indicated that there is likely to be greater control of EU immigration but this will need to be balanced against maintaining trade links with Europe. Ahead of Brexit, you should consider auditing your workforce in terms of their location and immigration status. In particular, you should consider whether EU nationals in the UK and/or UK nationals in the EU can obtain permanent residency and/or dual citizenship of the country in which they are based. You may wish to make immigration applications now to help mitigate the impact of Brexit on your workforce.

You may also wish to review your policies. In particular, if you are considering restructuring proposals, you should review any redundancy policies and/or European Works Council arrangements. In light of the increase in reports of racial harassment post-Brexit, employers may receive grievances or claims based on workplace incidents. Harassment and anti-bullying policies should be reviewed and diversity training should be considered as a measure to mitigate these risks.

If you have any queries or would like to receive further information please contact:

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## Bird & Bird's Satellite Group

Bird & Bird's satellite group are international specialists with a unique reputation and track record in the industry. Through many years of experience working in-house, at regulators, in international institutions (EC, ESA, ITU, UN) and in private practice, we have built an extensive footprint of expertise and knowledge. Possessing a genuine interest in the sector, our team assist clients in many areas including: regulatory advice, industry specific commercial contacts, competition, corporate, finance, dispute resolution, employment, and insurance.

Our international team offers clients a one-stop shop to address the issues they face, with expert lawyers across Europe, the Middle East, Asia, and strong experience in Africa.

Our satellite group fits neatly within Bird & Bird's world leading Tech & Comms sector group, which offers advice in related sectors such as: energy and utilities, life sciences, transport and maritime, aerospace, defence and security, aviation, financial services, and healthcare. Bird & Bird also house a team focused on SMEs and the needs of start-ups.

## Get in touch



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