

Post-Brexit UK Employment Reform: Three month cap on non-competes and other changes

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The UK Government has published a policy paper entitled [‘Smarter Regulation to Grow the Economy’](#) (10 May 2023) that outlines a series of upcoming employment related regulatory reforms designed, in part, to take advantage of the UK’s post-Brexit regulatory freedom. The stated aim is to reduce unnecessary regulation for businesses to ensure economic growth whilst maintaining existing UK labour standards.

What are the proposed changes?

- **Non-Competes limited to three months:** The biggest news is that, the UK Government plan to limit the length of non-compete clauses in employment contracts to three months post-termination. The upper limit of what was enforceable in the UK has tended to be 12 months in an employment context, subject to considerations such as the employee’s role, the scope of the restriction and the legitimate interest of the employer. It is interesting that this proposal follows shortly after the US Federal Trade Commission’s proposal to ban non-competes.

There is no timeframe for this change to come into effect and, until the legislation is papered, the specific scope of this cap is yet unknown. For example, it is not yet known how this may impact non-competes in arrangements contained outside of the employment contract but that are related to employment (e.g. within incentive agreements). Whilst currently employers will still be able to include longer non-competes in employment contracts for now, in light of the proposed change, greater consideration should be given to notice periods, garden leave provisions, the use of non-solicitation and non-poaching provisions, and the wider set of protections available to employers when drafting and negotiating contracts of employment.

- **Minor changes to TUPE:** The Transfer of Undertakings (Protection of Employment Regulations) (known as TUPE) provide a number of protections to employees and obligations on employers in the event of a business sale or where there is a so-called “service provision change”. With a view to simplifying the requirements and

reducing the burden on employers, the Government are looking to allow businesses, where there are fewer than 50 employees and for transfers affecting less than 10 people, to consult directly with affected employees rather than having to elect representatives. Whilst this is a welcome easing of the rules, in practice this is only a minor change and there remain a number of aspects of TUPE that businesses would like to see reviewed.

- **Changes to Working Time Records:** Due to retained EU law, several requirements remain on UK employers in respect of working hours. The Government will consult on proposals to remove the requirement to keep working hours records for most members of the workforce.
- **Changes to Holiday pay:** At present, UK employees have two separate holiday entitlements made up of a core 4 weeks leave (under EU law) and an extra entitlement to 1.6 weeks (under UK law). The Government plan to combine these entitlements to one “pot of statutory annual leave”. In addition, rolled up holiday will be permitted to allow workers to receive their holiday pay in every payslip.
- **No more sunset clause:** As part of the Retained EU Bill, controversially, the plan was that a raft of EU derived laws would be automatically removed at the end of 2023 unless replaced or expressly retained. However, the Government have now announced that this “sunset clause” will be removed and instead only a specific list of relatively obscure EU derived employment law regulations will be removed.

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Related Professionals

- **Nicola J. Bartholomew**
Special International Labor & Employment Counsel
- **Kelly M. McMullon**
Special International Labor, Employment & Data Protection Counsel