

HR News Alert



UK EMPLOYMENT LAW REFORMS ANNOUNCED

After a period of relative inactivity on the employment law front, the Government has now set out a number of new proposals and reforms in what it is calling its “most radical reform to the employment law system for decades”. Perhaps of most interest/concern for employers is the announcement that there will be a consultation in 2012 on ‘protected conversations’, which will allow employers to discuss issues such as retirement or poor performance in an open manner with staff but without the discussion then being used in subsequent Tribunal claims. Very little detail of precisely how such a system could work has yet been reported and it is possible to conclude that what sounds attractive at the theoretical level could generate significant difficulties in practice.

A number of the announcements relate to the Government’s [response](#) (PDF) to the ‘Resolving Workplace Disputes’ consultation. Key proposals include:

- **Unfair dismissal qualification period.** The Government has confirmed that the qualifying period for bringing an unfair dismissal claim will be extended from 1 to 2 years in April 2012. The transitional arrangements have yet to be decided.
- **Employment Tribunal fees.** There will be a consultation on introducing fees for claimants. The Government is considering two options. The first involves payment of a fee to lodge a claim, with a second fee to take that claim to hearing. The second option proposes introducing a £30,000 threshold, so that claimants seeking more than £30,000 will pay higher fees.
- **Financial penalties for employers.** Employment Tribunals will have discretionary power to levy financial penalties on employers found to have breached employment rights. The penalties (payable to the Exchequer) will generally be half of the total compensation award made by the Tribunal, subject to a minimum penalty of £100 and a maximum of £5,000.
- **“Simplifying” compromise agreements (to be renamed ‘settlement agreements’).** This may include provision of a template settlement agreement and associated guidance as well as amending legislation to enable agreements to cover all existing and future claims without requiring long lists of actions to be waived individually. The Government will consult on its proposals in due course.
- **Early conciliation.** Claimants will be required to submit details of their claim to Acas in the first instance and will be offered the option of engaging in early conciliation. Where early conciliation is refused or is unsuccessful, the claimant will be able to proceed to lodge a claim. Acas’ duty to provide post-claim, or individual, conciliation will remain unchanged.
- **Case management powers.** The Government has invited Mr Justice Underhill to undertake a fundamental review of Employment Tribunal procedural rules. He will report back by the end of April 2012. Also in April 2012, the limit for deposit orders (used where the Tribunal believes that a claim or defence has little prospect of success) will be increased from £500 to £1000 and the current cap on costs awards (which can cover cost orders, preparation time orders and wasted costs orders) will be increased from £10,000 to £20,000.
- **Witness statements.** The Tribunal rules are to be amended to require from April 2012 that witness statements are taken as read, unless a Judge or Tribunal directs otherwise.

- **Judges sitting alone (i.e. without lay members).** From April 2012, Judges will be allowed to hear unfair dismissal cases alone unless they direct otherwise. Also, Employment Appeal Tribunal Judges will always sit alone unless they direct that members should be involved.
- **Rapid resolution.** The Government is to consider whether and how it can introduce a 'rapid resolution' scheme in low value, straightforward claims such as holiday pay. Such a scheme could involve non-judicial determination by, for example, legally qualified individuals based only on papers (i.e. no oral hearing). The Government will consult on its proposals.

As part of its ongoing Employment Law Review, the Government has also issued two 'Call for evidence' documents (the evidence gathered will be used to formulate policy proposals ahead of more detailed consultations next year):

- **Collective redundancy consultation rules.** The document seeks views on reducing the 90-day minimum collective consultation period before large-scale redundancies can take place, the lack of clarity of the definition of "establishment" and the overlap between the collective redundancy rules and other legislation such as TUPE and the insolvency rules.
- **Effectiveness of the TUPE regulations.** The Government is concerned that the current rules may be "gold-plated" (as they flow from a European Directive) and overly bureaucratic. In particular, it is seeking views on the service provision changes, issues surrounding harmonisation of terms and conditions, the application of TUPE in insolvency situations, and liability for pre-transfer obligations.

The closing date for both calls for evidence is 31 January 2012. Links to the documents:

[Collective redundancy consultation rules](#) (PDF)

[Effectiveness of the TUPE regulations](#) (PDF)

The Government is also to:

- seek views on introducing no-fault dismissal for firms with fewer than 10 employees.
- examine ways to slim down and simplify dismissal processes, including potentially working with Acas to change its Code of Practice, or publishing supplemental guidance for small businesses.
- close a loophole in the whistleblowing legislation which currently allows employees to blow the whistle about alleged breaches of their own personal work contracts.
- merge 17 separate National Minimum Wage regulations into one set.
- consult in Spring 2012 on simplifying the current regulatory regime (including a review of the Conduct of Employment Agencies and Employment Businesses Regulations) for the recruitment sector.
- create a universally portable CRB check that is instantly available to employers from 2013.

FURTHER INFORMATION

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