

05 February 2016

# 3HR Corporate Solicitors Weekly

## Employment

### Forthcoming Legislation

Please see below for some of the employment legislation expected in 2016.

#### 1) National Living Wage and National Minimum Wage

The new National Living Wage (NLW) will start on 1 April 2016. The NLW provides that, for workers aged 25 and over, a mandatory 50 pence extra must be paid over the national minimum wage (NMW). The NLW and NMW rates will be reviewed in October each year. Therefore, the weekly rates until October 2016 will be:

- £7.20 (NLW) for workers aged 25+, from 1 April
- £6.70 (NMW standard rate) for workers 21 to 24 (21+ until 1 April)
- £5.30 (development rate) for age 18 to 20
- £3.87 (apprentice) for apprentices under 19 or 19+ but in first apprenticeship year
- £3.30 (young workers) for non-apprentices under 18 but above compulsory school age.

For pay reference periods after 1 April, the financial penalty for employers who underpay the NMW will also increase from 100% to 200% of the underpayment due to each worker.

#### 2) Zero Hour Contract Exclusivity Contracts

The Small Business, Enterprise and Employment Act 2015 introduced a ban last year on including exclusivity clauses in the contracts of employment for zero hours employees. The remedy for zero hours workers whose employers breach that ban is now in effect.

Zero hours employees now have the right not to be unfairly dismissed if the reason, or principal reason, is that the employee has failed to comply with an exclusivity clause. The regulations do not require any qualifying period of employment. Zero hours employees and workers also have the right to not be subjected to a detriment for failing to comply with an exclusivity clause.

#### 3) Gender Pay Reporting

The Equal Pay Act 1970 made it illegal to pay men and women different amounts for equal or similar work. Section 78 of the Equality Act 2010 will make it mandatory for all employers with at least 250 employees to publish information about their gender pay gap. It is aimed to increase transparency and also incentivize employers to achieve gender equality by creating a new commercial interest. These regulations will cover private and voluntary sector employers in England, Scotland and Wales.

A consultation titled "Closing the Gender Pay Gap" closed on 6 September 2015 and the Government's response is expected any time. It is anticipated that the Government will confirm the precise details of what pay data employers will be required to publish, however David Cameron has already confirmed that bonus payments will be included. The draft regulations are expected to be published by June 2016.

#### 4) Equal pay claims

Employers who are exposed as having a large gender pay gap are also at risk of potentially significant employee claims for equal pay, which could be backdated as far as six years.

Equal pay claims are currently highly topical, with the hearing of the test cases against Asda (expected to go ahead in the first half of 2016) hotly awaited. The case will determine if the supermarket's in-store staff jobs, which are mainly held by female workers, are of equal value to higher-paid jobs in the company's male-dominated distribution centres. If the Court finds that the roles do in fact constitute equal work, workers could be entitled to six years' back pay for the difference in earnings, potentially costing Asda millions, if not billions, of pounds.

#### 5) Termination of Employment Payments

In July 2015, the Government launched a consultation on reforming the tax and NI treatment of termination payments. There are in existence various exemptions, reliefs and reductions applying to termination payments in addition to the tax-free threshold. For these exemptions to apply the payment to the employee must not be contractual or salary. If the conditions of the exemption are met then there is no income tax liability even on the elements over £30,000.

The consultation states that HMRC has evidence that some employees and employers attempt to change the nature of their termination payments so that the employee can benefit from the £30,000 exemption and the employer isn't liable for NICs. The consultation therefore seeks views on:

- removing the distinction between contractual and non-contractual termination payments
- the design of the new exemption from income tax and NICs
- whether the income tax and NI treatment of termination payments should be aligned
- which of the existing exemptions should be retained and whether any new exemptions should be introduced

The consultation closed on 16 October and a summary of responses is expected to be published in 2016. The Small Business, Enterprise and Employment Act 2015 gives the Government power to make regulations on this issue.

If you have any queries on any of the forthcoming legislation, please contact your usual consultant.

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