

EMPLOYMENT LAW DEVELOPMENTS 2017 AND BEYOND

1. Introduction

This bulletin is the second of two looking at employment law developments in 2016 and 2017. This one deals with 2017 and EMP/108 looked at developments that occurred in 2016.

2. Thinking ahead

The Prime Minister has promised a complete exit from the EU, with Article 50 due to be invoked next month. She has also committed to take a Great Reform Bill through Parliament that will transfer all EU derived legislation into UK law. While this may secure most of the employment law rights we have at present in the immediate term it will mean that future governments will be free to abandon or amend them as they see fit in the future. EU derived employment and associated rights are relevant in the following areas:

- discrimination
- equal pay
- information and consultation
- redundancy
- TUPE
- collective bargaining
- working time
- health and safety
- agency workers
- public procurement
- insolvencies

- part time workers
- fixed term employees
- free movement of labour
- posted workers
- equal access to social security benefits data protection.

3. Gender Pay Reporting

The final draft regulations have been published and are subject to parliamentary approval. UK employers with at least 250 employees and workers, including contractors and zero hours contract workers, must publish mean and median overall pay and bonuses for each gender. The first deadline for publishing the information will be 4 April 2018, but the snapshot must be taken in April 2017. At that point reps and/or Company Councils should ask for the data and timescale in which the data is being collected. As the definition of employees in the new gender pay rules has changed it is likely that more organisations than previously thought will be caught by them.

4. Diversity on Boards

Two reports have recently been published on ethnic and gender diversity on boards in the FTSE 250 and 350 companies respectively. It is likely these employers will need to show they have made some genuine

attempts to improve diversity at management level. This will also provide an excellent opportunity for company councils to ask what their company is doing to increase the gender and wider diversity of their boards.

5. Data Protection

The new data protection rules (set out in the EU General Data Protection Regulation) will apply after May 2018. Some of the obligations are onerous and will take time to prepare for. The aim of the new regulation is to harmonise the law and regulatory approaches to data protection across the EU and to strengthen the rights individuals have over their data. The main definitions and basic structure are broadly similar to the current provisions, but there are some key differences, including:

- there will be a concept of “transparency”, which in an employment context will require greater openness and explanation
- consent to the processing of personal data will have to be demonstrably “freely given, specific, informed and unambiguous”
- employers must have a data protection policy and designated officer
- employers will only have one month to respond to a subject access request – rather than 40 days – and will have to provide additional information
- if HR data is lost or hacked into employers will have only 72 hours to inform the ICO
- there will be tougher fines for breaching the regulation – up to 20 million Euros or 4% of annual global turnover.

6. Apprenticeship levy

The expected date of introduction is April 2017 and will require employers with annual pay bills in excess of £3 million to pay 0.5% of their annual wage bill towards the cost of apprenticeship training. This will replace the current apprenticeship system – see ...

Many employers are unlikely to recoup the levy they pay, and so they will see this as yet another employment tax. Reps may want to encourage some broader thinking about apprenticeships and beyond structured training for young starters so they can receive some benefit from the levy.

7. Immigration Skills Charge

Another levy - £1,000 per certificate of sponsorship per year - is being introduced in April 2017. This will have to be paid by employers that use migrant workers under tier 2 of the points based system of immigration.

8. Employment Status

This is likely to continue to be a key issue, particularly for those in the “gig” economy. There is an expectation that the Uber drivers’ decision (see EMPL/108) will be appealed but other similar workers – cycle couriers, Addison Lee drivers, Citysprint and Deliveroo drivers – are beginning to take notice and further actions can be expected. Indeed, a plumber working for Pimlico Plumbers has this month won the same point as the Uber drivers – they are workers and are not self employed.

The issue of employment status is also at the centre of an inquiry launched in October 2016 into the future of the world of work, focusing on the rapidly changing world of work and the status and rights of agency workers, the self employed, and those working in the gig economy. The study will include a consideration of how those workers

should be categorised for the purposes of tax, benefits and employment law.

9. Corporate Governance

The government wants business behaviours to be more accountable following the collapse of BHS and the exposure of the poor working practices at Sports Direct. In response to these issues the government published a consultation document on improving the corporate governance framework focuses on executive pay, strengthening the employee, customer and stakeholder voice in quoted companies and applying corporate governance and reporting standards to large private businesses.

10. Flexibility and leave

These are likely to be significant issues running through 2017. The consultation on grandparent leave which was expected last summer has been delayed because of Brexit pressures but may surface during the year. However, given the low take up of shared parental leave to date, this type of leave may not come into being any time soon.

There is a Private Members' Bill due for a second reading in Parliament which seeks to guarantee employees who are living organ donors the right to paid time off to allow them to recover. However, such bills rarely progress to legislation unless they attract government support – so watch this space!

11. ET Fees

The Unison challenge to employment tribunal fees is due to be heard in the Supreme Court in April. Meanwhile the government is undertaking a consultation on their proposals for changes to the fees system. TSSA nationally will submit views in response to the consultation, but all interested reps are encouraged to

complete one from their branch. The document is available on the Ministry of Justice website. Responses must be returned by 14 March 2017.

Further Information

More information on this and other equality matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- ❑ the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law.