

Key employment law developments for 2021



The response to Covid-19 will understandably remain government's and business' priority in the months ahead. Nevertheless, we expect to see some important changes in other areas too. Below we outline the incoming legislative changes and outline some other expected developments to be mindful of this year.

Legislation

This year we expect to see an Employment Bill which was announced in the December 2019 Queen's Speech. This could include various measures, such as:

- **Extended redundancy protection** (the right to be offered suitable alternative employment) to employees on maternity leave and new parents in order to prevent pregnancy and maternity discrimination. The Government committed to extending the period of protection so that it would apply from the point the employee informs their employer that they are pregnant and continue for six months after their return to work.
- **Standardised flexible working:** The current government's manifesto stipulated that it would make flexible working the default position subject to any legitimate reason an employer has against implementing it.

Elsewhere, the government is reviewing whether (1) exclusivity clauses for low-paid employees are fair and should be banned; (2) non-compete provisions should be paid or banned; and (3) Non-Disclosure Agreements are reasonable.

Arguably the most significant legislative change this year is the reform to IR35, coming into force in April 2021 (although reports suggest there may be delays). The new rules mean that medium and large businesses in the



private sector who engage consultants via intermediaries will now be responsible for identifying consultants' employment status rather than the intermediaries and, if appropriate, operate PAYE and NICs.

Key Case law

We expect important decisions in the following cases:

- *Uber* – the Supreme Court will determine whether drivers have **worker status** and thus entitled to certain employment rights such as holiday pay.
- *Royal Mencap Society* – whether **sleep-in workers** are entitled to **minimum wage** for time spent asleep but on-call, or paid only for hours when awake and performing duties.
- Three cases are being heard this year in the Supreme Court, including *East of England Ambulance Service NHS Trust* concerning what should be included in **holiday pay** (e.g. regular voluntary overtime).

Furlough Scheme

The furlough scheme is due to finish at the end of April 2021 and what happens to the scheme in April and beyond will be interesting. Some of the possibilities include:

- An extension of the furlough scheme, whether on current terms or bringing back higher levels of employer contribution.
- Implementation of the Job Support Scheme, which was due to come in last November but was postponed when the furlough scheme was extended.
- Implementation of the Job Retention Bonus scheme which was similarly put on hold, or some other incentive scheme as was indicated by the Chancellor.

Covid-19 Vaccination roll-out

The management of the vaccination roll out will be an interesting one for employers as many business' will want to ensure staff are vaccinated before allowing them to return to offices or deal face to face with customers.

The general position for most businesses, however, is that you should not require staff to take vaccinations due to potential discrimination and Human Rights breaches. However, businesses should consider how to encourage staff to take vaccinations to mitigate risks, for example, by allowing (paid) time off for jobs.

Brexit

Right to work, immigration & recruitment practices will be the main issue for businesses. If you haven't already, remind EU staff in the UK, and UK nationals in Europe, to apply for the applicable status to which they are eligible in advance of 30th June 2021.

If necessary, ensure you have a sponsor license to sponsor individuals in the UK and budget approval for any sponsor applications required.

Plan how to look after business visitors (coming into the UK or visiting the EU). No visas are required, however individuals' activities must fall within the scope for travel under the 'Business Visitor Rules', e.g. business meetings. It is noted UK nationals must spend no more than 90 days per every 180 days in the Schengen area (inclusive of business and tourism time). Therefore train staff internally and prepare a sensible business plan for your clients who will need assistance.



Looking further ahead

The impact of leaving the EU (from where we have derived much of our law) will have little immediate effect to legislation and case law. EU law already enshrined in UK law prior to 1st January 2021 will remain binding unless or until it is changed by the government. It is reported that potential changes in the future could see:

- A relaxation of the TUPE rules around consultation and harmonising of contracts post-transfer.
- A relaxation of the rules around compulsory consultation in collective redundancy situations
- A relaxation of the 48 hour maximum working week and the holiday pay calculation under the Working Time Regulations 1998.

How we can help

If you require any advice on the above or have other employment queries, please contact the [employment team](#).