



Employment Law in 2014 (and beyond)

As ever, the employment law landscape is due to change again during 2014. The changes begin in January and are expected to continue throughout the year and then into 2015. We'll be covering them in more detail as the year progresses. In the meantime, here is a summary of some of the more significant issues that should be on the agenda of every HR professional.

When?

What?

January 2014

Collective Redundancy: the Court of Appeal is due to consider the appeal against the EAT's decision to disregard the words "*at one establishment*" when deciding whether the 20 or 100 proposed dismissals threshold is reached, which has exposed employers to liability for additional compensation in circumstances that had never been envisaged.

Post-employment victimisation: the Court of Appeal is due to resolve two conflicting EAT decisions and decide whether the Equality Act 2010 does (or doesn't) protect people from being victimised after their employment has ended.

TUPE: there will be changes to deal with what amounts to a service provision change; the obligation to provide Employee Liability Information by no later than 28 (not 14) days before a transfer; the ability to renegotiate collectively agreed terms and conditions of employment 12 months after a transfer, where the employer is no longer involved with the collective negotiations; the ability to start collective redundancy consultation before a transfer completes; and that micro businesses will be able to consult directly with employees (rather than with trade union or with other elected representatives).

February 2014

Rates and limits: the current rates of things such as a week's pay and the compensatory award (as well as other rates) will change with effect from 1 February.

April 2014

Conciliation: this will become mandatory, using ACAS. Claimants will have to submit details of their claim to ACAS before bringing a claim. They will then be offered pre claim conciliation for up to 1 month. Taking part will "stop the clock" on the 3 (or 6) month limitation period during when a claim to the Employment Tribunals must be made.

Discrimination questionnaires: they will be abolished with effect from 6 April, but will still be available to those who wish to use them on a voluntary basis.

Fines: employers who lose employment tribunal claims may have to pay a penalty of 50% of the compensation awarded. But the penalty may only be between £100 and £5,000 and will be cut (like a parking fine) by 50% if payment is made within 21 days.

Flexible working: the right to request this will extend to everyone (i.e. not only to people who qualify as parents or carers) who has at least 26 weeks' continuous employment. The convoluted statutory procedure for considering requests will also be replaced by an obligation to consider all requests reasonably.

- Spring 2014 **Sickness absence management:** the government will introduce a health at work assessment and advisory service that will provide a state funded assessment by OH professionals for employees who are off sick for 4 weeks or more, as well as a case management service for employees with complex needs to facilitate their return to work. The government also intends to abolish the SSP record-keeping obligations in favour of allowing employers to be more flexible in recording that data.
- Expected 2014 **Companions:** the problems caused by the EAT's decision in *Toal v. GB Oils* that an employee may bring any colleague or appropriate union representative to a disciplinary or grievance hearing (however unreasonable to the employer) will be addressed in a revised ACAS code of practice (although this will not change the current law).
- Equal pay audits:** employment tribunals will be given the power to order that these take place. More information will be known when draft regulations are published later.
- Holidays:** the UK government is due to publish its response to the following holiday issues: how workers who are unable to take holiday during one holiday year can carry it over to the next holiday year; how holiday that is untaken due to maternity and other family leave may be carried over into the next holiday year; how the current prohibition against "buying out" any statutory leave under the Working Time Regulations should be altered; and how employees might be required to carry over up to 1.6 weeks' of holiday if pressing business needs caused them not to take that leave.
- Unfair dismissal cap:** the High Court is due to decide on whether the current cap on the Compensatory Award for unfair dismissal of a financial sum or 12 months' salary (whichever is the lower) is unlawful and discriminates against older people.
- Zero hours contracts:** the debate about whether this type of contract should be banned, or about what should be included (or not) will be addressed when the government responds to the consultation exercise that closes on 13 March 2014.
- Expected 2015 **Bonus caps:** the European regime (usually known as the CRD IV Directive) that was introduced with effect from 1 January 2014 and caps bonuses payable to high earning staff at banks, building societies and investment firms at 1 year's (or 2 years' with shareholder approval) basic pay, will start to bite in respect of 2014 performance payments. The UK government is currently challenging the Directive.
- Discrimination:** the list of protected characteristics will expand to include "caste"
- Expected 2015 **Shared parental leave:** more information about this will become available later. But it is expected that eligible parents (natural, adoptive and surrogate) will be entitled to up to 52 weeks' leave and to 39 weeks' statutory pay on the birth or adoption of a child, which can be shared between the parents.

More information

The information in this document is believed to be correct as at January 2014, but does not comprise legal advice, which you should seek by reference to particular situations. However if you have any questions about the content of this checklist, please contact Wyn Lewis on w.lewis@goldenleaver.co.uk or on 020 3159 5174 or get in touch with your usual Golden Leaver contact.

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