



MS Rubric,
solicitors

Employment Law

NEWS

Quarterly Newsletter

Spring 2018



Hello,

welcome to the **Spring** edition of our newsletter. Having recently joined the firm I would like to introduce myself. I have over 10 years' experience advising on employment law and HR consultancy, representing both employees and employers. I deal with all types of claims including complex high value tribunal claim and regularly advises on redundancies and business reorganisations (including TUPE), due diligence in company sales, unfair dismissal, discrimination, family friendly rights and whistleblowing. I am a member of the Employment Lawyers Association.

Sylvia Chan
Employment Law Solicitor

Have a specific HR question or issue? Don't forget you can contact me direct on 01454 800 008

Gig economy and Taylor Review

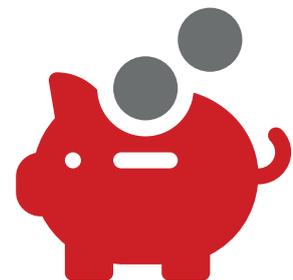
On 7 February 2018 the government published its response to the Taylor Review of Modern Working Practices. It sets out the government's proposals to increase workers' rights and their awareness of those rights, and the action it intends to take against employers who breach their workers' rights.

The government's proposals include the following rights for all workers from the first day of work; for casual and zero-hours workers an itemised payslip and the right to request a "more stable" contract; providing clearer financial information to agency workers; developing an online tool to determine employment status; extending the qualifying period for continuous service beyond one week; reviewing the redundancy legislation in relation to pregnancy and maternity; and introducing tougher enforcement measures and penalties for employers who breach existing employment protections.

Gender Pay Gap

Private and voluntary sector employers in England, Wales and Scotland with at least 250 employees will be required to publish information about the differences in pay between men and women in their workforce, based on a pay bill 'snapshot' date of 5 April 2017, under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.

The first reports must be published by 4 April 2018.



Pension Auto Enrolment

The minimum contribution to pensions under automatic enrolment will increase from the current 2% of earnings to 5% (2% from the employer, 2.4% from the worker and 0.6% as tax relief from the government). This amount will rise again in April 2019 to 8% of earnings (3% from the employer, 4% from the worker and 1% as tax relief).

General Data Protection Regulation

The government has confirmed it will be implementing the General Data Protection Regulation (GDPR), which applies to all EU Member States from 25 May 2018, even though the UK is leaving the EU.

The new rules give individuals:

- easier access to their own data
- a 'right to be forgotten'
- a right to know when their data has been hacked.

• organisations will benefit from having:

- a single set of data protection rules across the EU and
- one supervisory authority, rather than the current 28.



Notifications to supervisory bodies are also being scrapped. But companies may be required to:

- pay a fine of up to 4% of global turnover if they breach the new rules
- appoint a data protection officer in certain circumstances.
- exemptions apply for SMEs for whom data processing is not a core business activity, and these employers may also charge a data access fee where requests are 'manifestly unfounded' or 'excessive.'

First reports must be published by 4 April 2018.

Changes to taxation of termination payments from April 2018

The current £30k 'tax exemption' will remain, (and there will be no changes to the treatment of legal fees paid by an employer under a settlement agreement.

All payments in lieu of notice (PILONs) will be subject to deductions for income tax and National Insurance contributions (NICs), regardless of whether they are paid further to a contractual PILON clause or not;

- Payments for injury to feelings will fall outside the tax exemption for injury payments, except where the injury amounts to a psychiatric injury or other recognised medical condition;
- Foreign Service Relief, (which allows some employees who worked abroad for an extended period of time to qualify for full or partial relief from taxation on termination payments), will be abolished altogether.

What we've been up to...



**LVS Show – Excel
November 16-17 2017**



**VMPA Show –
25-27 January 2018**

KEY CASES FOR 2018

ANNUAL LEAVE

The Sash Window Workshop Ltd and another v King - after the ECJ judgement opening the door to significant holiday pay claims, the Court of Appeal will now consider whether a worker is entitled to be paid on termination for any periods of annual leave that have accrued during employment, where the worker has been prevented from taking that leave because the employer would not grant paid leave.

KNOWLEDGE OF DISABILITY

Donelien v Liberta UK Ltd - this case was heard by the Court of Appeal in November 2017. The Court is considering an appeal against an EAT decision that an employer that took reasonable steps, but not every possible step, to ascertain whether an employee was disabled, did enough to avoid having constructive knowledge of the disability.

SEX DISCRIMINATION

Capita Customer Management Limited v Ali is the case where a Tribunal ruled that a male employee was discriminated against because of his sex when his employer refused to allow him any period of shared parental leave at full pay when a women on maternity leave would have had 14 weeks' enhanced maternity pay. The case was heard by the EAT on 20 & 21 December 2017.

SEX DISCRIMINATION

Hextall v Chief Constable of Leicestershire Police is similar to Capita v Ali above but in this case the Tribunal held that a police force's policy of giving a period of full pay to mothers on maternity leave but paying only statutory shared parental pay to partners is not discriminatory. The case is due to be heard in the EAT on 16 January 2018.

EMPLOYMENT STATUS

Pimlico Plumbers Ltd v Smith heads to the Supreme Court on 20 and 21 February dealing with employment status.

EMPLOYMENT STATUS

Uber BV and ors v Aslam and ors - although no date has been fixed after Uber's application to leapfrog their appeal from the EAT directly to the Supreme Court was rejected in November, this case is likely to be heard in the Court of Appeal at some point in 2018.

SEXUAL ORIENTATION DISCRIMINATION

Lee v McArthur and Ashers Baking Company Ltd, otherwise known as the "gay cake case" will be heard by the Supreme Court on 1 May 2018. The Court of Appeal in Northern Ireland held that a bakery directly discriminated against a gay man on the grounds of sexual orientation by refusing to bake a cake with the caption "Support Gay Marriage" on it.

NATIONAL MINIMUM WAGES CLAIM "SLEEP IN" ISSUE

Focus Care Agency Ltd v Roberts heads to the Court of Appeal on 20 March 2018 where the correct approach to determining the question of whether employees who "sleep-in" in order to carry out duties, if required, engage in "time work" for the full duration of the night shift or whether they are only entitled to NMW when they are awake and carrying out relevant work.

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