

# Employment Law Developments: 2020



Image courtesy of Warfield Park

**April 2020 onwards will see a number of changes and employers should be taking practical steps now to ensure that they are fully prepared.**

**A number of additional changes may take place depending on the outcome of the general election but here is a summary of what to expect based on what we know currently:**

## **Written Statement of Terms**

There are 3 changes to implement from 6th April 2020 onwards:

1. The right to a written statement of terms will be extended to workers, not just (as currently) employees.
2. The statement must be provided on or before the first day of employment, rather than (as present) within two months of the start date
3. More information now needs to be included. Statements will now also need to include:
  - Details of any remuneration/benefits over and above basic pay (including non-contractual ones)
  - Normal working hours (if any), days of the week to be worked and details of any variations to these
  - Any paid leave available (not just sick pay / holiday)
  - Any probationary period, including conditions and duration
  - Any training entitlement, including whether it is mandatory and / or must be paid for by the worker

This requirement will apply to new starters from 6th April 2020 onwards. It will not apply to existing employees or workers unless they specifically request a written statement that complies with the new requirements.

## **Holiday Pay**

Holiday pay for workers with irregular hours or pay is based on a notional 'week's pay'. At present, this is calculated by taking an average of pay over 12 weeks (discounting any weeks of zero pay). From 6th April 2020 this will extend to 52 weeks. If the worker has been employed for less than 52 weeks then the reference period will instead be the number of complete weeks the worker has been employed for.

## **Minimum Wage**

Minimum wage rates are expected to go up in April 2020. New rates would normally be announced the preceding November; however the general election has pushed this back and we are unlikely to know what the new rates will be until December or possibly January.

## **Collective Consultation**

From 6th April 2020 onwards the threshold to request an information and consultation agreement under the ICE Regulations will be lowered from 10% to 2% of employees, subject to the minimum requirement of 15 employees.

## **Parental Bereavement Leave and Pay**

From April 2020 employed parents who have lost a child (including a still birth after 24 weeks of pregnancy) will be entitled to two weeks' leave (irrespective of their length of service) to allow them time to grieve away from the workplace. Parental bereavement leave and pay will be available to be taken as a single block or as two separate weeks. Employed parents will have a period of 56 weeks in which to use their entitlement.

## **Termination Payments**

From 6th April 2020 onwards all termination payments that fall within section 403 of ITEPA 2003 but exceed the £30,000 threshold will be subject to class 1A national insurance contributions.

## **Agency Workers**

The "Swedish Derogation" currently allows employment businesses to avoid pay parity between agency workers and direct employees if certain conditions are met. However, from 6th April 2020 onwards, including such a provision within an agency worker's contract will be banned.

## **IR35 Legislation**

From 6th April 2020 onwards medium and large companies in the private sector that contract with personal service companies (intermediaries) for the provision of workers' services will have to account for tax and national insurance through PAYE. This means that the responsibility to determine IR35 status will now be on the employer, not the individual or personal service company.

For further information please ask for our separate Guidance Note on IR35 Legislation.

## **Other likely changes**

The Good Work Plan was published on 17th December 2018 and although some aspects of this plan have been implemented most are awaiting further government action. The proposals below have no set time frame and it is uncertain when, or even if, these changes will be actioned.

## **Continuity of Employment**

Casual employees (including agency and zero-hours workers) sometimes find it difficult to accrue employment rights as a gap of one week can break their continuity of employment. It is proposed to extend this one-week gap to a four-week gap, allowing more employees to have access to greater employment rights by satisfying the minimum service requirement.

## **Zero Hours Workers**

It is proposed to give all workers (including zero-hours workers and agency workers) the right to request a more predictable and stable contract after 26 weeks' service. Consideration is also being given to introducing the right for workers to switch to a contract that reflects their normal working hours.

## **One-sided Flexibility**

Consultation has commenced concerning workers who have unpredictable hours and an insecure income. This may lead to workers having a right to be given reasonable notice of their working hours and a right to be compensated where their shifts are cancelled or curtailed without reasonable notice.

## **Employment Status**

The government says it will "legislate to improve the clarity of the employment status tests, reflecting the reality of modern working relationships". It aims to reduce the differences between the tests for employment status in employment law (which allows for employees, workers and the self-employed) and under tax law (which only allows for employees and the self-employed) "to an absolute minimum", although it is not clear how this will be achieved. An online tool has been proposed to enable people to easily determine their employment status.

## **Proposals for Families**

Consultation has closed on a possible new right to neonatal care leave and pay. A further proposal is to require employers to provide greater transparency over their flexible working policies and family-related leave and pay policies.

## **Holiday Pay**

The government has outlined its intention to provide state enforcement of "vulnerable workers' holiday pay rights". The definition of vulnerable is yet to be determined.

## **Tips and Deductions**

The government intends to ban employers taking 'administrative fees' or any other deductions from staff tips. There would be a legal requirement for all tips and service charges to be passed on to staff and all tips collected by employers would have to be distributed amongst the staff on a fair and transparent basis.

## **Tribunal Powers and Enforcement**

The government is seeking to deal with employers who flout employment law. Existing action has already included publishing the names of employers who don't pay tribunal awards and increasing fines for aggravated breaches of employment law. It is proposed to introduce sanctions for repeated breaches on the same issue by the same employer. Details of what sort of sanctions are being considered have not yet been released.

These notes are for general guidance only. For further information or specific advice please contact the employment team at Tozers on **01392 207020** or email **employment@tozers.co.uk**



This guidance note aims to promote a general awareness of the law but it is not intended to constitute advice. Every effort is made to ensure that the law referred to is correct at the date of publication and to avoid any statement which may mislead. However, no duty of care is assumed to any person and no liability is accepted for any omission or inaccuracy. Always seek our specific advice.

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