



Employment Law Update Webinar: Key Employment Law Developments in 2021 and Beyond

23 February 2021

Today's presenters



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Unlocking the Lockdown

What will it look like this time round?

8 March 2021

Step 1
Schools and colleges
re-open



**12 April
(at the earliest)**



Step 2
Retail businesses
will reopen plus outdoor
hospitality

**17 May
(at the earliest)**

Step 3
Opening up of hotels
and indoor hospitality



**21 June
(at the earliest)**



Step 4
Remaining closed
settings reopen

Unlocking the Lockdown

Things to start thinking about

- Planning for a return to the workplace and return to work dates
- Selection of which employees will return to work and why
- Health and safety - precautions being taken and any risk assessments, approach to vaccinations
- Approach to accrued holiday
- Homeworking arrangements



COVID-19 Vaccinations

- The UK government is not making the vaccine mandatory
- Employers may potentially dismiss for persistent refusal to have the vaccine, but each case should be considered on its facts. Employers should avoid adopting a blanket approach.
- Be aware of the risk of some employees alleging discrimination – any legal pushback is most likely to be presented as an indirect discrimination claim, i.e. the employer's policy of requiring its staff to be vaccinated puts those employees with a particular protected characteristic at a disadvantage and cannot be justified
- Consider data protection implications – dealing with special category health data
- Consider implementing a vaccination policy/set of principles



Meeting the economic challenges ahead

Using the CJRS	Redundancies	Changes to terms and conditions of employment
Still available until end April 2021 – possibly longer	<ul style="list-style-type: none">▪ Preparation, preparation, preparation!▪ Collective consultation obligations	<ul style="list-style-type: none">▪ E.g. pay cuts, changes to benefits, etc.▪ Collective consultation obligations▪ Recent bad publicity over such exercises
Other alternatives	Reviewing template contracts	
E.g. terminating agency worker contracts, short-time working, flexible working, etc.	New provisions, e.g. homeworking clauses, homeworking policy, vaccination policy, etc.	

ESG Issues

Companies are facing scrutiny on their actions, particularly in relation to their employees, both from the public as well as from investors through their Environmental, Social and Governance (ESG) frameworks



Key themes for 2021 include:
diversity and inclusion;
mental health; and
employee engagement

IR35 – The new rules in the private sector

6 April 2021 onwards

- End-user clients will be responsible for determining whether IR35 applies (unless small company exemption applies)
- If yes, the obligation to operate PAYE and pay income tax and employer and employee NICs will transfer to the fee-payer, i.e. end-user client, agency or other third party that pays the PSC
- This is no longer a good position for end-user clients – they will carry the risk of PAYE/NICs non-compliance



IR35 - The latest position

- Reforms are due to go ahead on 6 April 2021
- HMRC amnesty for pre-6 April 2021
- There is still time to mitigate your IR35 risk - do what you can before 6 April 2021 and take advice on tricky cases
- IR35 isn't a one-off situation – it's an ongoing process

- A determination of “inside IR35” applies for tax purposes only
- It does not create an employment relationship for the purposes of employment law
- Taylor Review recommended addressing the inconsistencies between tax and employment law in relation to employment status

Changes to Post-Employment Notice Pay (PENP)

6 April 2021

- Small change to be aware of – An alternative PENP calculation for when an employee's pay period is defined in months, but their notice period is not a whole number of months – flag to payroll

AIU	1,822	12,349,000
EJK	3,680	238,681,000
HPL	1,062	85,678,000
KEE	105	0,210,000

Gender Pay Gap Reporting

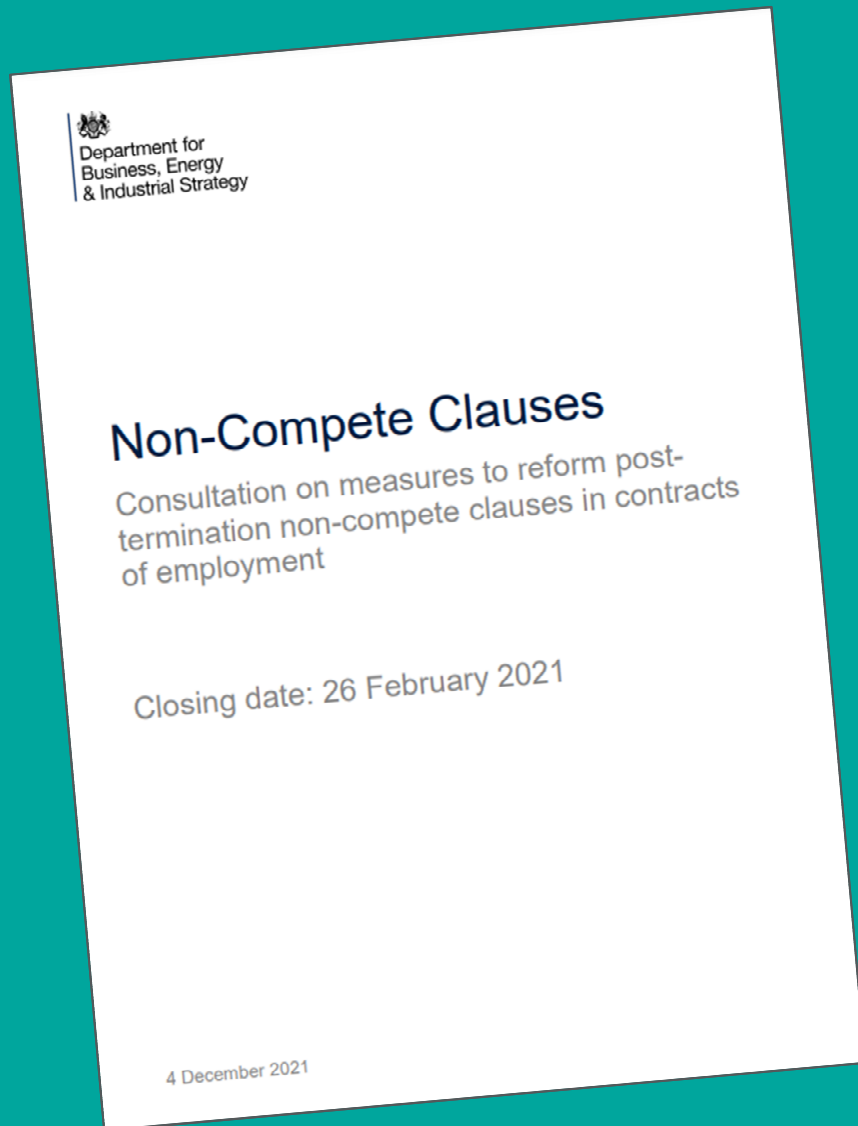
Reporting deadline is 4 April 2021

Breaking News: According to an article in the Guardian yesterday, the EHRC has said that companies should report by 4 April deadline if they can, but it will not begin enforcement proceedings until 4 October 2021

Brexit Trade Deal

UK and the EU finally reached a trade and cooperation agreement

- Data Protection: Deal included an interim solution to the issue of personal data transfers from the EU to the UK
- Changes to employment laws: No immediate plans to change any legislation deriving from Europe



- The government is seeking views on:
 - Proposals to make non-compete clauses enforceable only when the employer provides compensation during the term of the restriction
 - An alternative proposal to make post-termination non-compete clauses in contracts of employment unenforceable

National Living Wage/National Minimum Wage

1 April 2021

£8.91
per hour

National Living
Wage – now age 23 or
over



£8.36
per hour (Adult rate)

National Minimum Wage

Increase in rates/tribunal awards

The limit on the compensatory award for “ordinary” unfair dismissal will increase and the maximum amount of a week’s pay for the purposes of calculating statutory redundancy pay and the basic award in unfair dismissal claims will increase – no details as to new rates as yet!

SSP will increase to

£96.35
per week



SMP, SAP, SPP and SSPP
will increase to

£151.97
per week

Remember – the cap on the compensatory award for “ordinary” unfair dismissal purposes is the lower of the statutory limit set out above and 52 weeks’ pay of the individual concerned

New Employment Bill expected at some stage

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- Creating a new, single enforcement body, offering greater protections for workers
 - Ensuring that tips left for workers go to them in full
 - A new right for all workers to request a more predictable contract
 - Extending redundancy protections to prevent pregnancy and maternity discrimination
 - Allowing parents to take extended leave for neonatal care
 - An entitlement to one week's leave for unpaid carers
 - Make flexible working the default option, unless employers have a good reason not to

Update on Consultations


Department for
Business, Energy
& Industrial Strategy

GOOD WORK PLAN: PREGNANCY AND MATERNITY DISCRIMINATION CONSULTATION

Extending redundancy protection for women
and new parents

Government response

July 2019


Department for
Business, Energy
& Industrial Strategy

CONFIDENTIALITY CLAUSES

Response to the Government consultation on
proposals to prevent misuse in situations of
workplace harassment or discrimination.

July 2019


Government
Equalities Office

Consultation on Sexual Harassment in the Workplace

Legal protections under the Equality Act 2010

This consultation begins on 11 July 2019
This consultation ends on 2 October 2019


HM Government

Good Work Plan: Proposals to support families

Consultation

July 2019

Immigration Update

Brexit

- Free movement between the UK and the EU ended on 31 December 2020.
- Protections are in place for EU citizens resident in the UK and British citizens resident in the EU on or before 31 December 2020
- The UK's new points-based immigration system:
 - applies to non-EU citizens *and* EU citizens (unless eligible under EU Settlement Scheme) intending to work in the UK
 - lower skills and salary thresholds than before
 - no Resident Labour Market Test
 - no quotas (for now)



Immigration Update

Brexit

- Visitors to the EU or the UK must assess whether their 'business' activities are specifically permitted in the country they are travelling to without a work visa.
- The UK/EU Trade and Co-operation Agreement contains a list of permitted business activities but visitors must still check whether a work visa is required on a country-by-country basis.
- Non-EU citizens are limited to 90 days in any 180 period throughout the whole Schengen area.
- Non-UK citizens may enter the UK as visitors for up to 6 months at a time.



Immigration Update

Brexit

For non-EU workers intending to work in EU countries:

- Each EU country has its own immigration rules and work visa processes
- Stays beyond 90 days in any 180 day period will require a work visa / residence permit (as well as some shorter stays depending on work activity)
- Many EU countries' work visa processes are document intensive and lengthy to complete
- A local sponsor / employer is almost always required.



Questions and Answers



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