



What are the likely risk scenarios For Employers to a hard or soft Brexit?

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Soft Brexit (Withdrawal Agreement Becomes Law)

1. A transitional period from 29 March 2019 to 31 December 2020, 21 months after Brexit day which would allow EU nationals already in the UK to apply for permanent settlement
2. Freedom of movement to continue for those that wish to work in the UK but job offer required before an EU national allowed to come to the UK
3. No minimum skills threshold
4. No minimum pay requirement
5. No residence labour market test required
6. Right to permanently settle to continue after 5 years residence in a qualifying category



Hard Brexit No Deal

1. No transitional period. EU workers who do not have permanent settlement must make an application to remain in the UK prior to 29 March 2019
2. Freedom of movement to cease from 29 March 2019. A new immigration category introduced for EU migrants similar to the present Points Based System (PBS) for non EU workers
3. Minimum skills threshold similar to the PBS
4. Minimum pay requirement
5. Residence labour market test required
6. Right to permanently settle to continue
7. Application fee to settle to reside to be raised to circa £1000



How can Employers limit their risks?

Under the current EEA Regulations (Reg 15) EEA nationals are entitled to permanent residence if they have been resident in the UK as a qualifying worker for a period of 5 years and have not spent more than 6 months out of the UK in any calendar year. This will provide these individuals with settled status. Also, irrespective of what the outcome of the Brexit negotiations are, these individuals will be allowed to remain in the UK post Brexit. In addition, after 1 year of holding EEA PR, these individuals will be eligible to apply to be naturalised as a British citizens.

The Home Office position is that even if you have EEA permanent residence you will still have to apply for settled status . Any such decision would be unlawful as permanent residence is what it says permanent residence and it would be in breach of the UK's treaty obligations to revoke such residence.

We have therefore advise our clients who are able to apply for permanent resident to do so immediately.

Residence Permit (those EU employees that haven't been residing in the UK as qualified workers for 5 years)

Under the provisions of the EEA Regulations, an EEA national exercising Treaty rights as a worker is entitled to apply for a 5 year Residence Permit. EEA nationals do not need to apply for such permits in order to work here as their passport or national identity card is sufficient to allow them to do so. The EEA Residence Card is simply a documentary proof of an automatic entitlement. The reason we are advising clients to make such applications is because post Brexit EEA nationals may not have automatic rights to live and work in the UK. They will however be able to argue that they have a 5 year grant of leave, which still stands, as they have a legitimate expectation of that right as the law stood at that time of the grant of leave.



Pros and cons of regularising your employees status now or waiting till after the Withdrawal Agreement is finalised?

Pros

- Certainty in regularising the immigration status of your EEA workers
- Goodwill established with EEA workers
- Significant reduction in application costs and legal fees as many EU nationals will have the right to challenge a Hard Brexit in court

Cons

- Legal costs incurred now as opposed to waiting and applying post Brexit
- What is the application process of acting now under current EU law against waiting till after withdrawal from the EU?



Pros and cons of regularising your employees status now or waiting till after the Withdrawal Agreement is finalised?

The Home Office wish to introduce a new category of immigration status for EEA nationals post Brexit called "Settled Status" The Home Office says that If you're an EU citizen or a family member of an EU citizen, you'll usually need to apply if you want to stay in the UK after 30 June 2021. This includes if you're married to a British citizen.

You do not need to apply if:

- You're an Irish citizen
- You have indefinite leave to enter the UK
- You have indefinite leave to remain in the UK

Our Advice to clients is to secure their immigration status under current law with a document that gives them a right to remain in the UK.



Settled status

You'll usually get settled status if you've:

- started living in the UK by 31 December 2020 (or by 29 March 2019 if the UK leaves the EU without a deal)
- lived in the UK for a continuous 5-year period (known as 'continuous residence')

Five years' continuous residence means that for 5 years in a row you've been in the UK for at least 6 months in any 12 month period.

The exceptions are:

- one period of up to 12 months for an important reason (for example, childbirth, serious illness, study, vocational training or an overseas work posting)
- compulsory military service of any length

You can stay in the UK as long as you like if you get settled status. You'll also be able to apply for British citizenship if you're eligible.



Pre-settled status

If you do not have 5 years' continuous residence when you apply, you'll usually get pre-settled status. You must have started living in the UK by 31 December 2020 (or by 29 March 2019 if the UK leaves the EU without a deal).

You can then apply to change this to settled status once you've got 5 years' continuous residence.

If you'll reach 5 years' continuous residence at some point before 30 December 2020, you can choose to wait to apply until you reach 5 years' continuous residence. This means that if your application is successful, you'll get settled status without having to apply for pre-settled status first.

You can stay in the UK for a further 5 years from the date you get pre-settled status.



Your rights with settled or pre-settled status

You'll be able to:

- work in the UK
- use the NHS
- enrol in education or continue studying
- access public funds such as benefits and pensions, if you're eligible for them
- travel in and out of the UK



If you want to spend time outside the UK

If you have settled status, you should be able to spend up to 5 years in a row outside the UK without losing your status. This is still subject to approval by Parliament.

If you have pre-settled status, you can spend up to 2 years in a row outside the UK without losing your status. You will need to maintain your continuous residence if you want to qualify for settled status.



If you have children after applying

If you get settled status, any children born in the UK while you're living here will automatically be British citizens.

If you get pre-settled status, any children born in the UK will be automatically eligible for pre-settled status. They will only be a British citizen if they qualify for it through their other parent.

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