

# Business Briefing

May 2010

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## Election Special

We promised in our last newsletter to review the employment landscape after the general election. Following the publication of the full coalition agreement between the Conservatives and Liberal Democrats and the Queen's Speech earlier this week we would like to take this opportunity to look more closely at the employment law issues that the new government intends to deal with.

If you wish to discuss any of the matters referred to in this newsletter, please contact us on: 020 3159 5160, or at [enquiries@goldenleaver.co.uk](mailto:enquiries@goldenleaver.co.uk)

## National Insurance

It was confirmed in the Queen's Speech that the much debated 1% increase in both employee and employer National Insurance Contributions from April 2011 is to be kept, but its impact is to be reduced by raising the threshold at which employers start paying National Insurance Contributions by £21 per week, a saving of up to £150 per employee per annum. The net effect is that National Insurance costs for employers will typically increase by less than 0.5%. However the 1% increase for employee National Insurance Contributions will still go ahead for those earning more than £20,000 per annum.

This will be implemented by way of the National Insurance Contributions Bill and reflects the plans set out in the parties' coalition agreement.

The response from business has been mixed. Although many employers welcome the move to reduce the rise in employers' National Insurance and thereby address the "tax on jobs", there are concerns that the move does not go far enough to prevent the rise being a barrier to staff retention and job creation which may hinder economic recovery.

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## Default retirement age and state pension

Although both parties made manifesto promises to remove the default retirement age, it has been agreed that this will be implemented in phases rather than an immediate removal, a move criticised by age equality campaigners who consider the move to be a 'missed opportunity'. However plans for a gradual phase out are welcomed by most as a practical means of implementing the variation in a manner which will allow businesses to accommodate this change, while it is hoped that the

move will have an impact on the way older workers are perceived in the work place.

It has also been agreed that a review will be held to set the date at which the state pension will rise to 66 years. It is expected that any rise will be implemented between 2024 and 2026. Both these changes will be dealt with through the Pensions and Savings Bill.

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## Working Time Directive

The new government has committed to limiting the application of the Working Time Directive in the UK. It remains to be seen the extent to which the new government will be able to limit its application given the UK's current

commitments to the European Union, however, the pledge will safeguard the flexibility which the UK's labour market currently enjoys via the individual opt-out.

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## Human rights

Following the successful appeal of terror suspects, Abid Naseer and Ahmad Faraz Khan against their deportation to Pakistan, Human Rights looks set to be a very hot topic. The Conservatives had a clear manifesto policy to scrap the Human Rights Act and replace it with a UK Bill of Rights, a move vehemently opposed by the Liberal Democrats with Nick Clegg warning last week that 'any government would tamper with [the Human Rights Act] at its peril'. There is a commitment, however, to establish a commission to investigate the creation of a UK Bill of Rights that incorporates and builds on the European Commission on Human Rights.

The agreement between the two parties that ID cards will be abolished and that safeguards will be put in place for the use of personal details on the DNA database was confirmed in the Queen's Speech. ID cards will be scrapped via the Identity Documents Bill and DNA safeguards put in place through the Freedom (Great Repeal) Bill. However, it is still the intention that a review of the Human Rights Act will be carried out and the implications of this on employers and employment law remain to be seen.

## Immigration and recruitment

With the concession that there would be an annual cap on immigration from outside the European Union the Liberal Democrats were forced to abandon one of their flagship policies to implement a regional points based system to ensure migrants are able to work where they are needed. This cap is likely to be closer to tens of thousands of workers being allowed to migrate to the UK than the hundreds of thousands currently allowed.

It is likely that the workers most affected by the move will be those applying for Tier 2 working visas. This could have a significant effect on those UK businesses that have already invested time and money entering into

Sponsorship Licences. Although businesses may also be concerned that the cap will affect their ability to recruit Tier 1 (highly skilled) workers with the necessary skills to help pull their businesses through the downturn, they may take some comfort in the Conservative's policy on attracting the brightest and best people to the UK. Furthermore as Tier 1 has already been subject to a recent overhaul it is probable that it will be left alone for the time being.

Proposals regarding these changes will be implemented via secondary legislation and are likely to be announced towards the end of this year.

## Rise in income tax allowances

The parties have agreed that the personal allowance should be increased to help lower and middle earners, though this fell short of the Liberal Democrat's aim to take all workers earning under £10,000 out of the tax system. It is thought that the increase will be in the region of £700 bringing the personal allowance to over £7,000. This

increase is to be announced in the first Budget and to be effective from April 2011. The Liberal Democrats did, however, manage to secure that there would be a move towards accommodating Liberal Democrat proposals to remove low earners from the tax system.

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## IR35

The Coalition Agreement has committed the new government to a review of IR35 as part of a wholesale review of all small business taxation with a view to replacing it with simpler measures that prevent tax avoidance but do not place undue administrative burdens

or uncertainty on the self-employed, or restrict labour market flexibility. We are sure that many self-employed consultants will welcome any positive change to this legislation which has for a number of years been a difficult area of the law.

## Bankers' bonuses

The new government has committed to bring forward proposals to tackle bonuses in the financial services sector. It is intended that the proposals will also have the effect of

reducing risk. With Vince Cable appointed as Business Secretary there can be little doubt that bankers' bonuses will come under robust scrutiny in the coming months.

## Reduction in child tax credits

As a means of reducing the deficit, the new government has agreed that reductions can be made to the Child Trust

Fund and child tax credits for higher earners, which is a long standing policy of the Conservatives.

## Parental leave and family rights

During the election campaign there was clear cross-party support for a system of flexible parental leave which enables parents to share leave between them and to have increased rights to request flexible working. The Coalition Agreement pledges to extend the right to request flexible working to all employees and there will be further

consultation on this point. These proposals will be supported by both sides of the coalition and although these rights did not feature in the Queen's Speech, employees and employers can expect to see further family- friendly employment rights introduced.

## Equality Act

Although the Conservatives expressed their support for the Equality Act which received Royal Assent on 8th April 2010, they had stated that if they came to power they would not implement the provisions on equal pay, the duty to promote equality and the rules on positive action. The view of the Liberal Democrats was that the Act did not go far enough particularly with regard to equal pay

and the introduction of pay audits. We note that the Coalition Agreement pledges to promote equal pay but remains silent on the other points. As the Queen's Speech made no mention of the Equality Act the new government may delay bringing those areas in dispute into force until an agreement between the parties can be reached.

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## Agency workers

Prior to the election, the Conservatives had warned that they wanted to repeal the regulations which give temporary staff the same rights as permanent employees after just 12 weeks in a job. However, the Conservatives may find that they face opposition from the Liberal Democrats who are in principle in favour of the new Regulations to the extent that they are not a barrier to the flexibility of the UK's labour market. In reality it will be

difficult to amend the regulations too much as they derive from EU legislation.

Although not addressed by either the Coalition Agreement or the Queen's Speech, as new legislation on Agency Workers comes into force in October 2011 it is likely that this area of employment law will face further scrutiny over the next year.

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### Disclaimer

These notes are intended only as a summary of developments and not as a definitive statement of the law. Advice should always be taken in individual circumstances.