



Sick leave and discrimination laws in employers' sights post-Brexit

Press Release - 14 July 2017

People Management
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<http://www2.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2017/07/14/sick-leave-and-discrimination-laws-in-employers-sights-post-brexit.aspx>

Legal expert Darren Isaacs looks at the UK employment laws industry wants to see changed after the UK leaves the EU.

For the time being, it is likely there will be no changes to UK employment law. Prime Minister Theresa May has stated on record that the government has no interest in making any immediate changes to our employment laws. In her widely-publicised Brexit speech in January this year, May said "Not only will the Government protect the rights of workers' set out in European legislation, we will build on them."

That may be all well and good - but what do businesses want? In a recent survey undertaken by GQ Employment Law, only 5% of companies surveyed said they wanted any major changes to the UK's employment laws. However, around two-thirds (65%) said they want "some" changes (even if not major changes). And, interestingly, nearly a third (30%) want no change at all.

Almost all of the businesses in favour of change focussed on two particular areas of the law: sick leave, and discrimination.

Sick leave

When it comes to sick leave, the key sticking point is the current entitlement of long-term ill employees to accrue and roll-over holiday entitlement, something businesses feel is unnecessary and, frankly, unfair.

At the heart of it, there is fundamental disagreement with the view of the Court of Justice of the European Union that employees who are long-term absent from the workplace still need to be able to take a paid break from their work. From the employer perspective, the point of annual holiday is to give an employee a break from working so he or she can rest and refresh. It is difficult to see the argument for an employee needing the same break when he or she is not at work to begin with.

Discrimination

In the case of discrimination, the issue is not whether workers should have any protection at all, but that under the current system, compensation for discrimination is uncapped. The argument is that, like unfair dismissal claims, compensation awards in discrimination should be capped because without a cap there is uncertainty as to the outcome. And with that uncertainty, companies say they are often forced into settling a claim to avoid an unknown and potentially significant exposure if they are found to be in the wrong.

A better system, according to employers, would be one where potential compensation is subject to some cap - no matter how high it may be set. One possibility would be to opt for a maximum of one year's pay (like in unfair dismissal claims), but without the additional arbitrary cap of £80,541 (as it currently stands).

Whether there will ever be any political appetite for reducing the potential compensation entitlement in a successful discrimination claim remains to be seen. But it is clear this is one aspect of discrimination law businesses don't like.

Other areas

In other areas of employment law, employers have expressed a reluctance for any significant change. For example, most businesses surveyed were content with the UK's collective consultation requirement in cases where 20 or more redundancies are contemplated. Similarly, most wanted existing protections for agency workers to be retained. And, perhaps surprisingly, an overwhelming proportion of respondent businesses said that they did not want any changes to the EU's minimum standards of data protection.

So the message from businesses seems to be clear: most want stability above all but, when the time is right, some small changes to sick leave laws and discrimination laws may be merited.

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