

Employment Law – What's on the Horizon?



This is a list of the UK legal risks, either through legislation or policy implementation, that we can foresee affecting employers over the next few years. For details of the changes that have come into force over the past 18 months, [click here](#).

Employment Law Changes	Likely/Actual Implementation Date	Implications	Key Links
<p>Changes to rules on disclosure of convictions</p> <p>On 10 March 2014, changes to legislation came into force which shortens the time frame in which offenders (both adult and youth offenders) must disclose old and minor cautions and convictions to prospective employers. This is with the exception of those applying for work in sensitive positions (such as those working with children) who will have to continue to disclose previous convictions.</p>	<p>10 March 2014</p>	<p>Employers should be aware of this change in the rules on the period after which individuals no longer have to disclose previous convictions to employers.</p>	<p>For more information, click here.</p>
<p>UK intermediaries to be responsible for offshore workers' employment taxes under simplified Government proposals</p> <p>Following on from the recent proposals in relation to offshore employment intermediaries, the Government has now proposed changes to the tax treatment of individuals who work through UK intermediary structures involving employment agencies.</p> <p>The proposals have been unveiled as part of a crackdown on perceived avoidance of agency structures, which the Government believes are being used to 'disguise' what are really employment</p>	<p>6 April 2014</p>	<p>The changes were subject to consultation which closed February 2014. The Government's response is awaited.</p> <p>However, if enacted, they will undoubtedly make it much harder to avoid PAYE, whether at agency or personal service company level, in cases where the worker is in practice personally providing services. There is no risk of PAYE</p>	<p>HMRC guidance: Click here</p>

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<p>relationships.</p> <p>The change is designed to ensure that PAYE has to be operated by the agency supplying labour to the end client, and to make it harder to argue that the individuals whose services are being supplied are self-employment contractors. This is to be achieved by tightening up the tax legislation so that there is only a requirement for the worker to be “personally involved in the provision of services” to the end user, rather than “personally providing services”. There will remain a carve-out for workers who are not subject to sufficient supervision or control, such that ‘truly’ self-employed individuals will remain exempted.</p> <p>Separate proposals have been made for the oil and gas sector, due to the particular complexity of chains of contracts and sub-contracts and confusion as to the status of oilfield licensees under Joint Operating Agreements (JOAs).</p> <p>The Government has published guidance on the draft changes and launched a consultation on the changes which closed in February 2014.</p>		<p>obligations falling on the end user, and contracting through intermediaries will still hold attractions for end users from both a tax and commercial perspective. However, increased costs in the supply chain arising from these changes are of course likely to be passed on.</p>	
<p>Removal of Discrimination Questionnaires</p> <p>The Government is set to amend the Equality Act 2010 (EqA 2010) to abolish the discrimination questionnaire procedure on 6 April 2014.</p>	<p>6 April 2014</p>	<p>Many employers faced with discrimination questionnaires will, no doubt, welcome this reform as they are often long, technical and employees often seek information going back many years. The forms can be used for "fishing</p>	

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		expeditions" by employees who do not reasonably have any cause for complaint.	
<p>Early ACAS conciliation</p> <p>The "Early Conciliation" (EC) scheme places a mandatory obligation on claimant employees to notify Acas of their intention to bring a tribunal claim.</p> <p>The scheme is due into force on 6 April 2014, becoming mandatory in May 2014.</p>	6 April 2014	For more information on this change, click here .	Regulations: click here .
<p>Financial penalties for losing employers/respondents in tribunals</p> <p>The Government has confirmed its intention to give employment tribunals the power to impose financial penalties on employers where they breach a worker's rights and there are "aggravating features".</p> <p>The penalty will be 50% of any award with a cap of £5,000, which is halved if paid within 21 days, according to the legislation. The minimum penalty where no award is made is £100.</p>	6 April 2014	<p>Given the low level nature of the fines and the fact that 50% of the fine is discharged if paid within 21 days, this might not have a significant impact upon employers' litigation strategies.</p> <p>However, large employers who tend to have a large number of employment claims should take this into account when budgeting.</p> <p>It is currently unclear as to what an "aggravating factor" is.</p>	Coverage on Out-Law.com: Click here .
<p>Increase tribunal award limits</p> <p>The maximum compensatory award that a claimant employee could be awarded in an unfair dismissal claim will increase from £74,200 to £76,574. (With the maximum being the <i>lesser</i> of the new limit and 52</p>	6 April 2014	Employers should be aware of these new rates in force from 6 April 2014.	

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<p>weeks' gross salary).</p> <p>The maximum amount of a week's pay which is used for calculating redundancy payments and various awards including the basic or additional award of compensation for unfair dismissal will also increase from £450 to £464.</p> <p>The maximum statutory redundancy payment has increased from £13,500 to £13,920.</p>			
<p>Increased Statutory Rates and Limits</p> <p>Increased rates for sick pay/maternity pay/ paternity pay and adoption pay will also come into force on 6 April 2014 and are as follows:</p> <ul style="list-style-type: none"> • Statutory sick pay increasing from £86.70 to £87.55 • Statutory maternity pay increasing from £136.78 to £138.18 • Statutory adoption pay, paternity pay and additional statutory paternity pay increasing from £136.78 to £138.18 	<p>6 April 2014</p>	<p>Employers should be aware of these new rates in force from 6 April 2014.</p>	
<p>Sickness Absence Review</p> <p>The Department for Work and Pensions (DWP) last year announced proposals for dealing with sickness absence. The most significant proposal was for the</p>	<p>6 April (abolishment of statutory sick pay record-keeping)</p>	<p>Given that many employers have large workforces, absence management is an important issue and the proposals are likely to be largely welcomed by</p>	<p>Further details on Out-Law.com: Click here.</p>

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introduction of a new government-funded health and work assessment and advisory service. The Government have previously announced intentions for this to be in place by Spring 2014, it is now anticipated that this will be in place by the end of 2014.

The service will provide a state-funded occupational health (OH) assessment for employees who are absent for four or more weeks. The Government declined to introduce a new job-brokering service to help long-term sick employees find new work (where appropriate) but instead proposes that the advisory and assessment service will signpost employees in this position to 'Universal Jobmatch', a free internet job-matching service, which was launched in November 2012.

The Government has also announced that health-related benefits, paid for by employers, on the advice of the new service, in order to support an employee's return to work, will be exempt from tax, up to £500. This is anticipated to come into force in Autumn 2014.

The Government published revised 'fit note' guidance in March 2013 to emphasise the importance of assessing the individual's ability to return to work in general and not just to their own specific role.

The Government also plans to abolish the statutory sick pay record-keeping obligations to enable employers to keep records in the way that best suits their organisation.

Date unconfirmed for Health & Advisory Service (Expected by end of 2014)

employers, although many employers already use an OH service to review an employee's health so this proposal will not necessarily be new to them.

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<p>Flexible Working – Extending the Right to Request</p> <p>The right to request flexible working is also to be extended to all employees from 2014, which the Government said would remove the "cultural expectation" that flexible working only has benefits for parents and carers. Currently, only those employees with 26 weeks' service who qualify as parents or carers are granted the right to request flexible working. Employers will no longer be required to follow the statutory procedure for considering such requests and instead will be required to consider all requests reasonably.</p> <p>The Government legislated for this reform through the Children and Families Bill Act 2014 which has now received Royal Assent.</p> <p>It is anticipated that the reform will come into force on 30 June 2014.</p> <p>Acas has finalised its code of practice and guidance on handling flexible working requests in light of the reform.</p>	<p>30 June 2014</p>	<p>Many employers already allow flexible working for all employees, not just those with childcare responsibilities, but if this is not the case you may want to consider reviewing existing policies to allow this.</p> <p>On a general note , the focus over the next few years will be on flexible, family friendly employment practices and consequently employers should give consideration as to how to make their existing policies more family friendly and flexible.</p>	<p>Acas Guidance Click here</p> <p>Acas Code of Practice: Click here (Annex A)</p>
<p>Scottish Referendum – Employment Law Implications</p> <p>In the event of a 'yes' vote at the Scottish Referendum on 18 September 2014, the Scottish Government has confirmed that employment law would then be "tailored to Scotland's needs". Existing UK laws would remain in place after independence for a period of transition. This would have to be the case, as otherwise there would be a vacuum. Thereafter, a process of decision-making on</p>	<p>18 September 2014</p>	<p>Employers with operations or employees in Scotland should be aware that such changes could be on the horizon, in the event of a 'yes' vote.</p>	<p>For more details: Click here.</p>

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<p>specific employment laws would be taken by a Scottish government.</p> <p>For more information on the specific points which the Scottish Government has confirmed it would address, click here.</p>			
<p>Increase in National Minimum Wage Rate</p> <p>The Government has confirmed that, from 1 October 2014 the NMW will be raised as follows:</p> <ul style="list-style-type: none"> • Adult rate – increased 19p from £6.31 to £6.50 per hour • Rate for 18-20 year olds increased 10p from £5.03 to £5.13 per hour • Rate for 16-17 year olds increased 7p from £3.72 to £3.79 per hour • Rate for apprentices increased 5p from £2.68 to £2.73 per hour 	<p>1 October 2014</p>	<p>This is a significant increase in the NMW rate and will lead to an increased wage bill for those employers paying the NMW rate.</p>	
<p>Equal Pay Auditing</p> <p>Legislation implemented in 2013 gives the Government power to create new regulations that would allow employment tribunals to order businesses to undertake an equal pay audit if they are found to have breached equal pay laws.</p>	<p>2014</p>	<p>Where such cases are raised, employers will need to be aware of this extra audit requirement. The audit requirement could increase employers' appetites for settlement in cases that are identified as having poor prospects of a successful</p>	<p>Government consultation (response awaited): click here.</p>

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<p>The Government has said that employers will not be required to publish the results of such pay audits and has published a further consultation seeking views on the scope and details of these Regulations and related issues. This closed on 18 July 2013. The Government hopes that the legislation will come into force in 2014.</p>		<p>defence.</p>	
<p>Shared Parental Leave</p> <p>The Government has published draft regulations that would govern its proposed new system of shared parental leave which will allow parents more flexibility to choose how they share childcare responsibilities in the first year after a child's birth.</p> <p>The Government legislated for this change through the Children and Families Act 2013, which has now received Royal Assent. The Government is seeking views on the draft regulations.</p> <p>The proposed system would allow both parents to share up to 50 weeks leave, taken at the same time or separately, and to receive Statutory Shared Parental Pay (SSPP) in respect of up to 37 weeks of that leave. New mothers would be entitled to cut short, or "curtail", their maternity leave after two weeks, and to make up to three requests to share leave with their partner with sufficient notice. These periods of leave need not be continuous; however, employers will have the right to refuse discontinuous periods of leave or suggest alternative dates.</p>	<p>5 April 2015</p>	<p>Employers should carry out some workforce planning in relation to this issue.</p> <p>Please do not hesitate to contact us if this is something you'd like to discuss further.</p>	<p>For more information click here.</p>

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<p>The regulations are expected to come into force in October for babies due or adopted on or after 5 April 2015.</p>			
<p>New scheme for tax-free childcare</p> <p>The Government has announced that it will introduce a new tax-free childcare system. Eligible families will receive 20% of their yearly childcare costs up to £6,000 a year, for children under 12 years of age. Claims will be capped at £1,200 per child each year.</p> <p>The Government has published a consultation on the proposed scheme which closed on 14 October 2013. Its response is awaited.</p>	<p>Autumn 2015</p>	<p>Employers should await further details and be aware that this is on the horizon.</p>	<p>Government consultation: Click here.</p>
<p>Reform of Apprenticeships</p> <p>Following an independent review of apprenticeships, the Government has now confirmed that it will reform apprenticeships and following a consultation on its proposals, has set out an "implementation plan" for its reforms.</p> <p>The Government proposes to remove much of the prescriptive detail from current legislation and replace existing apprenticeship framework with new apprenticeship standards that will be developed by employers, with the government setting a "small number of criteria" that all standards must meet.</p> <p>The Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA 2009) will be amended by the</p>	<p>No date set</p>	<p>These changes should encourage the greater use of apprenticeships and allow employers to 'have a say' in the design and assessment of apprenticeships.</p> <p>Employers should note that this reform relates to apprenticeships in England only.</p>	<p>Government's "implementation plan": Click here</p> <p>Draft Deregulation Bill: click here.</p>

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<p>Deregulation Bill, and the new apprenticeships will replace apprenticeship agreements (which were introduced under ASCLA 2009).</p> <p>Apprentices' employment status will remain the same as it is under current 'apprenticeship agreements' under the ASCLA 2009, i.e. they would be under a contract of service rather than a contract of an employment, therefore allowing employers greater flexibility around the termination of apprenticeships where circumstances change.</p>			
<p>Annual leave – Working Time Regulations amendments</p> <p>The Government has proposed to amend the Working Time Regulations to allow up to 4 weeks of annual leave to be carried forward into future years where a worker is ill during the leave year or ill during the period of leave and to amend the prohibition on "buying out" any statutory leave under the WTR to allow employers to buy out the additional 1.6 weeks annual leave entitlement.</p> <p>The Consultation on Modern Workplaces sought views on these proposals and the Government's response to this consultation is still awaited.</p>	<p>No date set</p>	<p>Employers' holiday policies will need to be reviewed to ensure that carry over of annual leave is permitted in these circumstances.</p> <p>Changes will need to be communicated to line managers so that they do not inadvertently deny someone the right to carry over their leave entitlement where they are eligible to do so as this could trigger disability discrimination complaints and claims under the WTR.</p>	<p>Government consultation (response awaited): Click here.</p>

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<p>Removal of Tribunals' powers to make Wider Recommendations</p> <p>The Deregulation Bill 2013 introduces provision to amend the Equality Act 2010 to repeal tribunals' power to make wider recommendations in successful discrimination claims. No anticipated implementation date has been announced.</p>	<p>No date set</p>	<p>Employers may welcome this as there are fears that tribunals are making excessive recommendations, although evidence does not necessarily support this being the case.</p>	<p>Draft Deregulation Bill: click here.</p>
<p>Further reform of the law on whistleblowing</p> <p>Following the reforms introduced in June 2013, the Government published a call for evidence on current whistleblower protection, seeking views on whether further changes are required.</p> <p>The Government seeks views on (amongst other things):</p> <ul style="list-style-type: none"> • Whether there needs to be further categories of disclosure which qualify for protection in order to capture all disclosures that are "in the public interest"; • Whether the requirements for making a protected disclosure affect or deter a whistleblower from making a disclosure; • Whether the definition of "worker" for the purposes of whistleblowing protection should be further 	<p>No date set</p>	<p>Depending on the proposals that are taken forward, this could result in an extension of the protection afforded to whistleblowers. Employers should be aware that changes might be on the horizon and await further details.</p>	<p>Government consultation: Click here.</p>

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<p>extended;</p> <ul style="list-style-type: none"> • Whether financial incentives should be introduced to encourage whistleblowing in the financial sector (reflective of those which have worked successfully in the USA); • The introduction of a non-statutory code of practice which would provide employers with best practice guidance for handling whistleblowing in their organisation and their whistleblowing policies. <p>The consultation closed on 1 November 2013. The Government's response is awaited.</p>			
<p>Protection from Caste Discrimination</p> <p>A provision in the ERRA 2013 amends the EqA 2010, making it mandatory for the Government to outlaw discrimination on the grounds of caste.</p> <p>The provision came into force on 25 June but does not provide a date by which the Government must make this order but the Government has indicated an aim to bring such an order into force within 1-2 years.</p>	<p>2015 estimate</p>	<p>Employers should be aware that this change is on the horizon and that employees will be protected from discrimination on the grounds of their caste in the same way as employees are protected from discrimination on the grounds of other characteristics (such as sex, disability, age etc).</p>	
<p>Education and Skills Act 2008</p> <p>The Act changed the Statutory Framework to put a duty on all young people to participate in education or training until the age of 17 (from Summer 2013).</p>	<p>Summer 2015</p>	<p>Employers should be aware of this extension but note that the legislation places no new obligations on employers.</p> <p>It was initially thought that</p>	<p>Government guidance for employers: click here.</p>

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<p>By summer 2015 this 'participation age' will be extended to 18.</p>		<p>employers of 16 and 17 year olds would be required to give employees time off for this training & to check when recruiting employees of this age whether they are in suitable education or training.</p> <p>However, the Government has confirmed that this is not the case; instead the Government's guidance encourages employers to give thought to how they can support young employees who are carrying out such training alongside their employment.</p>	
<p>Consolidation of National Minimum Wage Rules</p> <p>The Government plans to consolidate the current 17 sets of NMW regulations into one single simplified set of regulations.</p> <p>It was originally thought that the consolidated regulations would be introduced in April 2013. However, Employment Rights Minister, Jo Swinson, has now stated that the Government "will introduce the improved set of regulations, following consultation, during this Parliament" and no exact date has been set.</p>	<p>No date set</p>	<p>This simplification of the NMW regulations should make compliance easier and will be welcomed by employers.</p>	

KEY CASES ON THE HORIZON

There are also a number of significant case law decisions which are anticipated over the coming year, details of which can be found below.

Topic	Case	Details
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		<p>the protection afforded under disability discrimination law.</p> <ul style="list-style-type: none"> The EAT has recently held (<i>Walker v SITA Information Networking Computing Ltd</i>) that obesity is not in itself a disability under UK legislation, but that obesity might make it more likely that a person has impairments which are within disability discrimination legislation.
SURROGACY	<p>Z v A Government Department and the Board of Management of a Community School</p> <p>CD v ST</p>	<ul style="list-style-type: none"> The ECJ is due to consider whether women who become mothers via a surrogacy arrangement are entitled to maternity leave and rights under EU law. Differing opinions were given by the Advocate Generals in each case.
REASONABLE ADJUSTMENTS	<p>Griffiths v Department for Work and Pensions</p>	<ul style="list-style-type: none"> The EAT is due to consider whether the duty for employers to make reasonable adjustments requires employers to adjust the number of absences that trigger the implementation of an absence policy where the absence is related to an employee's disability.
COLLECTIVE REDUNDANCY CONSULTATION	<p>USDAW v Ethel Austin Ltd ("the Woolworths case")</p>	<ul style="list-style-type: none"> The EAT found that the concept of "establishment" is irrelevant for the purposes of the trigger point for collective consultation where 20 or more redundancies are being proposed within a 90 day period. This means that the redundancies do not have to be at one

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establishment (i.e. store, unit, etc.) for the duty to arise.

- This decision, which significantly extends the scope of employers' collective consultation obligations, was appealed to the Court of Appeal which has referred the case to the European Court of Justice.
- The Northern Ireland Industrial Tribunal has also sought clarification on this point from the European Court of Justice (ECJ).

Please note that employment law differs in Northern Ireland, and it has not yet been confirmed whether many of the changes noted above will apply there. Please see our [Northern Ireland](#) horizon watching document, or contact Paul.Gillen@pinsentmasons.com for further information if your business has employees in Northern Ireland.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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