

*"Brevity is the soul of wit"*  
*William Shakespeare*

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## B R E X I T

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# BREXIT IMPACT ON EMPLOYMENT LAW



**By Wendy Trehy – UK Solicitor.**

*Lastly, and although the Brexit discussion will not be over for a while, Lawyer Monthly hears from Wendy Trehy, Founder and Principal at TE Law (Tailored Employment Law Solutions). Wendy gives her insight on how the recent UK decision to leave the EU might affect employment law in the UK.*

Let's be honest, we are all a touch "Brexit-ed out." This article will take a brief look at what the implications of exiting the EU will be, or more accurately could be, for UK employment laws.

The simple answer is that it will be mixed, and matters remain uncertain in almost every area, which isn't great for business. The position will remain the same not just until the exit process is complete, but until Parliament has taken decisions on legislation post-exit, which as we know will take some time.

On exit, Parliament will have to either repeal or amend the European Communities Act 1972 (ECA) which took the UK into the EU and provides for the primacy of EU law. Parliament will also then begin to consider which UK laws derived from EU law stay or go. Parliament could look at repealing the ECA earlier without triggering Article 50 of the Lisbon Treaty. This would result in a unilateral withdrawal from the EU. However it seems highly unlikely that Parliament would do this, as it would no doubt be extremely unpopular with what at the moment remain the UK's European partners, and so it would have a very negative impact on exit negotiations for the UK.

Until exit is completed, it is important to remember that the UK remains a member of the EU and therefore subject to EU law and the decisions of the ECJ are still binding; in other words, business as usual for now. It seems likely that until exit is complete, changes that were proposed to current legislation will be put on hold, for example the proposal to extend the right to take shared parental leave to grandparents. All has gone quiet on that front.

There has been much speculation on what laws will be removed, will survive or face amendment. Much key legislation pre-dates the UK's membership of the EU and is entirely domestic, for example laws conferring unfair dismissal rights and as a more recent example, the Modern Slavery Act 2015. These will be unaffected by exit.

Other laws have either been influenced by, or are derived from EU law, for example the Employment Rights Act 1996 and the Equality Act 2010 amongst others. As primary legislation, such acts will not be automatically repealed, but they could well be amended and post-exit, Parliament will have total freedom to do so.

In terms of what is likely not to survive, many commentators have speculated (as that is all we can do for the moment) that the Agency Workers and Working Time Regulations are likely to go, and I would concur that that is certainly possible if not likely. This would prove popular amongst employers, less so by the workforce.

As we know, immigration and the right to free movement for workers is a political hot potato and is likely to be a key issue in exit negotiations. As with employment laws, we can only speculate what will be agreed, however it seems inevitable that compromise will be required by both the UK and the EU. This article does not look at the complex issues regarding immigration, however we would recommend that it would be prudent for employers to undertake a workplace audit to assess immigration status to understand the proportion of their workforce that could be affected by Brexit.

We have seen an increasing trend for employers to freeze pay and not undertake the usual annual review process, which generally results in pay increases, while the impact of Brexit remains so uncertain. This is not surprising but we would recommend that employers take steps to reassure their workforce during this time of uncertainty.

So for the moment it very much remains business as usual and it seems likely if not inevitable that it will take at least two years post notification (i.e. the invocation of Article 50) before the UK finally departs from the EU. After that, we are likely to face a lengthy period before certainty is re-established.

## **About Wendy Trehy**

Wendy is a solicitor who has specialised in employment law for over 16 years, working for a number of highly regarded employment practices. She was also an in-house employment counsel for a major International plc, which means she has considerable experience in working closely with senior management and HR as part of their team to manage employment and complex HR matters.

Wendy advises on all aspects of employment law and acts for a wide range of employers in many sectors, ranging from new ventures and SMEs to major international plcs and not for profit organisations. She also advises individuals, particularly in the insurance, banking and media sectors.

## REST PERIODS & BANK HOLIDAYS in Spain.



*By Connie Raymundo.*

The following article, published in the Costa Blanca News, lists the rest periods and Bank Holidays in Spain, an interesting piece of information even if you are no longer working.

### Daily Rest Periods

In accordance with the Workers Statute Law, Section 34, the part which specifically covers the working day states that all workers and employees have the right to rest for a period of at least 12 hours starting from the end of one work day to the beginning of the next.

The number of hours to be worked in any given day cannot exceed 9 hours, unless there are either special arrangements made with the Government or a different length of working day is agreed with the workers' representatives and is then stated and confirmed in writing afterwards within the Collective Agreements; nevertheless, the rest period of 12 hours must always be respected.

When the duration of any work day is over six hours, then a minimum rest period of 15 minutes (30 minutes for workers under the age of 18) should be taken at some point, except at the beginning or the end of the work day as this is not allowed - in other words, this entitlement cannot be used to actually shorten the length of the work day.

### Weekly Rest Periods

All workers and employees have the right to enjoy a continuous and uninterrupted weekly rest period of at least one and a half days, and this usually runs from Saturday afternoon through all of Sunday. However, these days can be changed provided the company and the workers agree, and any such alternative arrangement must be stated within the terms of the Collective Agreement ruling that particular employment sector or within the work contract.

However, for certain employment sectors the Government does have the power to change these days, or to increase or decrease the weekly rest periods, and can apply this for example to shop workers and/or to those in the hotel, agriculture or transport industries.

### **Bank Holidays (Fiestas)**

Even though sometimes it may seem that there are almost more fiestas than working days, all workers and employees have the right to enjoy a maximum of 14 Bank Holidays. Two of these fourteen days will be local Bank Holidays, and some specific National Fiestas must be always respected, these being Christmas Day, New Year's Day, 1<sup>st</sup> May (Workers Day) and Spain's National Day which is 12<sup>th</sup> October.

The Government is able to move any National Fiesta occurring mid-week to the following Monday, and in all cases where a National Bank Holiday falls on a Sunday then it will be moved forward one day to the Monday.

***Please, do not hesitate to contact me [connie@rhv-lawfirm.com](mailto:connie@rhv-lawfirm.com) if you need more information.***

***Connie Raymundo –  
Lawyer & Barrister at Raymundo & Hopman Abogados.***

## Where There's A Will There's A Way! Or Is There?



**By Tina Brown – Tax Adviser and General Services Expert.**

Well, there's good advice, bad advice, unsolicited advice and downright stupid advice. There are those who follow it unquestioningly, those who defiantly ignore it and those who have an opinion on any part and all of it. Whether it's Tom, Dick and Harry in the pub, the local newspaper or your best friend you need to evaluate the advice you receive and make sure you follow the good stuff!

Unfortunately this isn't always the case, sometimes everybody and their dog could be pointing you in the right direction and there are still some who know better, think it doesn't apply to them, will get round to it later or just don't care enough to do anything about it.

Last year every newspaper in the land shouted about new legislation affecting Spanish wills. The law was changing and everyone had to ensure that their wills had a clause stating they wanted the rules of their nationality to take precedent in inheritance cases or Spanish law would prevail. Simple, for a year before the change articles appeared on a weekly basis, everyone was notified with plenty of time to take action and on 15<sup>th</sup> August 2015 the law came into effect.

So, everyone updated their will right? Nope, some chose not to and here are a few of the consequences which have crossed my desk recently:

### **1. I'll Get Round To It Later - The Deceased Person Didn't Leave A Will**

The deceased person owns one third of a property in Spain and left no will. The family have had to do probate in the UK and this shows that there are four rightful heirs. Getting complicated eh? So, the probate has to be legalised at the Foreign Office and then officially translated into Spanish; three of the inheritors don't want anything to do with the property so have to renounce their claim, but to do this they need NIE numbers. The fourth person doesn't speak to the other owners of the property, tricky, he will have to sign acceptance but again also needs an NIE number.

All in all, this is getting expensive, complicated and messy and could have been avoided for a fraction of the cost.

### **2. It Doesn't Affect Me - The Deceased Person Didn't Update Their Will**

People won't be told will they? So, despite the fact that there is a will and the deceased person wanted his wife to inherit everything, the children from a previous marriage have a claim. It took time and money to track them down and they have, in this case, agreed to renounce their rights, but it could have been a very different story if relations had been strained between the parties involved.

Again though, in order to renounce their rights they have to get NIE numbers and sign deeds, they're doing this via power of attorneys paid for by the wife, expense and stress she could have done without.

### 3. **I Just Don't Care - The Will Wasn't Read Properly**

Now this one blows even my mind, and I've seen some things I can tell you! Even though the will was written in two columns, Spanish and English the will wasn't read properly and there was a huge mistake. They can't even blame the translator for this one. Instead of the wife inheriting, the property was left to the stepchildren, who are over the moon and have accepted the inheritance.

So, the wife no longer owns the house she lives in, relations are strained and the wife is now being forced to sell the property and down-size so she can release money to pay them off.

Simple mistakes can cost a lot.

I wish I could say that it ended there, I have an un-updated will where the parents were still alive at the time of writing so their death certificates have had to be ordered, legalised and translated, luckily there were no children. An inheritance involving a minor, the mother also inherits so there is a conflict of interest in the mother representing the child and the father is not in the picture adding further problems into the mix. Obviously the grandparents were expecting a long and happy life, but in this case they both died together leaving an inheritance nightmare that is dragging on.

And finally, a will written ten years ago by someone without an NIE number; it just goes to show that you can't do anything in Spain without an NIE number and that includes dying!

So, the moral of this is, if in doubt, get your Will checked out.



**Tina Brown – EXPAT SOLUTIONS LA MARINA.**  
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## What to do if your house is broken into.

*(Extracted from my article published in March)*



*By Ignacio Ganga. Lawyer.*

Unfortunately, robbery is a very common offence.

And the question is, what to do or not to do if our house is broken into.

As a **quick guideline** about how to proceed if you suffer a robbery at home:

- Do not touch, move or change anything in the house (but take some photos), and close the property (if possible).
- Call the Police or Guardia Civil to come to your house; if they cannot come immediately, then go to your nearest Police Station or Guardia Civil to inform them about the facts and process a denuncia.
- You should ask for a Scientific Police Squad to visit your house to find finger prints, evidence or any other relevant details important for the investigation.
- Contact your lawyer, as we will monitor the process from the beginning and requesting the relevant information, evidence, and witness for the legal process to begin and also to protect your rights in a future Criminal Court process.

Robbery is punished between 1-3 years imprisonment under Spanish Criminal Code.

Please do not hesitate to contact us for any query in regards to this or any other Criminal Issue emailing to [iganga@rhv-lawfirm.com](mailto:iganga@rhv-lawfirm.com).

**Ignacio Ganga**

**Lawyer & Barrister at Raymundo & Hopman Abogados.**

## DS & SJ Consultancy Ltd

Pensions Update

### Interest Rates, Annuities, Pension Contributions, EU Workers and White Lies.



*By David Sawyer – Independent Financial Consultant at DS & SJ Consultancy Ltd, UK.*

#### Mark Carney – Bank of England Base Rate Change

This month saw the governor of the Bank of England reducing base rate down to 0.25% which is designed to encourage investment into the UK, it does however have a major knock-on effect for savers and those seeking income in retirement. The good news is that this may help the building industry through more affordable mortgages, although present property values still mean substantial deposits and/or reliance on parents and grandparents support.

For savers it is now more important than ever to shop around. Those who have fixed term cash bonds maturing need to review the market as often the incumbent provider gives a poor return on retained money. Both the Internet and financial papers will have charts and suggestions but the one area they do not include is that of peace of mind. I have always taken the view that I need to be happy with the bank building society or other institution with which I am dealing, rather than seeking a high return from an unknown quantity. There are safeguards built into the banking system to protect consumers but my view remains that if something goes wrong the traumas of claiming from a protection funds may not be worth the small percentage gain offered at outset.

#### Coming up for Retirement.

Once again annuity rates remain in the limelight due to the above basic rate change. Annuity payments reflect returns on government bonds, or gilts, which had been depressed in recent years as investors piled into bonds and drove their yields – income element – down. Annuities either individual or via maturing pensions use these returns as their basis for calculation. Add improved longevity and we can understand why annuity returns are so low. A recent table published in the Telegraph showed that using a £100,000 purchase price at 65 in 2007 an illustrated income of £7,400 per annum could be achieved compared with £5,000 per annum in 2016. This assumes an average individual and does not take into consideration either health or regional differences.

Those seeking guarantees on future income may prefer the certainty of an annuity rate rather than leaving their money invested and drawing down income which may ultimately erode their capital. It is therefore important when considering retirement options to seek independent advice as the current financial climate has created a more hidden minefield.



At this stage little can be said about the effect of Brexit in that we are still using unisex annuity rates (EU Gender Directive) which may change in the future. Also we do not know how long the reduced base rate will last and change in either direction.

## **Maximising Pension Contributions.**

Previous updates covered the change to maximum annual pension contribution which affects those earning over and £150,000 a year and the use of Carry Forward which allows individuals to go back three tax years and claim unused relief. This year saw a change whereby what were known as Pension Input Periods where tax relief would be based on variable 12 month periods are now to be geared to the prevailing tax year and no longer give the ability to potentially have two catch up payments in a single financial year.

We have noticed that some individuals have the impression that Carry Forward has been abolished. It has not, but now comes into the new regime. As we come into the run up for completing Self-Assessment forms it is worth remembering that this option is still available. If in doubt it is worth discussing this with your accountant or pension advisor.

## **SIPPs v Personal Pensions.**

Over the last few years we have seen what is commonly known as personal pension described as a Self-Invested Personal Pension (SIPPs). Whilst in essence they are one in the same the difference lies in the investment options available in each case. The basic personal pension evolved following the introduction of Workplace Pensions in order that scheme members could easily switch, at retirement, to take drawing income from the plan rather than buying an annuity. It also gave a wider choice of investment funds through that provider.

A full SIPP is usually administered by a specialist provider and allows the individual while saving or in drawing down to access a wide variety of investments, including commercial property. These plans are normally suitable for individuals rather than being used for occupational pension schemes due to the costs involved and the contract basis.

Providing an individual does not exceed either annual contribution or the Lifetime Allowance limits there is no reason why they can be a member of their company's scheme whilst at the same time investing through their own SIPP.

## **European Workers.**

Having recently dealt with several overseas employers UK Workplace Pension requirements the question of how Brexit will affect current overseas employees working in the UK. Whilst it remains too early to comment on the potential EU immigration into the UK it remains highly likely that there will be restrictions at some time in the future.

The main question we are being asked is more regarding those already working in the UK rather than future immigration policy. Although it is not certain, previous changes to immigration law have not been retrospective and thus any EU workers currently in Britain are likely to be unaffected. It is thought however, that where these workers leave the UK to return to their country of origin for more than a temporary period i.e. holidays or extended holidays, as it is likely that they may fall under any new system which may be imposed.

As always whenever with legislation the devil remains in the detail and there can be unforeseen consequences as has been seen in the past. It will be some time before a clear picture evolves but our exit from the EU should not be a cause of panic for those currently working in the UK.

## **White Lies when making an Insurance Claim are Allowable.**

Following a recent decision by the Supreme Court insurance firms can no longer refuse to pay out if clients tell white lies or make errors on applications that do not affect the actual claim. What this actually means in practice, in our opinion, would take some time to evolve.

Where a claim is made and the insurer believes that there is an error, inconsistency or “white lie” on the original application of current claim form then this cannot be automatic grounds for turning down a claim. An example was given of the wrong receipt for the loss of an item which was used due to the insured trying to expedite the matter. This should not disallow the claim providing that ownership of the item is provable. The expression “collateral lies” in the course of an insurance claim has been used to explain this which has been seen as detrimental to the industry and honest customers.

What is clear is that insurers are expected to be less dogmatic when considering claims, but what it does not mean is that it will be an open cheque-book for those wishing to make fraudulent claims or have deliberately misled the insurance underwriter when establishing cover.

Despite some consumer comments to the contrary most insurance companies do endeavour to treat clients fairly and take simple mistakes into consideration. What this may mean is that if it opens the floodgates to more claims and possible litigation, following this decision, then we will expect to see insurance premiums increase.

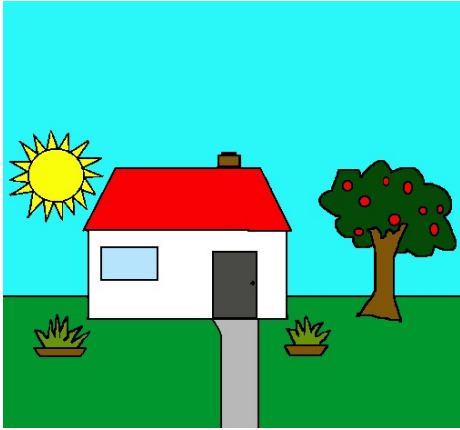
**David Sawyer – Director**

[www.dsandsjconsultancy.co.uk](http://www.dsandsjconsultancy.co.uk)

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**E&O.E**

## ‘Habitation Certificate’

### Part 2 - BUILDINGS SECOND/FURTHER OCCUPANCY LICENCE



*By Connie Raymundo- (Article published in CBNews)*

As mentioned in our previous article on this topic, Occupancy Licences (previously known as Habitation Certificates) are important legal documents which confirm that a house is suitable for living in and also that it complies with all applicable building rules and regulations.

A First Occupancy Licence has to be obtained for all New Build homes and, in accordance with the provisions of Article 214 of the new Valencia Land Laws (LOTUP) and Article 33 of the Buildings Law, a Second/Further Occupancy Licence has to be obtained in all cases when the First Occupancy Licence is over 10 years old, when the house is sold for the second or further time, and/or when new utility services contracts are needed (for example when changing these into a new owner's name)

Second Occupancy Licences have to be formally applied for in writing by means of a 'Responsible Statement', and to which the documentation requested by your specific Town Hall should be attached (please consult with your own local authorities as requirements can and do vary). Submission of this application will have an automatic positive effect and the Second Occupancy Licence will be considered to be granted for every house that a) originally had a valid First Occupancy Licence, b) was properly built in accordance with an Architect's project and c) had all the relevant building permissions etc. Do be aware however that this application will not have the same effect in respect of those houses for which a First Occupancy Licence was not applied for at the proper time, as the local authorities will now need to carry out a full inspection prior to granting their approval for the Licence to be issued.

In the eyes of the Law, those owners of houses that were unable to get the First Occupancy Licence due to problems of legality are in a completely different legal position, and will only be able to secure a Second Occupancy Licence if certain other legal conditions are complied with and, in accordance with the Law and general conditions covering this situation, there are no pending planning infringement fines or open demolition files – these should be either be non-existent or have already expired.

It is not practical in an advice article to try to cover every possible option for every individual situation, so 'general information' on these matters can sometimes easily lead to initial misunderstandings. For example, in the famous case of **Catral**, over 1200 houses were built illegally and because of this, purchasers were unable to get the First Occupancy Licence for their properties.

The local authorities had to draw up and pass a special bylaw in an attempt to resolve the majority of these cases, and after complying with certain legal requirements, Second Occupancy Licences will be granted to any houses that do not have any pending fines or open demolition files or where, as mentioned before, any such fines and/or files have now expired.

This was an absolutely tremendous step forward that has helped many worried residents obtain their 'Habitation Certificates' and yet, after so much effort over a period of 12 years working towards legalising this situation, it has completely amazed both the local authorities and this legal firm that **less than 30% of the people that could be entitled to a Second Occupancy Licence for their homes have actually applied for it!**

If you are a Catral resident and you want to know whether or not you may be entitled to a Habitation Certificate for your property, or alternatively if you are resident in any other town and need help to get a Second Occupancy Licence, don't hesitate to contact us and we will be happy to advise you – your first consultation or visit is free of charge.

*Connie Raymundo – Lawyer & Barrister at Raymundo & Hopman Abogados. ICALI Reg. N°: 5936.*

And if you are **selling or buying** please, visit our website for some **basic guidelines** on these processes. You can also contact us, we will provide you with a free estimate of costs for the conveyancing services with no obligation.

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### HOW AND WHO TO CONTACT.

- Animals – John 965 975 470
- Shop - Steve 677 093 585
- Fundraising and events – Pat 630 892 513
- Our Web Page is [www.barc-busotanimalrescueconcern.org](http://www.barc-busotanimalrescueconcern.org)
- Our Facebook Page is BARC (Busot Animal Rescue Concern) Support Group.



### AVOID FINES! SUMA and Title Deeds in Order.

*By Maria Navarro - Lawyer*



Several Towns have been recently revised for the Catastro update. Thousands of infractions were found and denounced in the mentioned Towns due to lack of IBI payment. This revision not only affects houses, it also involves any other buildings such as **pools, barbecues, etc.**

Aerial photographs are the tools used to compare old and brand new constructions. It is therefore strongly advisable to ensure that your house fits with Catastro and Land Registry descriptions in order to avoid fines and expensive and time consuming problems in the near future. Our Law Firm has a large experience in this field due to our work with the Catral, Orihuela and other Towns legalisation cases and we would be more than happy to resolve any question you may have in this regard.

But, as important as to update SUMA is to update your TITLE DEEDS because a copy of the updated deeds should be lodged with the SUMA application. This will save lots of time and money to you in the future.

Please, check your deeds and if you have any new item (barbecue, sheds, garage, pool, etc) not included in your deeds then contact us and we will inform you about the Deeds Update process and if convenient, we will be pleased to help you.

Email: [info@rhv-lawfirm.com](mailto:info@rhv-lawfirm.com), or, [maria@rhv-lawfirm.com](mailto:maria@rhv-lawfirm.com).



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