Oct 2024

Employment Rights Bill Full Briefing

From Thompsons Solicitors

Right to claim unfair dismissal from day one

Introduction

As anticipated, Schedule 2 of the Employment Rights Bill provides that employees will have a day one right to claim ordinary unfair dismissal where they have been dismissed for an unfair reason or unreasonably dismissed for one of the five fair reasons: misconduct, incapacity on grounds of incompetence or ill health, redundancy, for breach of a statutory duty (such as not holding a driving licence which is required to do the job) or for some other substantial reason, (such as a business reorganisation or a breakdown in the working relationship).

The right is to be modified by way of regulations for those employees who are in their probationary period, which the Bill refers to as the "initial period of employment."

What's included?

The right to claim unfair dismissal from day one in employment applies to employees only. The government proposes to introduce a statutory probationary period by way of regulations that will set how long the probationary period is and how the right to claim unfair dismissal from day one will apply to them. Employees will also be entitled to make a request for written reasons for dismissal under section 92 of the Employment Rights Act from day one of employment.

What's not included?

The right does not apply to workers, i.e. those engaged on a contract to personally provide their services but who do not have a contract of employment and are not self-employed.

Nor does it apply to employees who have accepted a contract of employment but whose employment has been terminated before they started, for example, when the contract has been withdrawn.

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Comment

Importantly, the right not to be unfairly dismissed is achieved by repealing s. 108 of the Employment Rights Act 1996. This means that it is likely to be harder for a future Government to change the qualifying period since this would require amending the Employment Rights Act 1996. The big question is when will the day one right apply? The answer can be found in the government 'Next Steps' document, which sets out that the Employment Rights Bill will provide the legislative framework by which the day-one rights, including protection from unfair dismissal and the statutory probationary periods, will be implemented.

Following consultation, the government anticipates that "Reforms of unfair dismissal will take effect no sooner than Autumn 2026." While it's important to get such big reforms right, it will be important to ensure that the long lead-in period is not used to undermine the benefits of these much-needed reforms.

Flexible working and Family Friendly Rights

Introduction

Family-friendly rights are improved since they will not only introduce a right to unpaid parental leave and paternity leave from day one in employment but also shift the burden to employers to justify why they have refused a request for flexible working. A new right to bereavement leave is also introduced, widening the current provision, which entitles bereaved parents to statutory parental bereavement leave.

What's included?

The right to unpaid parental leave gives employees the right from day one in employment to take up to 18 weeks unpaid leave to care for a child under the age of 18. The right applies to each child, so two children would mean two lots of 18 weeks of leave.

The right to paternity leave will also apply to employees from day one in employment and aligns with the rights of women and adoptive parents who are entitled to maternity and adoption leave from day one in employment. The restriction from taking paternity leave following a period of shared parental leave is also removed.

Employers may still refuse a request for flexible working on the following current grounds:

(a) the burden of additional costs;
(b) detrimental effect on the ability to meet customer demand;
(c) inability to re-organise work among existing staff;
(d) inability to recruit additional staff;
(e) detrimental impact on quality;
(f) detrimental impact on performance;
(g) insufficiency of work during the periods the employee proposes to work;
(h) planned structural changes;

However, employers will need to specify which of the above grounds they rely on and explain why the decision to refuse on the specified ground is reasonable. Regulations will also set out the steps an employer must take when consulting employees before rejecting a request.

The right to bereavement leave extends the current right to two weeks' leave, which is currently available for bereaved parents who lost a child under the age of 18 or who suffer stillbirth, to a bereaved person. Regulations will set out the conditions employees will be required to meet to qualify for the right, which will ultimately depend on the nature of the relationship to the loss of a loved one and, depending on that relationship, whether the employee will be entitled to more than one period of bereavement leave. Employees will also be protected from being subject to a detriment and dismissal for taking the leave. The right applies to each child, so two children would mean two lots of 18 weeks of leave.

What's not included?

The right to parental leave (which is separate and distinct from the right to shared parental leave) remains unpaid. Neither is there any proposal to increase paternity leave from the statutory minimum of two weeks paid leave pay. It is also unclear whether there will be an entitlement to pay for the expanded bereavement leave. The commitment to make flexible working the "default in workplaces" falls short of providing workers with a right to flexible working.

Nevertheless, the requirement on employers to justify the reason for refusing a request should hopefully lead to more requests being granted, as should the risk of an employer's rationale being subject to greater scrutiny by employment tribunals.

Comment

The Government's Plan to Make Work Pay commits to making immediate changes to the rights on flexible working, paternity and parental leave. But it doesn't stop there; in recognising the importance of balancing rights for working families as part of its Plan to Make Work Pay, the Government is also committed to reviewing the parental leave system as well as carers and their dependents. While such a review is long overdue, it's refreshing that this Government recognises the importance of having an ongoing strategy for developing family-friendly rights in consultation with Unions and employers.

Equality

Introduction

Clause 20 of the Bill extends the power in Section 49D of the Employment Rights Act 1996 to provide for regulations to protect women during or after a protected period of pregnancy from dismissal, not just redundancy. Further regulations will also provide for the right to protection from dismissal during or after a period of family leave.

Employers will be required to take all reasonable steps to prevent harassment, which mirrors the provisions employers can rely on to defend a claim of discrimination. Significantly Clause 16 amends section 40 of the Equality Act 2010 which protects workers from harassment by third parties such as by clients or customers. Disclosure of sexual harassment is also specified as a protected disclosure.

The Equality Act 2010 has been amended to include a new provision that requires employers with 250 or more employees to publish equality action plans in order to advance equality of opportunity between men and women.

What's included?

The details of protection from dismissal during or after pregnancy and following maternity and other family leave are to be set out in regulations.

These are likely to be along similar lines to the current protections that apply in relation to redundancy. For example, by requiring the employer to offer alternative employment and that a failure to comply with the regulations will result in the dismissal being treated as unfair.

The protection will apply during and after adoption leave, shared parental leave, neonatal care leave and paternity leave available to bereaved parents. Pregnant employees will have a right not to be dismissed during pregnancy and for six months following return to work from maternity leave.

The protection will also mean that a woman who has miscarried before informing her employer of her pregnancy should be protected from dismissal. The requirements to take all reasonable steps emphasise the duty on employers to be proactive in preventing sexual harassment in the workplace.

The right to protection from third-party harassment applies to harassment related to age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

The requirement to publish equality action plans includes plans to address the gender pay gap and support women going through menopause. The form and frequency of such plans will be set out in regulations.

What's not included?

The prevention of harassment duty on an employer only applies to sexual harassment not harassment related to other protected characteristics. The details of what steps are reasonable for an employer to take to prevent harassment are to be set out in regulations.

Clause 17 says this includes, amongst other things, carrying out assessments, publishing plans or policies, and determining the steps for reporting and handling complaints. There is no freestanding right for an individual to bring a claim against an employer in the employment tribunal if it fails to prevent sexual harassment. Only the Equality and Human Rights Commission can bring a claim.

The statutory questionnaire procedure for requesting information from employers about a potential claim under the Equality Act 2010 has not been re-enacted. While this does not prevent workers from asking questions of employers, it is arguably more effective in eliciting information at the pre-litigation stage and can assist a collective resolution.

Comment

The free-standing right to claim protection from third-party harassment is long overdue. It was abolished more than ten years ago, on 6 April 2014, under the previous government.

Enhanced protection from dismissal for pregnant women and employees taking family leave is another welcome move in the right direction. What is clear is that these are just the start of reforms to equality legislation. A new Equality (Race and Disability) Bill is proposed which will require larger companies to publish information on their ethnicity and disability pay gaps.

The requirement on large employers to produce action plans will be backed up by a Regulatory Enforcement Unit for equal pay. This unit will be crucial to ensuring that government plans to clamp down on outsourcing services which seek to avoid equal pay are effective.

Further initiatives are planned to enable disabled workers and people with health conditions to be supported in the workplace. While there is always more that can be done to improve equality this certainly feels like a step in the right direction towards creating a level playing field. A welcome relief after 14 years of regression.

Fire and Rehire

Introduction

The problem under the existing legislative framework is that it is all too easy for a profitable entity to undertake a fire and rehire exercise relying on the potentially fair reason of "some other substantial reason" for the dismissals that it makes. As a consequence of the range of reasonable responses test that is applied to judge the fairness of those dismissals, employment tribunals are left with very limited ability to challenge the underlying rationale for the alleged need to make savings.

The practice, therefore, has become increasingly popular as a tactic for unscrupulous employers to adopt to erode the terms and conditions of their workforce. In its Plan to Make Work Pay, Labour committed to end "the scourges of 'fire and rehire' and 'fire and replace' that leave working people at the mercy of bullying threats". It promised it would reform the law to provide effective remedies against abuse

What's Included?

Clause 22 of the Employment Rights Bill creates a new right to claim automatic unfair dismissal when:

- an employee is dismissed by their employer for not agreeing to vary their contract; or
- if the employer dismisses the employee and replaces them with other employees or re-engages them on the varied terms to do the same job before they were dismissed.

The clause, therefore, addresses both a conventional fire and rehire exercise and the sort of dismissal tactics deployed by P & O in 2021 when they dismissed their existing workforce and engaged an entirely new workforce on less favourable terms and conditions.

The employer can avoid a claim for automatic unfair dismissal if it can show;
a) that the reason for the variation "was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employer's ability to carry on the business as a going concern" ; and
b) the employer could not reasonably avoid making the variation.

Where an employer does not operate on "a going concern basis" (like some public-sector bodies) there is a parallel test whereby they have to show the reason for the variation "was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employer's ability to carry on activities constituting the business".

If an employment tribunal finds that the employer satisfies the above conditions, it will still have to determine if the dismissal was fair in all the circumstances. Whether the dismissal is fair will depend on factors such as whether there has been consultation with the appropriate representatives and whether the employer offered anything to the employees concerned in return for agreeing to the variation. Other factors an employment tribunal can take into account may be set out in further regulations.

What's not included?

The Employment Rights Bill falls short of banning fire and rehire outright, which is what Labour had originally committed to do in opposition. Whilst the circumstances in which fire and rehire exercises can be lawfully undertaken will be narrowed, the practice will still be permissible where an employer can establish an economic justification that threatens its existence. The test does, however, appear to set out a high standard to evidence this, and even if it can be met, the dismissal may still be unfair under ordinary principles if consultation has not taken place.

The Employment Rights Bill also does not address remedy with respect to fire and rehire dismissals. A key part of UK employment law is that in the main it punishes those who act in breach of it but does not stop them from doing so. Therefore, as an example, P & O chose to ignore all its obligations under the then-existing legislation and make the crass calculation that it would press on with making dismissals without engaging in any consultation or due process.

Even under strengthened legislation, an unscrupulous employer may still act in the same way as this and ignore its obligations, worries about any requirement to pay out compensation for another day. In order to address this, the Employment Rights Bill would need to have provided a mechanism in which employees could seek interim relief through the employment tribunal to ensure the contract of employment would continue to subsist through any judicial process where it is clear the newly introduced obligations had not been met. It does not do so. However, not all may be lost on this.

The “Next Steps” document, also issued yesterday, addresses the issue of remedies to end the practice of fire and rehire and references future consultation on what role “interim relief could play in protecting workers in these situations” as well as consultation on whether the cap on Protective Award claims should be removed. Finally, there is a concern employers may introduce wide variation clauses into existing contracts of employment as a way to mitigate the effect of these new provisions that address fire and rehire. That potential loophole should be closed off.

Comments

The Employment Rights Bill is certainly an important step forward to address fire and rehire tactics. It will not eradicate the practice altogether, but it should significantly limit the circumstances in which it can be lawfully undertaken as the exception does appear to be narrow in nature. That is welcome news for trade unions and workers alike.

Fair pay and trade union rights

Introduction

In 'Making Work Pay', Labour committed to 'updating trade union legislation so it is fit for a modern economy, removing unnecessary restrictions on trade union activity….'. Labour said it would repeal 'all' of the anti-trade union legislation introduced in the last 14 years, including the Trade Union Act 2016 and the Strikes (Minimum Service Levels) Act 2023).

Labour also said that it would simplify the statutory recognition process, create a new right of access for trade unions, provide new protection for trade union representatives and facility time, and 'update' protection against blacklisting. In its 'New Deal', Labour said it would introduce electronic and workplace balloting and that UK industrial action law should comply 'in every respect' with the international labour obligations ratified by the UK, including those of the International Labour Organisation and the European Social Charter. Labour has already met its commitment to upgrade the remit of the Low Pay Commission to include the cost of living in decision-making on National Minimum wage rates.

What's included?

The Employment Rights Bill introduces many measures towards these ends. Most of the restrictions on industrial action introduced by the Trade Union Act 2016 – ballot thresholds, additional information to be provided on the ballot paper (issues in dispute, types of action short of a strike and period within which action is expected to take place), extension of action notice from 7 to 14 days – are removed. The Strikes (Minimum Service Levels) Act 2023 will be repealed.

There is new protection against being subjected to a detriment 'of a prescribed description' (to be defined in regulations) for participating in protected industrial action. The limit on automatic unfair dismissal protection (in most circumstances) to the first 12 weeks of action is removed – dismissal for participating in protected industrial action will be automatically unfair whenever it occurs. In the statutory union recognition procedure, there will be power to introduce regulations to reduce the 10% admissibility criterion to between 2 and 10%.

Where a majority of workers in the bargaining unit vote in favour of recognition, the CAC will be required to award recognition – the requirement for 40% support in the bargaining unit will be abolished. The collective redundancy threshold of 20 or more employees 'at one establishment' will be removed. The requirement to consult will be triggered when the employer proposes to dismiss as redundant 20 or more employees.

Other restrictions introduced by the Trade Union Act 2016 are also removed – the requirement of a picket supervisor, the additional powers of the Certification Officer (including investigatory powers, power to impose a levy and financial penalties), the additional duties in relation to unions' annual returns (concerning industrial action and political expenditure) and the restriction on collecting union subscriptions by check-off in the public sector.

The facility time publication requirements and reserve powers are also abolished. Significantly, the requirement to 'opt-in' for political contributions is reversed, and the 'opt-out' procedure reinstated.

There is a new procedure for seeking agreements for access to the workplace, with disputes to be adjudicated by the CAC. There is a new right of complaint to the Employment Tribunal for failure to provide reasonable 'accommodation and other facilities' for trade union representatives, and a new right to time off for union equality representatives. There is a power to introduce regulations prohibiting the use of any list containing details of trade union members, or those who have taken part in the activities of unions, for the purpose of discrimination.

What's not included?

Not all of the restrictions on industrial action introduced by the Trade Union Act 2016 are to be repealed. The expiry of the ballot mandate after six months is to be retained. There is no progress on the introduction of electronic balloting – the Bill simply records that the power to provide for electronic ballot contained in section 54 of the Employment Relations Act 2004 is retained. Many unnecessary restrictions on industrial action balloting requirements have not been addressed – such as the information as to 'lists' and 'figures' to be provided in ballot and action notices and a union's ability to ballot where there is to be a change of employer.

Beyond provision for an Adult Social Care Negotiating Body, there is no further progress on fair pay agreements.

The government is separately removing the discriminatory pay bands in the National Minimum Wage.

Comment

The Employment Rights Bill's fair pay and trade union rights provisions implement many (though not all) of Labour's pre-election commitments. Further deliberation will take place on how to implement electronic balloting. In 'Next Steps', the government says that it will launch a working group with stakeholders, including cyber security experts and trade unions, by the end of the year, 'with full rollout implemented following Royal Assent of the Employment Rights Bill'. This needs to happen fast - trade unions have been waiting almost seven years since Sir Ken Knight's review.

Further consideration should be given to what other 'unnecessary restrictions' on trade union rights should also be removed to make trade union laws fit for a modern economy and compliant with the UK's international obligations, including the balloting and notification requirements that remain, and the outright ban on secondary industrial action.

In 'Next Steps,' it is confirmed that there will be consultation on modernising trade union legislation, and the 10-year ballot requirement for political funds is singled out for mention. Labour still needs to deliver on its commitments to reverse the decline in collective bargaining, update trade union laws, and empower workers in the workplace.

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Zero Hours and 'Low Hours' contracts

Introduction

With the publication of the Employment Rights Bill yesterday, we now have some long-awaited details about how the policy of ending 'exploitative' zero-hours contracts will be implemented.

In summary, the Bill includes a right to guaranteed hours for workers who have had regular work over a set period, a right to reasonable notice of shifts, and a right to payment when shifts are cancelled at short notice.

What's included?

A right to guaranteed hours

The Bill introduces amendments to the Employment Rights Act 1996 which introduce the right for workers to be offered a 'guaranteed hours' contract if they have worked regular hours over a specified reference period under a qualifying arrangement. The Bill does not apply to Agency workers but includes provisions for consultation and further regulations to take place to put this in place.

The meaning of 'regular' hours is not set out in the Bill and will be subject to consultation. However, it is envisaged this will apply to workers who are working on a continuous basis for an employer and are being offered and accepting work frequently. The Bill is also silent on the length of the reference period, again, to be subject to consultation. However, in the 'Next Steps to Make Work Pay' policy briefing, Labour has stated that a 12-week period is likely, and this would mirror similar reference periods within the Employment Rights Act.

If the requirements are met, the employer must offer a contract for guaranteed hours. This must be for the hours worked over the reference period (presumably the average) and must be on no less favourable terms than the worker had during the reference period. In circumstances where a contract already existed, terms can only be changed to reflect the guaranteed hours of work.

Where a worker has worked under contracts with differing terms, the employer can only issue the worker a guaranteed hours contract on the least favourable of these terms where it can justify this as a 'proportionate means of achieving a legitimate aim'. If they choose to do this, they must issue a notice alongside the contract stating why it is felt this requirement is met.

The guaranteed hours contract can be for a fixed term only if the employer can show this is reasonable. The Bill sets out specific circumstances where it may be viewed as reasonable, such as a contract in relation to a specific time-limited task or event, and where they can show there is a genuine need for temporary workers. These provisions are no doubt intended to ensure that employers can recruit staff when they need extra workers, such as seasonal requirements or in relation to a specific source of work.

While not set out in the Bill or the 'Next steps ' policy briefing, Labour have also committed to consulting on putting in place 'reference review periods' where the guaranteed hours contract no longer reflects the reality of the working arrangement.

It's hoped that the requirement on employers to show that these exceptions are met should reduce the potential for employers to exploit these caveats to circumvent the act. Workers do not have to accept the guaranteed hours contract. If they wish to remain in their previous working arrangement, they can do so without guaranteed hours.

Who qualifies?

In the run-up to the Bill, the focus has been on zero-hours contracts (contracts where the employer can offer work, but they are not obliged to do so). However, in its 'Next Steps' policy briefing, Labour clarified that they also wish for the legislation to apply to 'low hours' workers. The stated aim is to ensure that employers cannot avoid the legislation by offering contracts for a low number of guaranteed hours, but expecting workers to work significantly longer hours.

The Bill, therefore, focuses on zero-hours contracts and also qualifying 'minimum' hours contracts. This means those working over and above the minimum hours in their contracts have a right to a guaranteed hours contract reflecting their actual working pattern over the reference period. There is no definition in the Bill of what qualifies as 'minimum' hours contract in terms of hours, this will be subject to consultation and made clear in subsequent regulations.

However, it is positive that there is focus on trying to counter avoidance in the Bill. The Bill also provides several exceptions to the Right to Guaranteed hours. These include where a worker has resigned during the reference period, where their assignment has been terminated, and where the assignment has ceased at the end of a fixed term.
In relation to where they have had their assignment terminated this will only exempt an employer from the requirement to provide a guaranteed hours contract where the employer has acted reasonably in terminating the contract in line with a 'qualifying reason', the details of which will be announced under the Regulations. It is hoped that in due course this may include provisions to prevent employers from dismissing workers for seeking to rely on their rights under the Bill, but this remains to be seen.

Shifts - right to reasonable notice

The Bill also sets out provisions that an employer must provide a worker with reasonable notice of when they require them to work and also reasonable notice if they need to cancel, change or rearrange a shift. Currently, under zero-hours contracts, there is often no restriction on this, and shifts can be cancelled at short notice with no compensation, leaving workers in financial hardship. What constitutes reasonable notice is not specified, again this will be clarified in regulations following consultation.

The Bill sets out that the worker will have a right to compensation if these provisions are breached. In relation to a breach of the minimum notice period to work this is stated as compensation that is just and equitable. However, in relation to cancelled or changed shifts the Bill states that the employer must compensate the worker.

IThe Bill states that the amount of compensation will be set by regulations, but will not exceed the financial loss of the worker and therefore will not be punitive.

In effect, this should mean that employers will no longer be able to cancel the shifts of casual workers on short notice without having to pay, at least, some compensation.

Claims to an employment tribunal

The Bill makes provision for claims to be brought to the tribunal in relation to breaches of the legislation. The remedies available for breaches include a declaration and compensation. As mentioned above, the levels of compensation appear to be broadly on a 'just and equitable' basis and focussed on the financial loss of the worker.

In addition, there is mention of setting a maximum compensation based on a number of weeks. However, as with much in this area of the Bill, this will be subject to consultation. It is hoped that the compensation regime included in the Regulations will be sufficient to make employers take their compliance with the provisions seriously.

What's not included?

The Bill stops short of an outright ban on zero-hour contracts. It recognises that for some people, the flexibility of a casual contract meets their needs and that the issue is the exploitation of these contracts for ongoing working arrangements.

Comment

Following the release of the Bill, it's clear that changes will not be imminent. In its 'Next Steps' policy briefing, the government stated that it will need to consult with trade unions and businesses regarding the finer points of the proposed legislation, and further regulations will follow. It has stated that consultation will commence in early 2025, and the legislation should not be expected to be in force until 2026 at the earliest.

The ONS estimated that between April and June 2024, 1.3 million people in the UK were on a zero-hours contract as their main employment, and many more in other types of employment. Given this, the Bill has the potential to significantly improve the financial stability of a large proportion of the UK workforce, leading to improved circumstances for them and their families. While the bill leaves many questions unanswered, this mustn't be overlooked.

A consultation will decide what compensation is on offer for breaches, how long the reference period will be and add more detail to the anti-avoidance provisions. To ensure the bill meets its clear potential, it's crucial that the government doesn't allow itself to be derailed and balances the rights of workers with the needs of business in such a way that the legislation fulfils its purpose.

Other individual rights

Introduction

In addition to making minor changes regarding the ability to get SSP and influence an employer's tipping policy, measures about public sector outsourcing, levelling up, and enforcement can be hugely impactful.

What's included?

Statutory Sick Pay: removal of waiting period and lower earnings limit etc (Clauses 8 and 9)

- Makes SSP payable from day 1, thereby amending the existing regime where SSP is not paid until day 4
- Makes SSP available regardless of how much you earn, thereby abolishing the current requirement to earn at least £123 per week

Policy about allocating tips etc: review and consultation (Clause 10)

- Requires employers to consult their own staff, or their trade union or other representative, before drafting their mandatory tips policy
- A requirement that the tips policy be reviewed at least every 3-years and to consult again when doing the review
- Enforcement via the existing s.27N Employment Rights Act 1996 with just and equitable compensation up to £5,000

Public sector outsourcing: protection of workers (Clause 25)

- Establishes the power to introduce secondary legislation to protect public sector workers from less favourable treatment after being outsourced.
- The same power allows for the levelling-up of the supplier's existing staff (where appropriate) thereby addressing the issue of the 2-tier workforce.

Right to statement of trade union rights (Clause 45)

- Requires new starters to be given a written statement saying that they can join a trade union.
- Gives the Secretary of State power to make separate regulations to set out other information about trade union rights which must be included.
- Enforcement via the same as the existing provisions on the Statement of Particulars of Employment

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Protection for taking industrial action (Clauses 59 and 60)

- These clauses brings UK law into line with its international obligations by providing detriment and dismissal protections for workers taking official industrial action. This follows the recent Supreme Court decision of Mercer.
- It provides remedies in relation to both past action, and for any attempt to deter future action.
- Workers benefit from extended protections against detriment
    - Protections apply even where the trade union repudiated the action itself
    - The burden of proof is on the employer to show its sole or main purpose
    - Enforced in the usual way
    - Compensation to be set by the tribunal on a just and equitable basis, which can include reductions for contributory fault
- Employees benefit from extended protections against unfair dismissal
    - Enforced in the usual way

Enforcement of labour market legislation (Part 5)

- Introduces an obligation on the Secretary of State to take responsibility to enforce specific employment legislation such as those relating to employment agencies, working time regulations, national minimum wage, modern slavery and gangmasters. There is a power to expand the list in the future but only in relation to the rights or entitlements of employees or workers; the treatment of employees or workers; requirements, restrictions or prohibitions on employers; or trade unions, employers' associations, industrial action or labour relations.
- The mechanism for this is a single enforcement body which will have delegated authority to take that action
- It will have important investigative powers such as the ability to enter premises to search and seize documents. This includes certain powers under the Police and Criminal Evidence Act 1984 such as search, arrest and suspect interviews.

Continued on page 16

- An advisory board will be established to direct these activities, prepare and implement 3-year plans, and report annually on its activities. Members will be appointed in equal numbers from trade union representatives and employer representatives and will also be assisted by independent experts
- Public authority employees can delegate these powers where appropriate
- An enforcement regime of 'Labour Market Enforcement Undertakings' is to be introduced which identifies to the employer the areas of its activity which are of concern and the action expected to correct that. LME undertakings can be in place up to 2 years or until the employer is discharged from it.
- A failure to comply with the relevant legislation, or to honour an LME Undertaking can result in enforcement through the civil courts via LME Orders. A failure to comply with an LME Order can result in criminal proceedings.
- Any attempt to obstruct this process can also result in criminal sanctions.
- Individual officers of companies can be held personally liable for the criminal law sanctions as can partners in other business types including trade unions.

What's not included

Any mechanism for electing workers' representatives to consult on the tips policy. Any extension of TUPE rights to workers and not just employees.

Comment

Some of these provisions rely on the introduction of secondary legislation to address the details. We, therefore, must assess whether and when those regulations are laid before Parliament. The creation of the single enforcement body finally takes forward proposals that have existed for several years.

As ever, however, that body's effectiveness depends substantially upon being properly resourced. That information is yet to be addressed, but personal liability for individuals operating businesses will assist that function significantly.

The government's 'Next Steps to Make Work Pay' document also sets out its ambitions for various issues affecting individuals directly including surveillance at work, a single status for workers, the ban on unpaid internships, changes to the area of self-employment, and a review of TUPE. There, therefore, remains much work to be done.

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Next steps to make work pay

Published alongside the Employment Rights Bill, the government's 'Next Steps' policy paper sets out its 'vision and objective for Make Work Pay' and wider reforms to be implemented outside the Employment Rights Bill.

The government will launch a Call for Evidence on banning unpaid internships by the end of the year. It will establish a working group by the end of the year, including unions and cyber security experts, to make provisions for electronic balloting, 'with full rollout implemented following the Royal Assent of the Bill'.

The government says that it will use the New Fair Employment Code to strengthen protections for the self-employed against late payment and will 'progress commitments' on paid travel time. It will provide for a 'Right to Switch Off' through a statutory Code of Practice.

Other measures will include:

- removing National Minimum Wage age bands;
- a 'Dying to Work' Charter;
- 'modernising health and safety guidance';
- enacting the socioeconomic duty;
- extend the Public Sector Equality duty to all parties exercising public functions; and
- developing guidance for employers and guidance on health and wellbeing.

There is to be a new Equality (Race and Disability) Bill, with a draft to be published in this parliamentary session, which will:

- extend pay gap reporting to ethnicity and disability for employer with more than 250 staff and measures on equal pay;
- extend equal pay rights to protect workers suffering discrimination on the basis of race or disability;
- ensure that outsourcing of service can no longer be used by employers to avoid paying equal pay; and
- implement a regulatory and enforcement unit for equal pay with the involvement of trade unions.

Further longer-term reforms are also envisaged as follows:

- parental leave review;
- carers' leave review;
- consultation on workplace surveillance technologies;
- consultation on single 'worker status;
- right to written contract for the self-employed, and extending blacklisting and health and safety protections;
- call for evidence 'to holistically examine a wide variety of issues relating to TUPE regulations and process';
- review health and safety guidance and regulations;
- consultation with ACAS concerning collective grievances;
- ensuring social value is mandatory in procurement contract design, and using public procurement to raise standards in employment rights;
- extending the Freedom of Information Act to private companies which hold public contracts and publicly funded employers.

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