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In the wake of the referendum on Brexit, by which the U.K. population voted by a 52 percent majority to exit the European Union, U.S. employers and their assignees and local hires abroad are facing the uncertainty of change in the mobility laws of the European Union, including within parts of the U.K. itself. In this Bloomberg Law Insights article, Mayer Brown's Elizabeth Stern provides employers with guidance on how to assess the impact of the Brexit "leave" vote, stabilize qualms and plan for the future.

Managing Mobility Changes in the Aftermath of the Brexit Vote: Guidelines for U.S. Employers with Operations in Britain and the European Continent

ELIZABETH STERN

In the wake of the referendum on Brexit, by which the U.K. population voted by a 52 percent majority to exit the European Union, U.S. employers and their assignees and local hires abroad are facing the uncertainty of change in the mobility laws of the European Union, including within parts of the U. K. itself. The leaders of Northern Ireland and Scotland already have indicated they are likely to seek to "Remain" in the European Union, challenging the longstanding unity of their countries with Great Britain and Ireland. Even the new mayor of London, Sadiq Khan, has indicated that he plans to push hard to secure free movement rights for London residents, as London voted 76 percent to "Remain" in the European Union. In the meanwhile, the reactions from the leaders of the seven original members of the European Union immediately following the Brexit "Leave" vote are to move to action quickly to segregate Great Britain.

With immigration policy at the core of the debate on "Leave" versus "Remain," workers previously free to move across borders throughout the European Union are acutely concerned about whether they will be able

Elizabeth Espin Stern, a partner in Mayer Brown's Washington, D.C., office, leads the firm's Global Mobility & Migration practice, which forms part of the Employment & Benefits group.

to visit, work, or transit throughout the region. The dramatic statements of different world leaders, and the unexpected fragmentation of the region, is creating disruption and confusion. With few answers clearly decided, employers require guidance on how to assess the impact, stabilize qualms, and plan for the future.

Step One: Communicate With and Stabilize the Work Corps

At a minimum, the current free movement terms are expected to remain in place for two years following the Brexit vote. The Prime Minister had indicated that the British government would invoke its right, under Article 50 of the EU Treaty, to notify the European Union of its withdrawal, which would then require the European Union to attempt negotiation of a "withdrawal agreement." The EU Treaty terms cease to apply to a member state from the date the withdrawal agreement takes effect, or, failing that, two years after the notification (or longer if the European Council makes a unanimous decision, in agreement with the member state, to extend this period).

At the time of writing, the Prime Minister has resigned and his successor will be in place by October 2016. The Prime Minister has left it to his successor to trigger Article 50. The outcome of the withdrawal remains opaque, as Britain could ultimately negotiate a new agreement within the region—for example, an agreement to remain part of the European Economic

Area (EEA) or a series of bilateral agreements that ease the impact of the loss of full free movement throughout the European Union.

In view of the confusion surrounding “what’s next” after Brexit, employers operating in the U.K. (and European Union) should send active communications to their workforce indicating:

- there is no immediate impact to the free movement provisions and no changes will occur in the near term,
- the employer is monitoring the impact and timing of any change to free movement rules for workers operating in and traveling to and from the U.K. and European Union regions, and
- the employer will be establishing measures to address immigration and mobility needs as the Brexit negotiations with the European Union mature.

Step Two: Assess the Demographics and Prioritize Action

Currently, British citizens can move easily to another EU country, with citizens of EU countries equally free to move to the U.K.

According to the April–June 2014 Labour Force Survey, there are 1.73 million EU nationals living in the U.K., 79 percent of whom are actively employed. Recent reports from British consular authorities estimate that 2.2 million Britons live in the other 26 EU countries, excluding Croatia, which joined in 2013.

Of the reported 624,000 people who immigrated to the U.K. in the year prior to September 2014, about 251,000 people moved to Britain under the EU free movement rules. The remainder entered pursuant to the governing visa restrictions of the UK’s points-based immigration system.

Both of these free movement benefits would be subject to the negotiation of the terms of Britain’s withdrawal and, potentially, new agreements between Britain and individual member states. The current free movement beneficiaries that may be affected upon negotiation of an exit are:

- *EU workers hired to work in Britain.* Under Article 45 of the Treaty on the Functioning of the European Union (“EU Treaty”), passport holders from any EU member state currently may work for an employer in another member state—including the U.K.—freely. Employers operating within the European Union accordingly benefit from the ability to staff their operations with “visa free” nationals from any EU member state—they do not have to undertake immigration processes to apply for and obtain work permits. While those EU workers must still comply with validation of their legal right to work, such as the UK’s “day one validation” requirements, they face no immigration work permit filing or registration requirement.

- *British citizens hired to work in the European Union.* Conversely, British citizens seeking to work in other EU states currently are authorized to undertake employment in other EU and EEA member states without first having to file for a work permit.

Both of these categories could be subject to work permit and registration requirements after a withdrawal of

Great Britain. The “Leave” campaign indicated it favors establishment of a points-based admission system (“PBS”) akin to the Tier 2 work permit process for non-EU nationals in place today. The government could in fact simply apply the overall PBS requirements (Tiers 1 to 5) for any incoming admittees from the rest of the European Union. Ironically, if Northern Ireland and Scotland ultimately separate from Britain in their alliance with the European Union, even their nationals could be subjected to those same PBS admissions requirements. If the political debate remains aggressive with regard to admissions, quota restrictions could further restrict admissions.

The same type of rubric could be implemented for UK nationals entering other EU nations, and, once again, this could encompass movement into Northern Ireland and Scotland if they form part of the European Union after Britain exits.

In both instances, the negotiation of bilateral or sub-regional (e.g., EEA) agreements would temper the impact of such immigration clearance requirements.

In this uncertain environment, employers operating in these regions should map out what their demographics are. To the extent they have cross-national employees who have settled into a location, they should identify them as prioritized candidates for residency in that local country. For employees who are actively engaged in roving and/or have short-term assignments, assessing where they travel, how their assignments are tracked, and whether certain aspects of their duties can be centralized into particular locations is an analysis that should be initiated. Most significantly, maintaining an accessible tracking system that monitors changes in location, passport expiration, and nationality is essential to address changes as negotiations mature on Brexit in the coming months.

Step Three: Establish a Prospective Plan

With the benefit of a demographic mapping and a reliable tracking system, employers can address contingency action plans. Longstanding assignees operating in the European Union may be eligible to exercise the right to permanent residency to protect against any future change. Specifically, permanent residency should be considered for two groups, as noted below:

- EU nationals who have exercised treaty rights (by working, studying or being self-sufficient) in the U.K. for a period of at least five years are entitled to permanent residence in the U.K. under EU law.

- British nationals who have exercised treaty rights in other parts of the European Union by working for at least five years similarly may apply for permanent residency in that other EU state. That residency benefit would give them rights not only in the EU state where they apply for residency but throughout the remaining EU treaty region.

For shorter-term assignees, “ticklers” should be set in a schedule to assess visa options for travel, with a minimum of a 7-month reminder so filings can be instituted early for those who will need work permits in the face of change. A post-exit framework for travel within the region is likely to become more cumbersome, potentially requiring UK and EU nationals to obtain formal visa approvals prior to travel and to register upon arrival in the destination country. While individual

member state agreements may soften the impact, border officials will need to scrutinize passports more closely, evaluating whether there is a “visa free” bilat-

eral agreement or not. In either case, the queues at port inspections are likely to grow.