



BREXIT

Employment Law

Employment law

On 31 January 2020, the United Kingdom (UK) left the European Union (EU) but there is a transition period until 31 December 2020 (the **Transition Period**). Until this date, EU law will continue to apply and therefore nothing will change for employers and employees who conduct services or work across borders within the EU. However, if the EU and the UK do not reach an agreement before 1 January 2021, EU law will cease to apply to the UK from that date in view. This will create employment law complications for instance for employers based in the Netherlands who employ UK employees, as well as for Dutch employees working in the UK. Although the COVID-19 crisis will continue to have a major impact in the upcoming period, it is important to also consider which implications Brexit will have for your company and employees.

Free movement of workers / freedom to provide services

The issue

The free movement of workers, as well as the effectiveness of employee mobility programmes may be affected by Brexit. This will also apply to postings of workers to provide services in other EU jurisdictions.

The context

An important labour law aspect of the expiry of the Transition Period without further arrangements will be the end of the free movement of workers as we know it today.

As long as the Transition Period applies, UK workers do not need a work permit to work in the Netherlands. This will change for UK workers coming to work in the Netherlands after 31 December 2020. For those who come to work in the Netherlands for less than 90 days, an employer must apply for a work permit (**TWV**) from the UWV as from 1 January 2021. For those who come to work in the Netherlands for more than 90 days, the employer must apply for a Combined Residence and Work Permit (**GVVA**) from the IND. The GVVA permit is subject to many conditions, which considerably limits the possibilities of Dutch employers being able to employ UK employees.

However, UK employees who started living in the Netherlands before or on 31 December 2020 are covered by the withdrawal agreement. They will continue to be exempt from the requirement for a work permit, provided they hold a Dutch residence permit. UK citizens registered in the Netherlands who have not applied for a residence permit yet should do this immediately, in any event before 31 December 2020.

Furthermore, it is uncertain if posting of workers in the UK will still be possible, as the European regulation on this subject will no longer apply in most EU jurisdictions. For multinational employers, this could be a barrier to employing highly skilled migrants or seasonal workers because there could be a significant administrative burden and financial consequences.

Recommended actions

- ▶ Identify in a timely manner whether it is necessary to apply for a work permit for your UK employee and if so, apply for it as soon as possible;
- ▶ Identify already the number of employees that may require a visa to work in the UK; and
- ▶ Identify the required labour law requirements when assigning / posting an employee from the UK to an EU jurisdiction.

Employment conditions and applicable law

The issue

The applicable employment conditions and the applicable laws (including employment laws) may all be affected by Brexit.

The context

Employment conditions previously influenced by European regulations can change after Brexit. This may have consequences for e.g. the protection of employees in a cross-border transfer of undertaking. Also the Rome I Regulation will no longer regulate the law that mandatorily applies to permanent employment contracts with an international component in the UK. This regulation will however still apply to the employment of British workers in EU member states.

Recommended actions

Review any choice of law clause in your existing employment agreements and collective labour law regulations and amend or, if necessary, include such a clause.

Our added value

HVG Law has a team of experienced lawyers that can advise on any of the above in the run-up and aftermath of Brexit. Law Alerts on the effects of Brexit in fields other than employment law, such as privacy law, corporate and commercial law, financing and financial regulatory law and healthcare law (manufacturers of medical devices) can all be obtained from our lawyers.

What HVG Law can do for you

We deal with all matters that keep an organisation in good shape. From reorganisations to acquisitions, from compliance to litigation. You will be doing business with lawyers and civil-law notaries who work together.

With you and with each other, at the highest level. We advise and litigate.



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About HVG Law

HVG Law LLP (HVG Law) ranks amongst the top Dutch law firms and is characterized by an entrepreneurial, innovative and solution-driven approach. With more than 150 dedicated and pragmatic lawyers, including (candidate) Civil Law Notaries, HVG Law offers high-quality, legal services in a broad and multidisciplinary context. Our lawyers are active in all legal areas and sectors relevant to business, directors, shareholders and government authorities and have knowledge of your business and your market. At our offices in Amsterdam, Rotterdam, Utrecht, The Hague, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.