



EMPLOYMENT UPDATE

April 2011

**SQUIRE
SANDERS
HAMMONDS** | LEGAL
COUNSEL
WORLDWIDE

NEW THIS MONTH

- Cases on unfair dismissal - final written warnings/absence dismissals/conduct outside work ('Key Employment Cases (UK) – pages 18-22)
- Equality Act 2010: Banning age discrimination in services, public functions and associations ('UK consultations (open)' – page 23)
- Fair Deal Policy: Treatment of pensions on compulsory transfer of staff from the public sector ('UK consultations (open)' – page 23)
- Equality Act 2010: The public sector Equality Duty: reducing bureaucracy ('UK consultations (open)' – page 23)
- Agency Workers Regulations Guidance ('UK consultations (open)' – page 23)

UPDATED THIS MONTH

- Equality Act 2010 ('New legislation' – page 1)
- Right to request time off to study or train ('New legislation' – page 4)
- Enhanced rights for agency workers ('New legislation' – page 4)
- Tiers 1 and 2 PBS limits ('Amendments to existing legislation' – page 6)
- Increased benefit rates for 2011/12 ('Amendments to existing legislation' – page 8)
- Phase-out of the Default Retirement Age ('Amendments to existing legislation' – page 8)
- Extension of flexible working rights ('Amendments to existing legislation' – page 9)
- Equal Treatment Directive between men and women engaged in a self-employed capacity ('Amendments to existing legislation' – page 11)
- Apprenticeships and Skills (Public Procurement Contracts) Bill 2010-11 ('Proposed Legislation' – page 12)
- High Pay Commission Bill 2010-11 ('Proposed Legislation' – page 13)
- Minimum Wage (Amendment) Bill 2010-11 ('Proposed Legislation' – page 13)
- Training Wage Bill 2010-11 ('Proposed Legislation' – page 14)
- Amendments to the Pregnant Workers Directive ('EU Legislation' – page 15)
- Points-based System: students ('UK Consultations (closed)' – page 24)

LEGISLATION TRACKER

Effective Date (Parliamentary stage where relevant)	Title(s) of relevant legislation	Summary	Potential Impact	Risk Rating	Next steps following Risk Rating
NEW LEGISLATION					
*From 01/10/10	<p>(1) Equality Act 2010</p> <p>(2) The Equality Act 2010 (Commencement No. 4 etc) Order 2010 (SI 2317)</p> <p>(3) The Equality Act 2010 (Disability) Regulations 2010 (SI 2128)</p> <p>(4) The Equality Act 2010 (Commencement No.5) Order 2011 (SI 0096)</p> <p>(5) The Equality Act 2010 Codes of Practice (Services, Public Functions and Associations, Employment and Equal Pay) Order 2011 (SI 0857)</p>	<p>The following key provisions of the Act that are of interest to employers came into force on 1 October 2010:</p> <ul style="list-style-type: none"> • Pre-employment disability and health questionnaires. • Discrimination based on association or perception of a "protected characteristic". • Pay secrecy clauses. • Harassment of employees by 3rd parties. As part of the recent Budget's 'The Plan For Growth' the Government announced that it is to consult on removing this provision from the Act. • Strengthened powers for Employment Tribunals to make recommendations benefiting the wider work force in discrimination case. <p>The Government is still considering the best way for the following provisions to be implemented:</p> <ul style="list-style-type: none"> • Dual discrimination. The Act provides for discrimination claims to be brought in relation to a combination of two protected characteristics (from age, disability, gender reassignment, race, religion or belief, sex or sexual orientation). The Government has recently announced that these provisions will not now be introduced. • Caste discrimination. The Government Equalities Office published research findings in December 	<ul style="list-style-type: none"> • Increased risk of Tribunal claims and need for additional internal monitoring resources 	High	<ul style="list-style-type: none"> • Ensure Managers are trained on the impact of pre-employment health questions and the need to avoid stereotyping (discrimination based on association/dual discrimination). • Await implementation of further sections of the Act and consider impact on equal opportunities policies, gender gap reporting and recruitment procedures.

		<p>2010 on caste prejudice and discrimination in Great Britain. The Government is now considering the report findings and whether to legislate under the Act.</p> <ul style="list-style-type: none"> • Positive Action in recruitment or selecting for promotion. If they wish, employers will, subject to certain conditions, be able to use 'positive action' to pick someone for a job (or select them for promotion) from an under-represented group when it has the choice between two or more candidates who are <u>equally</u> suitable. This provision came into force on 06/04/11. The Government Equalities Office has issued "quick start" guidance and also practical guidance intended to help employers. • Public Sector Equality Duty. The new public sector Equality Duty replacing the current separate public sector duties relating to race, disability and sex and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment more fully came into force on 05/04/11. The Duty consists of a general duty and specific duties to be imposed through regulations. The specific duties include a requirement for listed bodies to publish sufficient information to demonstrate their compliance with the general equality duty, originally due to be implemented on 06/04/11, will now not come into force until July 2011. The Government is currently seeking views on the draft Regulations that will implement the specific duties – see 'UK Consultations (open)'. • Age discrimination outside the workplace. From April 2012, it will be unlawful to discriminate against someone aged 18 or over when providing services or carrying out public functions. There will be exceptions such as concessions for particular age groups. The Government is currently consulting on the scope of these concessions – see 'UK Consultation (open)'. <p>The Equality and Human Rights Commission has</p>			
--	--	--	--	--	--

		published a series of non-statutory guidance documents (including guidance for employers) to accompany the Act. The Employment, Equal Pay and, Services, Public Functions and Associations Statutory Codes of Practice came into force on 06/04/11. Copies of all of the guidance can be downloaded from the EHRC website .			
03/04/11	<p>Work and Families Act 2006</p> <p>Key secondary legislation:</p> <p>(1) Additional Paternity Leave Regulations 2010 (SI 1055)</p> <p>(2) Additional Statutory Paternity Pay (General) Regulations 2010 (SI 1056)</p>	<p>Additional Paternity Leave (APL) and Pay Scheme</p> <p>Regulations implementing the new Scheme came into force on 06/04/10 although the Scheme only applies to parents of babies whose EWC begins on or after 03/04/11.</p> <p>Key features of the Scheme:</p> <ul style="list-style-type: none"> • In order to be eligible to take APL, fathers (which includes partners, civil partners and adoptive parents) will have to have been eligible for Ordinary Paternity Leave (presently known as Statutory Paternity Leave) with the same employer (i.e. six months' service at the 15th week before EWC) and still be in employment with that employer until the week before the first week of APL. • A mother must return to work for a father to be able to take APL and receive Additional Statutory Paternity Pay (ASPP). • APL can be taken no earlier than 20 weeks after the child's birth but must be taken within the first year. • A father taking APL can agree to work for up to 10 days during his APL ('Keeping in Touch' or KIT days). If both father and mother work for the same employer, this will potentially result in 20 KIT days during the combined period of maternity/additional paternity leave. • A father taking APL and ASPP will be entitled to the benefit of his terms and conditions (except for remuneration) and will be entitled to return to the same job on the same terms and conditions. <p>Although the Scheme has been introduced this April as</p>	<ul style="list-style-type: none"> ○ Increased staff costs. ○ Rostering issues 	High	<ul style="list-style-type: none"> • Consider the extent to which APL may be abused and measures to counter this • Investigate whether existing payroll software will be able to cope with these variations • Risk of abuse as the Scheme allows self-certification rather than independent verification of the fact that the mother has actually returned to work. Employers are, however, also entitled to ask the father to provide a copy of the child's birth certificate and details of the mother's employer. HMRC will also undertake compliance checks and be able to impose financial penalties where there is evidence of fraudulent claims by employers or employees • Consider the entitlement to any enhanced maternity pay and whether men should receive the same benefits

		planned, the Government has stated that it is an “interim” measure pending the outcome of a consultation on a new system of “shared parental leave”. Detailed plans on the latter will be developed by December 2011 and any changes will not come into force until 2015 at the earliest. BIS has recently updated its guidance leaflets on ‘Pregnancy and Work’ to include APL.			as comparable women
*06/04/11 & 2013	The Apprenticeship, Skills, Children and Learning Act 2009 (Commencement No2 and Transitional and Savings Provisions) Order 2010 (Amendment) Order 2011 (SI 882)	<p>Right to request time off for study or training/apprenticeships</p> <p>The Act amends the Employment Rights Act 1996 to include a right for employees to request time off (which can be unpaid) to study or train. The right is modelled on the existing right for making and rejecting flexible working requests.</p> <p>The right applies to employers with 250 or more staff from 06/04/10 and was due to apply to all other employers from 06/04/11. The Government has recently announced that the right will not now be extended to such employers.</p> <p>The Act also introduces, by 2013, an entitlement to an apprenticeship place for all suitably qualified 16-18 year olds.</p>	<ul style="list-style-type: none"> Increased payroll costs and administration Rostering issues Potentially significant impact on available pool of labour which could give rise to staff shortages, particularly in relation to unskilled roles 	Low	<ul style="list-style-type: none"> Await secondary legislation in relation to apprenticeship places Ensure managers are aware of the right to request procedures
*01/10/11	Agency Workers Regulations 2010 (SI 0093)	<p>Enhanced rights for agency workers</p> <p>The Agency Workers Directive was passed by the European Parliament on 22/10/08 – giving temporary workers in the UK equal rights to permanent staff after 12 weeks with a hirer (occupational benefits that recognise the long-term relationship that permanent staff have with an employer, such as sick pay, certain insurances and pensions will however be excluded).</p> <p>The final UK Regulations include an anti-avoidance provision intended to deter hirers from depriving agency workers of their right to equal treatment (e.g. by rotating them between different jobs every 11 weeks). Penalties</p>	<ul style="list-style-type: none"> Increased payroll costs Increased turnover of agency staff Potential difficulty for long-term temporary roles 	Medium	<ul style="list-style-type: none"> Consider reviewing contracts with agency staff suppliers Consider current use of agency workers and what measures can be implemented to mitigate risk of equal rights e.g. the “Swedish Derogation” or outsourcing services

		of up to £5,000 can be imposed for such breaches. The draft guidance on the Regulations was published on 01/04/11 – see ‘ UK Consultations (open) ’ and the final version should be available at the end of April/early May.			
Expires 16/12/11	Superannuation Act 2010	The Act received Royal Assent on 16/12/10. It caps temporarily compensation payable under the Civil Service Compensation Scheme at a maximum of 12 months’ pay for compulsory redundancy and 15 months’ for voluntary exits. As the cap is an interim measure, pending implementation of a revised CSCS, the Act further provides for the cap to expire after 12 months, unless repealed, extended or revived using order-making powers.	<ul style="list-style-type: none"> • Could result in lower redundancy costs for public bodies using the Scheme 	High	<ul style="list-style-type: none"> • Review existing redundancy packages for compliance with the Act

AMENDMENTS TO EXISTING LEGISLATION

2013	<p>Implementing Regulations to the Safeguarding Vulnerable Adults Act 2006 (SVGA) including:</p> <p>The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 (SI 1154)</p> <p>Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SI 1351)</p> <p>Freedom of Protections Bill 2010-11</p>	<p>Roll-out of the Vetting and Barring Scheme</p> <p>The first phase of the Scheme was introduced on 12/10/09. From that date:</p> <ul style="list-style-type: none"> • It became an offence for an employer to allow a person to engage in a regulated activity whom it knows (or has reason to believe) is on the Independent Safeguarding Authority’s (ISA) barred lists. • A mandatory duty was introduced requiring employers to refer to the ISA information about individuals working with children or vulnerable adults in a regulated or controlled activity where they have caused or put at risk of harm. <p>The Government has confirmed that the above offence and duty are to be retained.</p> <p>From April 2010, employers who do not know whether or not a new entrant or mover into a controlled activity (see also below) is barred from regulated activity have had to apply to the CRB for enhanced disclosure with an ISA barred list check on that individual.</p> <p>On 15/06/10, the Home Office announced that</p>	<ul style="list-style-type: none"> • Risk of fines/prosecution • Relevant to employers if they operate crèche facilities • Employers should also consider implications where staff deal specifically with children or vulnerable adults 	Medium	<ul style="list-style-type: none"> • Ensure compliance of recruitment procedures and that the necessary ISA reporting procedures are in place • Identify roles which may fall within the scope of the Scheme
-------------	---	---	--	---------------	--

		<p>registration under the scheme was being halted whilst a Government review was undertaken. The findings of that review were published on 11/02/11. Key recommendations – incorporated into the 'Protection of Freedom Bill' (see 'Proposed Legislation' below) – include:</p> <ul style="list-style-type: none"> • A large reduction in the number of positions requiring checks to just those working most closely and regularly with children and vulnerable adults ("regulated activities"). • Registration with the Scheme to be scrapped. • Portability of CRB checks to be introduced. • The "controlled activity" category to be abandoned. It will be up to employers to decide as part of their recruitment processes whether to obtain additional information on employees who are not performing a regulated activity but may still have contact with children or vulnerable adults. <p>Subject to Parliamentary approval, the Government hopes the Bill will become law in November 2011. It then intends to roll out the Act during 2012, with the new disclosure and vetting service beginning in 2013.</p> <p>Some parts of the SVGA do not extend to Northern Ireland and corresponding legislation replicates those provisions.</p>			
*06/04/11	<p>Amended Immigration Rules and Guidance</p> <p>Tier 2 PBS Statement of Intent</p>	<p>Tiers 1 and 2 PBS limits</p> <p>On 16/03/11, the Government published its formal guidance on the permanent limit to Tier 2 (General) and changes to Tier 2 ICT in force from 06/04/11</p> <ul style="list-style-type: none"> • Annual limit of 20,700 on "restricted" Tier 2 (General) visas, divided into 12 monthly allocations (which will replace the current pre-allocation system), 4,200 in April 2011, 1,500 per month thereafter. • All migrants granted leave to enter the UK under 	<ul style="list-style-type: none"> • Increased administration resulting from more complex means of obtaining Certificates of Sponsorship allocation for certain 	High	<ul style="list-style-type: none"> • Tier 2 (General) – factor in extra time frame required to obtain restricted CoS via new online process • Tier 2 (ICT) – consider raising salaries to £40,000 if needed in UK for more than 12 months

		<p>Tier 2 (or those switching into Tier 2 from within the UK) from 06/04/11 must fill a role that is at or above graduate level (even if they have not actually been educated to graduate level).</p> <ul style="list-style-type: none"> • The annual limit on migration will apply to Certificates of Sponsorship ('CoS') for migrant workers who earn under £150,000 per year and are required to apply for a visa to enter the UK from overseas. These restricted CoS can be applied for online by Level 1 users via the Sponsor Management System. Applications will be scored and prioritised according to shortage occupation status, specific PhD level roles, successful completion of or exemption from the resident labour market test and salary levels. • Applications for restricted CoS will be approved solely on the number of points scored, starting with the highest. If the number of valid applications received is greater than the number of CoS available for that month, those applications with the lowest number of points are less likely to be approved. • The Tier 2 Intra-Company Transfer Established Staff category is being replaced with two new sub-categories for those migrants with 12 months' prior service, namely, 'Short Term Staff' (maximum stay in the UK of 12 months) and 'Long Term Staff' (maximum stay in the UK of 60 months) with minimum salaries of £24,000 and £40,000 respectively or the minimum appropriate rate in the relevant Code of Practice, whichever is the higher. • Vacancies attracting a salary of £150,000 or more are not subject to the limits or the resident labour market test. • Tier 1 (General) will be closed to all applicants with effect from 06/04/11. Transitional provisions are in place for those with Tier 1 (General) visas 	migrants		
--	--	---	----------	--	--

		prior to 06/04/11 but wishing to extend their stay after this date.			
*03/04/11, 06/04/11 & 11/04/11	The Social Security Benefits Up-rating Order 2011 (draft awaited)	<p>Increased benefit rates for 2011/12</p> <ul style="list-style-type: none"> SMP, SAP and OSSP will increase from £124.88 to £128.73 with effect from 03/04/11. The new rate will also apply to ASPP. Note that calculations in relation to Maternity Allowance come into effect on 11/04/11. SSP will increase from £79.15 to £81.60 with effect from 06/04/11. 	<ul style="list-style-type: none"> Increased payroll costs 	High	<ul style="list-style-type: none"> Ensure payroll systems updated
*06/04/11 & 11/04/11	The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (draft)	<p>Phase-out of the Default Retirement Age</p> <p>The Government has issued a second set of draft Regulations that will repeal the statutory Default Retirement Age (DRA) provisions. Under the Regulations:</p> <ul style="list-style-type: none"> employers will not be allowed to issue new notifications of retirement using the DRA procedure on or after 06/04/11. the associated statutory retirement procedures will also be abolished. the current rule which allows employers to refuse the employ an applicant for a job vacancy who is aged 64 and a half or more will be removed. “retirement” will be removed from the current list of potentially fair reasons for unfair dismissal. there will be an exception to the principle of equal treatment on the grounds of age for group risk insured benefits such as life assurance, income protection etc. Employers will be allowed to withdraw the provision of such benefits for employees aged 65 or the State pension age, whichever is greater. <p>The revised Regulations make it clear that provided an employer has notified an employee of its intention to</p>	<ul style="list-style-type: none"> Increased risk of Tribunal claims in relation to “retirement”-related dismissals DRA retirements not made in accordance with the transitional arrangements (and therefore ineffective) Potential health and safety issues relating to an ageing workforce 	High	<ul style="list-style-type: none"> Ensure any retirement notifications have been sent out before 06/04/11 Consider how and when any contractual retirement age will be phased out/abolished Consider practical implications of abolition e.g. succession and workforce planning etc. Consider whether performance management processes are sufficiently robust and managers trained to deal with falling performance

		<p>retire him on or before 05/04/11 and the employee in question has already turned 65 (or the Company's normal retirement age, if higher) or will do so before 01/10/11, the transitional provisions will apply and the dismissal will be lawful.</p> <p>The Government has also taken the opportunity to introduce a new provision which effectively says that employees will be unable to make requests to continue working beyond their intended retirement date under the DRA procedure after 04/01/12 (this assumes they were given the maximum period of 12 months' notice of an intention to retire on 05/04/11 (as a request to work beyond the intended retirement date must be made more than 3 months before the intended retirement date)). If their employer agrees to a request – of not more than 6 months – this means that the last possible date for retiring an employee under the DRA provisions is 05/10/12.</p> <p>Acas has published guidance on how employers can work without the DRA.</p>			
*06/04/11	Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (Revocation) Regulations 2011 (SI 0989)	<p>Extension of flexible working rights</p> <p>The Government has announced that the right – currently available to qualifying parents of children under 17, parents of disabled children under 18 and carers of certain adults – will <u>not</u> now be extended as planned.</p> <p>The Government still intends, however, to consult later in the Spring on how the right can be extended to all employees, with a view to developing detailed plans by December 2011.</p>	<ul style="list-style-type: none"> Potentially increased administration and rostering issues, though there may be limited impact until the right possibly extends to all employees at a later date. 	Medium	<ul style="list-style-type: none"> Family friendly policies may need to be further updated if they were amended to reflect the now repealed extension of the right
05/06/11	Transnational Information and Consultation of	The recast European Works Council Directive (2009/38/EC) came into force on 05/06/09. It clarifies the scope of "transnational" so that where an EWC is in	<ul style="list-style-type: none"> Possible increased complexity of 	High	<ul style="list-style-type: none"> Establish whether any procedural changes are required ahead of the

	Employees (Amendment) Regulations 2010 (SI 1088)	<p>place and a closure/restructuring decision is taken in one Member State (e.g. at a multinational Head Office in the UK) but affects workers in another Member State (and has no impact on the workers in the decision-making Member State), the closure/restructuring will fall within the scope of the Directive and the employer will need to consider their transnational consultation obligations.</p> <p>The response to the second-stage consultation in relation to the UK implementing legislation was issued in April 2010. The final Regulations include the following changes:</p> <ul style="list-style-type: none"> • A legal regime applicable to EWC's with pre-existing agreements and to other EWC's created or amended during the 2-year period prior to 05/06/11 (the implementation date for the new Regulations) • The definitions of 'information' and 'consultation' have been further amended to bring them in line with the Directive. • The time limit for making complaints to the Central Arbitration Committee about a failure to comply with the Regulations is increased from 3 to 6 months • The maximum penalty for breach of the Regulations is increased from £75,000 to £100,000. <p>The Government has also published guidance on the new Regulations. Link to the guidance here.</p>	decision-making process.		June 2011 implementation date
By 08/03/12	Amending legislation implementing the Revised Directive on Parental Leave (2010/18/EU)	<p>Parental Leave extended</p> <p>On 30/11/09, EU Ministers approved the Revised Directive. Key changes are:</p> <ul style="list-style-type: none"> • An increase in parental leave from 3 to 4 months, one month of which will be non-transferable. Member States will still be able to decide whether the leave is paid or unpaid. The current UK entitlement is to 13 weeks' unpaid leave. 	<ul style="list-style-type: none"> • Rostering issues re increased statutory period of leave • Additional administration / procedures re: requests to 	Low	<ul style="list-style-type: none"> • Await UK implementing legislation and outcome of the 2011 consultation on shared parental leave

		<ul style="list-style-type: none"> Parents returning to work after parental leave will be given the opportunity to request a change to their working conditions (e.g. hours). <p>The UK and other Member States have until 08/03/12 to implement the Directive. The Government has announced that it will be consulting on a new system of flexible parental leave during 2011.</p>	change terms and conditions.		
*By 05/08/12	Equal Treatment Directive between men and women engaged in a self-employed capacity (Directive 2010/44/EU)	<p>The Directive is intended to give female self-employed workers and 'assisting' spouses (e.g. farmer's wives etc) (including life partners, as recognised by national law), the same maternity leave entitlement as provided to employees under the Pregnant Workers Directive. Member States can decide whether to provide maternity benefits on a mandatory or voluntary basis</p> <p>It is aimed at Member States where self-employed women do not enjoy the same maternity leave rights as employees. In the UK, self-employed workers are not entitled to maternity leave but may be entitled to Maternity Allowance, provided that they have made sufficient National Insurance contributions. The Directive may therefore have some impact upon UK employers. Member States have an additional period of 2 years (i.e. until 2014) if they experience difficulties in implementing the Directive.</p>	<ul style="list-style-type: none"> Limited impact as only applies to self-employed women and UK legislation already provides protection 	Low	<ul style="list-style-type: none"> Await any UK implementing legislation
2013/2015	Implementing legislation pursuant to the Education and Skills Act 2008	<p>The Act received Royal Assent on 26/11/08. Its main purpose is to raise to 18 the minimum age at which young people can leave education or training. The leaving age will rise to 17 by 2013 and to 18 by 2015.</p> <p>Employers will be under a duty to:</p> <ul style="list-style-type: none"> not employ a person unless they have taken reasonable steps to check the person has made appropriate arrangements to participate in relevant education or training; and permit an employee to participate in education or training. <p>Local education authorities will be able to issue penalty</p>	<ul style="list-style-type: none"> Potentially significant impact on available pool of labour which could give rise to staff shortages Additional administrative costs Risk of 	Low	<ul style="list-style-type: none"> Await details of implementing legislation and monitor for future recruitment planning

		<p>notices to employers who fail to comply with their duties. There will be an appeals procedure.</p>	<p>penalties for failure to comply with the legislation</p>		
TBC	<p>Road Transport (Working Time) Regulations 2005 (draft amending regulations awaited)</p>	<p>Regulations extended to self-employed drivers</p> <p>Self-employed drivers were due to fall under the scope of the Regulations from March 2009. However, the European Commission has proposed amending the Working Time Directive for Mobile Workers (2002/15/EC) to remove the requirement that self-employed workers come within the scope of the Directive and to introduce a more precise definition of mobile workers. The Government has indicated that it was minded to support the Commission's proposal.</p> <p>The Commission's initial proposal was rejected by both the European Parliament and the Employment and Social Affairs Committee. A vote of the full Parliament on 16/06/10 also rejected the Commission's proposal and called for it to be withdrawn and for a new proposal to be submitted.</p>	<ul style="list-style-type: none"> Reduced driver availability/ increased delivery times due to their need to comply with the Regulations 	Low	<ul style="list-style-type: none"> Monitor progress of the proposals to amend the Directive
PROPOSED LEGISLATION					
TBC	<p>Work and Families Act 2006</p>	<p>Extended Statutory Maternity Pay etc.</p> <p>Whilst the Additional Paternity Leave and Pay Scheme came into effect for parents of children whose EWC begins on or after 03/04/11, no announcement has yet been made on the extension of SMP, Maternity Allowance and Statutory Adoption Pay from 39 to 52 weeks.</p>	<ul style="list-style-type: none"> Increased staff costs 	Low	<ul style="list-style-type: none"> Await further Government announcement
*TBC	<p>'Apprenticeships and Skills (Public Procurement Contracts) Bill 2010-11' (2nd Reading, House of Commons – 17/06/11)</p>	<p>A Private Members' Bill (which means that is unlikely to become law) to introduce require certain public procurement contracts let by public authorities to include a commitment by the contractor to provide apprenticeship and skills training.</p> <p>The draft Bill was published on 03/03/11.</p>	<ul style="list-style-type: none"> Additional training obligations for contractor employers 	Low	<ul style="list-style-type: none"> Await further progress of the Bill

TBC	Carers and Employment Bill 2010-11 (2nd Reading, House of Commons – 17/06/11)	A Private Members' Bill (which means that it is unlikely to become law) to make provisions for carers' rights to flexible working. Until the Bill is published, it is not clear how any proposed rights will differ to those under existing legislation.	<ul style="list-style-type: none"> Rostering issues 	Low	<ul style="list-style-type: none"> Await further progress of Bill
TBC	Equal Opportunities Bill 2010 – 11 (2nd Reading, House of Commons – 17/06/11)	A Private Members' Bill (which means that it is unlikely to become law) to introduce more freedom, flexibility and opportunity for those seeking employment in the public and private sectors.	<ul style="list-style-type: none"> Likely to be minimal 	Low	<ul style="list-style-type: none"> Await further progress of the Bill
TBC	Employment Retention Bill 2010-11 (2nd Reading, House of Commons – 13/05/11)	A Private Members' Bill (which means that it is unlikely to become law) to introduce a statutory right to an employment retention assessment to determine entitlement to a period of rehabilitation leave for newly disabled people and people whose existing impairments change.	<ul style="list-style-type: none"> Rostering issues 	Low	<ul style="list-style-type: none"> If Bill approved, ensure procedures comply with the new right
TBC	Equality and Diversity (Reform) Bill 2010 -11 (2nd Reading, House of Commons – 21/10/11)	A Private Members' Bill (which means that it is unlikely to become law) to prohibit the use of alternative and positive action in recruitment and appointment processes. This contrasts with the provisions for positive action in the Equality Act coming into force on 06/04/11.	<ul style="list-style-type: none"> If approved may simplify recruitment procedures. 	Low	<ul style="list-style-type: none"> Await printing of Bill prior to Second Reading.
*TBC	High Pay Commission Bill 2010-11 (2nd Reading, House of Commons – 13/05/11)	A Private Members' Bill (which means that it is unlikely to become law) to make provision for the establishment of a High Pay Commission.	<ul style="list-style-type: none"> If approved, could result in lower salary costs if salaries are capped in some way 	Low	<ul style="list-style-type: none"> Await further progress of the Bill
*TBC	Minimum Wage (Amendment) Bill 2010-11 (2nd Reading, House of Commons – 14/10/11)	<p>A Private Members' Bill (which means that it is unlikely to become law) to enable the NMW to be varied to reflect local labour market conditions.</p> <p>The draft Bill was published on 01/03/11.</p>	<ul style="list-style-type: none"> May result in lower wage costs in certain regions but with increased administrative 	Low	<ul style="list-style-type: none"> If Bill approved, wage systems may need to be amended to reflect local variations.

			complexity		
TBC	National Service Bill 2010-11 (2 nd Reading, House of Commons – 16/03/12)	A Private Members' Bill (which means that it is unlikely to become law) to provide a system of national service for young persons.	<ul style="list-style-type: none"> If approved, could impact on available pool of labour which could give rise to staff shortages 	Low	<ul style="list-style-type: none"> Monitor progress of Bill for further recruitment planning.
*2012	Protection of Freedoms Bill 2010-11 (Committee Stage 05/04/11)	<p>The wide range of measures included in this Government Bill includes proposed restrictions to the scope of the vetting and barring scheme and changes to the system of criminal records checks.</p> <p>See also 'Roll-out of the Vetting and Barring Scheme' above.</p>	<ul style="list-style-type: none"> Reduced costs and administration if scope of VBS is reduced 	Low	<ul style="list-style-type: none"> Monitor further progress of the Bill
TBC	Remembrance Sunday (Closure of shops) Bill [HL] 2010-11 (2 nd Reading, House of Lords – (TBA)	A Private Member's Bill (which means that it is unlikely to become law) to provide for the extension of Christmas Day restrictions on the opening of retail premises to Remembrance Sunday.	<ul style="list-style-type: none"> Revised holiday arrangements and rostering issues 	Low	<ul style="list-style-type: none"> Monitor progress of the Bill.
2012	St George's Day and St David's Day Bill 2010-11 (2 nd Reading, House of Commons – 13/05/11)	A Private Member's Bill (which means that it is unlikely to become law) to designate, from 2012, St George's and St David's Days, or the nearest working day, as annual public holidays in England and Wales respectively.	<ul style="list-style-type: none"> Increased starting costs and rostering issues 	Low	<ul style="list-style-type: none"> Monitor progress of bill
*TBC	Training Wage Bill 2010-11 (2 nd Reading, House of Commons – 09/09/11)	<p>A Private Members' Bill (which means that it is unlikely to become law) to make provision that persons receiving a training wage are exempt from NMW legislation.</p> <p>The draft Bill was published on 16/03/11.</p>	<ul style="list-style-type: none"> Could result in lower training costs though this will not be clarified until the Bill is published 	Low	<ul style="list-style-type: none"> Await printing of the Bill prior to Second Reading.
TBC	Tribunals (Maximum Compensation	A Private Members' Bill (which means that it is unlikely to become law) to enable maximum limits to be established	<ul style="list-style-type: none"> Could result in reduced 	Low	<ul style="list-style-type: none"> Monitor progress of the Bill.

	Awards) Bill 2010-11 (2nd Reading, House of Commons – 17/06/11)	for compensation in Tribunal awards for cases involving unlawful discrimination.	compensation costs in successful discrimination claims against employers		
EU LEGISLATION					
Effective Date	Title(s) of relevant legislation	Summary	Potential Impact	Risk Rating	Next steps following Risk Rating
Ongoing	(1) Working Time Directive 2003/88/EC (2) Working Time Regulations 1998 [COD/2004/0209]	WTR 48-hour opt-out <p>The European Commission first put forward proposals to amend the Working Time Directive in 2004. Despite considerable subsequent discussion, in April 2009, EU government representatives and the European Parliament concluded that they could not reach agreement and the amending Directive lapsed.</p> <p>On 24/03/10 the European Commission launched a first-phase consultation with social partners (such as the European Trade Union Confederation (ETUC)). A second phase consultation was launched at the end of 2010 – see 'EU Consultations (closed)'.</p> <p>If the right to opt-out is ultimately ended, the UK would be granted 3 years from the date of the revised Directive to implement it.</p>	<ul style="list-style-type: none"> Increased staff costs Rostering issues 	Low	<ul style="list-style-type: none"> Await further developments
*2013	Amendments to the Pregnant Workers Directive 92/85/EEC (draft) [COD/2008/0193]	<p>On 20/10/10, the European Parliament voted in favour of a number of amendments (initially proposed by the European Commission in 2008 and revised by Parliamentary Committee) to the Pregnant Workers Directive.</p> <p>The proposed amendments include:</p> <ul style="list-style-type: none"> A minimum period of continuous maternity leave of 20 weeks on full pay (the Commission had proposed 18 weeks; the current Directive provides for 14 weeks). Whilst UK maternity leave at 52 weeks easily exceeds the proposed minimum, only 	<ul style="list-style-type: none"> Increased costs/risk of litigation, especially if leave at full pay is approved - but the UK already exceeds the minimum requirements in 	Low	<ul style="list-style-type: none"> Await discussion of the proposals by the European Parliament/Member States.

		<p>the first 6 weeks are at near full pay (90%).</p> <ul style="list-style-type: none"> • Member States will no longer be able to apply eligibility criteria to maternity pay (e.g. 26 weeks continuous service in the UK). • Fully paid compulsory maternity leave of 6 weeks (currently 2 weeks in the UK and not full pay under the statutory scheme) irrespective of the number of days worked before confinement. • Two separate one hour periods of time off for breastfeeding (presumably per working day, though this is not clear from the proposals) subject to any other arrangements agreed with the employer. • Stronger protection against dismissal, a right to return to the same job or an equivalent one after maternity leave (as is presently the case in the UK) and a right to ask the employer for flexible working patterns of up 1 years' duration after the end of maternity leave. <p>The EU Council of Employment Ministers rejected the proposal on 06/12/10 – strongly resisted by the UK – to extend fully-paid maternity leave to 20 weeks. Ministers were also sceptical of the 18 week period originally proposed by the European Commission and have agreed to review the proposals during 2011 (expected in June). Until the Council adopts its first reading position on the proposals, the proposals cannot proceed further.</p> <p>As part of its 'The Plan for Growth', the Government recently stated that it would seek to "prevent costly and regressive changes to maternity rights".</p> <p>If the Commission's proposals are ultimately approved, Member States will have 2 years to introduce the legislation into national law.</p>	a number of the current proposals.		
To be confirmed	Anti-discrimination Directive	<p>In July 2008, the European Commission issued a proposal for extending anti-discrimination legislation on</p>	<ul style="list-style-type: none"> • Increased risk of claims 	Low	<ul style="list-style-type: none"> • Monitor progress of Directive and consider

	[APP/2008/0140]	<p>grounds of age, disability, sexual orientation, and religion or belief beyond employment and training to areas such as access to, and supply of, goods and services that are commercially available to the public.</p> <p>The matter was discussed at a meeting of EU Ministers on 30/11/09, when it was acknowledged that “extensive” work needs to be done in this area ahead of any legislation.</p> <p>The UK has already legislated domestically in some of the proposed areas.</p>	(although the proposals are already reflected in some UK legislation)		impact on anti-discrimination policies
To be confirmed	Directive on intra–corporate transfers from outside EU (draft) [COD/2010/0209]	<p>In July 2010, the European Commission proposed a Directive aimed at making it easier for multinational companies to temporarily transfer skilled workers from companies outside the EU to branches or subsidiaries in Member States. The proposed fast-track procedure would apply to managers, specialists and graduate trainees only.</p> <p>Ministers held a first exchange of views on 07/10/10. The first reading in the European Parliament is awaited and may take place in April.</p> <p>The draft Directive is part of the EU's common immigration policy. The UK and Ireland have a form of opt-out from this policy and can decide on a case-by-case basis whether or not to be involved. We understand that the UK has decided not to take part in the adoption of the Directive or to be bound by it, which is not surprising given that it has its own intra-corporate transfers procedures under the Points Based System.</p>	<ul style="list-style-type: none"> May be minimal, given the UK's likely opt-out 	Low	<ul style="list-style-type: none"> Pending confirmation of the UK opt-out, monitor progress of the draft Directive.
To be confirmed	Draft proposals awaited [COD/2010/0210]	Paternity and Carers' Leave <p>As part of its ongoing actions on the “reconciliation between work, family and private life”, the European Commission is to launch a new round of consultations in 2011 on further legislative measures to improve work-life balance, including paternity and carer's leave. It may then issue legislative proposals in 2012.</p>	<ul style="list-style-type: none"> Potential risks for employers cannot be identified at this stage 	Low	<ul style="list-style-type: none"> Await further developments
To be confirmed	Directive on non-EU	In July 2010, the European Commission issued a draft	<ul style="list-style-type: none"> Unlikely to 	Low	<ul style="list-style-type: none"> Pending confirmation of

	Seasonal Workers (draft) [COD/2010/0210]	<p>Directive on a common procedure for the entry into and residence in the EU of non-EU seasonal workers, and on the rights of such workers.</p> <p>Ministers held a first exchange of views on 07/10/10. The first reading in the European Parliament is awaited any may take place in April.</p> <p>The draft Directive forms part of the EU's common immigration policy. The UK and Ireland have a form of opt-out from this policy and can decide on a case-by-case basis whether or not to be involved. We understand that the UK has decided not to take part in adoption of the Directive or to be bound by it.</p>	have any impact for employers given the UK's apparent opt-out		the UK opt-out, monitor progress of the draft Directive.
To be confirmed	Amendments to the Posted Workers Directive (96/71/EC)	In its Work Programme for 2011, the European Commission has indicated that it plans to issue an unspecified "legislative initiative" on the posting of workers. The current 1996 Directive gives workers sent by their employer on a temporary basis to carry out work in another Member State the protection of the basic employment rights applicable in the country which they are posted. The Commission is likely to consult on its proposals during 2011.	<ul style="list-style-type: none"> Potential increased costs of temporary workers if UK employment rights are more favourable than worker's home country 	Low	<ul style="list-style-type: none"> Await further development

KEY EMPLOYMENT CASES			
UK			
Case name	Current Stage	Subject/Issue	Summary
Davies v Sandwell MBC	EAT	Unfair dismissal/final written warnings	<p>The claimant was issued with a final written warning in 2005. She appealed, claiming that the disciplinary panel had acted unfairly in not taking into account certain evidence put forward by her which, she said, undermined their finding. The Council said it had not considered the evidence because the claimant had failed to comply with the requirement in its disciplinary policy that evidence be presented at least seven days before the disciplinary hearing. Initially the appeal hearing was proposed to be by way of a review, but the claimant argued that it should take the form of a re-hearing to enable the panel to consider the new evidence. The Council eventually agreed to her request, but by then the claimant and her trade union representative had become suspicious about the Council's motives and she decided not to press ahead with her appeal.</p> <p>In 2006, after new allegations of misconduct, she was dismissed. The Council took into account that she had the 2005 final written warning still live on her record and that she had abandoned her appeal against it and relied on</p>

			<p>this when it took the decision to dismiss her. The claimant brought unfair dismissal proceedings, but the Tribunal rejected her claim, saying that as she had not seen through her appeal, the Council was entitled to treat the final written warning as issued in good faith and on reasonable grounds, and so to rely upon it in 2006 in support of her dismissal. As such, the Council's decision to dismiss fell within the band of reasonable responses open to it.</p> <p>The EAT overturned this decision, saying that the claimant's failure to continue with the appeal did <u>not</u> by itself mean that the final written warning could be taken at face value. It said that the Tribunal was entitled to look behind that warning in light of the procedural defects in the 2005 hearing, particularly the exclusion of potentially relevant evidence.</p> <p><i>As a general rule, Tribunals will <u>not</u> go back and look behind any final written warning relied upon by the employer when considering the decision to dismiss. Provided the warning was clearly not issued inappropriately, they will usually regard it as valid to support any subsequent dismissal. This case means, however, that employers cannot assume that an employee's failure to appeal against a final written warning will automatically be the end of the matter. Furthermore, the case emphasises the importance of following a fair procedure when issuing warnings. This will almost never include the exclusion of relevant evidence on self-imposed time limit grounds alone, as here. Two factors made this a special case. The first was the EAT's conclusion that the evidence which the claimant was prevented from adducing was persuasive in her favour. Second, while many disciplinary procedures allow for the sanction to be revisited upwards on appeal, the Council's attitude and approach to the claimant gave her representative better than usual reason to see that as a real risk, making the claimant's decision not to pursue her appeal entirely understandable.</i></p>
Sakharkar v Northern Foods Grocery Group Ltd t/a Fox's Biscuits	EAT	Unfair dismissal/ absence dismissals	<p>The claimant had a poor attendance record and in May 2008 he was issued with a final warning under Northern Foods' absence management procedure. There were a number of further absences and he was subsequently dismissed. His appeal against dismissal was unsuccessful and he brought a claim of unfair dismissal.</p> <p>After issuing the claim, it transpired that the claimant should not have been issued with the final warning because one of the absences relied upon fell outside the relevant review period in the sickness management procedure. This error went unnoticed to all parties. Northern Foods maintained that the claimant's dismissal was fair because at the time it took the decision to dismiss it had a genuine (albeit mistaken) belief that he had breached the absence management procedure and had a live final warning against him. The Tribunal agreed, although accepted that its decision was harsh in its effect.</p> <p>The key question for the EAT was whether Northern Foods had acted reasonably in taking the decision to dismiss, bearing in mind that the final warning should not have been issued and that, but for its mistake, the claimant would not have been dismissed (at that point, at any rate). The EAT referred to the statutory test for determining the fairness of a dismissal in s.98(4) of the Employment Rights Act 1996. This says that fairness will depend on whether, in the circumstances "including the size and administrative resources of the employer's undertaking", the employer had acted reasonably in treating the reason for dismissal as a sufficient reason for dismissal. That Northern Foods had made a genuine mistake was relevant to the question of whether it had acted reasonably, but it was not conclusive. In line with its reasoning in <i>Davies v Sandwell MMC</i> above, the EAT said that the Tribunal was not obliged to take the final written warning at face value and that if it had applied the</p>

			<p>statutory test correctly it would have found that the decision to dismiss was unreasonable in the circumstances.</p> <p>Northern Foods' "administrative resources" were key to this finding of unfairness. It had an HR team with express responsibility for ensuring that the absence management procedure was applied correctly. Its own policy said that HR was responsible for "auditing absence levels and providing advice, support and training to line managers". The policy also said that a member of HR would be present at all final review and dismissal stages. In light of this, said the EAT, HR should have picked up on the mistake. If it had done so then the claimant would not have been issued with a final warning and would not have been dismissed.</p> <p><i>The EAT's decision could be said to be as harsh on employers as was the Tribunal's on the claimant. After all, the dismissal was effected in good faith on grounds which would otherwise have made it fair. The saving grace for employers is probably that the error here so clearly made the final warning unsafe – if there had been a less rigid sickness management procedure, the defect could not so easily be said to have made the difference. Genuine mistakes as to more peripheral issues are unlikely to lead to the same outcome.</i></p>
Gosden v Lifeline Project Ltd	ET	Unfair dismissal/conduct outside work	<p>The claimant worked at Moorland Prison for the Respondent – a charity which helps to rehabilitate drug users. The Respondent provides services within the prison community and the prison service is one of its major clients. Whilst at Moorland, the claimant was given a first written warning and was subsequently transferred to Lindholme Prison. Approximately a year after the transfer, the claimant received an email on his home computer headed 'The British are way ahead of us'. The email was potentially of an offensive nature and also contained numerous images of naked women. The email also said "it is your duty to pass this on!"</p> <p>The claimant forwarded this email on to the private home computer of a Prison Service employee, Y – with whom the claimant had previously worked at Moorland Prison. Y forwarded it onto another employee of the Prison Service and it therefore entered the Prison Service intranet. Following an investigation the claimant was suspended and Yorkshire and Humberside Prison Service said that they did not want him back on any of its sites. The Respondent took the decision to dismiss the claimant mainly because it felt that his actions made further assignments for him within the prison community impossible. In their view he had committed gross misconduct as he had damaged their reputation. The claimant subsequently claimed unfair dismissal.</p> <p>The Tribunal concluded that a reasonable employer would be entitled to conclude that the claimant had committed an act of gross misconduct that could damage the company's reputation or integrity. Furthermore one of the Respondent's largest customers had formed the view from the claimant's actions that the Respondent had been content to employ a person who held, or at least appeared to hold, discriminatory values that were contrary to its objectives and values. The decision to dismiss was therefore within the range of reasonable responses. The Tribunal pointed out that if the email had been private correspondence between the claimant and Y, there might have been privacy issues that made it inappropriate for the employer to take action. However the email was prepared expressly with the intention that it should be passed on by its recipients. It was therefore not confidential information and the claimant knew when he forwarded to Y that it might be passed on.</p> <p><i>Whilst only a Tribunal decision (thus not binding) this case confirms the principle that, generally, employers should not take disciplinary action against an employee if they become aware of a private, lawful matter</i></p>

			<p><i>between individuals that has no bearing on the workplace. As soon as the issue become public (for example on Facebook or Twitter, through a chain of emails etc.), however, the matter ceases to be private and they can take disciplinary action if they deem that their reputation is being damaged or the issue is impacting on the employee's working life or the working life of other employees. This case may also be useful where, for example, an employee is arrested or charged with a matter that may harm the reputation of an employer. Note that the employer here could have alternatively dismissed for some other substantial reason but would then have had to pay the employee his notice monies.</i></p>
--	--	--	---

EU

No relevant cases of interest this month.

CONSULTATION TRACKER						
UK (OPEN)						
Date Issued	Closing Date	Title (Consulting Body)	Summary	Potential Impact	Risk Rating	Next steps following Risk Rating
27/01/11	20/04/11	‘Resolving workplace disputes: a consultation’ (Department for Business Innovation and Skills) (BIS)	Employment Tribunal Reform Key proposals in the wide-ranging consultation are: <ul style="list-style-type: none"> • Qualifying period for bringing an unfair dismissal claim increased from 1 to 2 years. • A statutory period before a claim can be submitted to the Tribunal where pre-claim conciliation must be considered. • Introduction of fee charging mechanisms in the ET and EAT. • Increased flexibility in the use of strike out powers and Deposit Orders to deal with weaker cases. • Cost awards cap is increased to £20,000. • Schedule of Loss included in ET1 when compensation sought. • Respondents will be permitted to refer to an offer to settle where they are successful in Tribunal, as a means to encourage settlement. • Shortened Tribunal times as witness statements would generally be taken as read. • Introduction of punitive penalties (of up to £5,000) – payable to the Exchequer- for employers breaching fundamental employment rights. 	<ul style="list-style-type: none"> • Potentially increased cost of defending Tribunal claims and potentially increased liability if claims are unsuccessfully defended. This may be offset if potential claimants are deterred from bringing claims (e.g. through mediation) or more pressure for claimants to settle earlier or faces a costs penalty 	High	<ul style="list-style-type: none"> • Await outcome of consultation

			The Government has also published an ‘Employers Charter’ .			
**03/03/11	25/05/11	‘Equality Act 2010: Banning age discrimination in services, public functions and associations – a consultation on proposed exemptions to the ban’ (Government Equalities Office) (GEO)	The Equality Act 2010 contains provisions enabling a ban on age discrimination in the provision of services and public functions. The Government intends to introduce the ban in April 2012, but is consulting about what the exceptions to the ban should be. The proposed exemptions include, for example, age-based concessions such as discounts for over-65s.	<ul style="list-style-type: none"> Risk of discrimination claims from members of the public 	High	<ul style="list-style-type: none"> Await finalisation of draft regulations and consider reminding staff dealing with the public of their obligations/expected standards of service
**03/03/11	15/06/11	‘Consultation on the Fair Deal Policy: Treatment of pensions on compulsory transfer of staff from the public sector’ (HM Treasury)	The consultation examines the current status of the non-statutory ‘Fair Deal’ policy (which applies to compulsory transfers of staff from the public sector to third party employers (e.g. an outsourcing) - the new employer is required to provide access to a good quality pension scheme for the transferred staff) and asks for comments on whether it should be maintained, altered or withdrawn..	<ul style="list-style-type: none"> Depending on the outcome, could result in reduced pension obligations for the third party employer 	High	<ul style="list-style-type: none"> Await outcome of consultation
**17/03/11	21/04/11	‘Equality Act 2010: The public sector Equality Duty: reducing bureaucracy’ (GEO)	<p>The Government has published a policy review paper seeking views on the new draft regulations imposing specific duties to support better performance of the widened single public sector Equality Duty that came into force under the Equality Act 2010 on 05/04/11.</p> <p>The Government intends to bring the specific duties into force in July 2011.</p>	<ul style="list-style-type: none"> Increased reporting and administrative tasks to comply with the duties 	High	<ul style="list-style-type: none"> Await outcome of review
**01/04/11	15/04/11	‘Agency Workers Regulations Guidance’ (BIS)	The Guidance to accompany the Agency Workers Regulations when they come into force on 01/10/11 has been published for a short public consultation. The document provides useful guidance on:	<ul style="list-style-type: none"> See ‘Enhanced rights for agency workers’ above 	High	<ul style="list-style-type: none"> See ‘Enhanced rights for agency workers’ above.

			<ul style="list-style-type: none"> • scope of the Regulations; • the types of absence that affect the 12-week qualifying period for equal treatment; • the definition of “pay” and the types of bonus scheme that will be caught under the Regulations; • what to do when the end-user’s annual leave entitlement is greater than the statutory entitlement; and • payment between assignments (the “Swedish Derogation”). 			
UK (CLOSED)						
*07/12/10	31/01/11	‘The Student Immigration System’ (UK Border Agency) (UKBA)	<p>Points-based System: Students</p> <p>The Government issued its response on 22/03/11. They key points for employers are:</p> <p>From July 2011</p> <ul style="list-style-type: none"> • Students at Universities will retain their right to work 20 hours a week part-time during term-time (unlimited during vacations) and to do work placements where the study:work ration is 50:50. • Students at publicly-funded FE Colleges will continue to be able to work 10 hours a week part-time during term-time (unlimited during vacations). • Other students will have no right to work and work placements will have to be 66:33 in favour of study:work. <p>From April 2012</p> <ul style="list-style-type: none"> • The Tier 1 (Post-study work) PBS route – which allows students 2 years to seek employment after their own course ends- will 	<ul style="list-style-type: none"> • Staff shortages/rostering issues where reliance is placed on student labour due to increased restrictions on their permissible work activities and closure of Tier 1 (Post-Study work) route in 2012 	Medium	Await outcome of consultation

			be closed.			
EU						
There are currently no relevant consultations open.						
EU (CLOSED)						
21/12/10	28/02/11	Review of Working Time Directive	<p>Following its first phase consultation on a review of the Working Time Directive – which found that an urgent review of the EU working time rules is needed and that the working time rules should allow greater flexibility for social partners (e.g the European Trades Union Council) to negotiate on the details of implementation or any amended Directive – the European Commission has launched a second phase consultation with social partners.</p> <p>The consultation document seeks views on two alternative approaches based on either a “focused” review (concentrating on on-call time and compensatory rest) or a “comprehensive” review tackling a wider range of issues including the maximum 48-hour working week opt-out, better reconciliation of work and family life and clarifying areas where the law appears unclear.</p>	<ul style="list-style-type: none"> Increased staff costs and rostering issues 	Low	<ul style="list-style-type: none"> Await outcome of consultation

CAMPAIGNS		
Campaign Sponsor	Campaign	Details
TUC	Workers Memorial Day	Workers Memorial Day was officially recognised by the UK Government in 2010 and will be held on 28 April this year. It is a day when workers, their families and the trade unions focus on health and safety, both in the workplace and at events locally, nationally and worldwide.

OTHER NEWS	
NMW rates to be set every two years?	Announced as part of its 'Plan for Growth', the Government is to invite the Low Pay Commission in its next report to consider and implement the best way to give business clarity on future levels of the National Minimum Wage, including consideration of two-year recommendations (rather than annually, as at present).
Tax treatment of post-P45 termination payments	As the law currently stands, if an employer makes a termination payment to an employee after the P45 has been issued, and the payment is taxable (in whole or in part), it is required to deduct tax at basic rate only. From 6 April 2011, employers making payments after the P45 has been issued will be required to deduct tax using a new tax code (OT) which gives no personal allowance and requires deductions at basic rate (20%), higher rate (40%) and additional rate (50%). These new arrangements could result in a cash flow disadvantage for employees. They will, however, be able to recover any over-deduction either later in the year via PAYE or under self-assessment.

EVENT	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
Additional Paternity Leave & Pay Scheme in force	03/04/11											
Revised SMP etc and SSP rates in force	03 & 06/04/11											
PBS Tiers 1 and 2 limits introduced	06/04/11											
DRA notifications must be given by this date	06/04/11											
Equality Act 2010 positive action provisions in force	06/04/11											
Revised Maternity Allowance rate in force	11/04/11											
Agency Workers Regulations Guidance consultation closes	15/04/11											
'Resolving Workplace Disputes' consultation closes	20/04/11											
Equality Act 2010 specific duties review closes	21/04/11											
Equality Act 2010 disability Guidance in force		01/05/11										
Banning age discrimination in services etc consultation closes		25/05/11										
ICE Amendment Regulations come into force			05/06/11									
'Fair Deal' consultation closes			15/06/11									
Equality Act 2010 specific duties in force				07/11								
Agency Workers Regulations in force							01/10/11					
Amended Parental Leave Directive must be implemented by this date												08/03/12
Equal Treatment Directive on workers engaged in a self-employed capacity must be implemented					05/08/12							
KEY: Risk Rating Low = long-term, no action currently required Risk Rating Medium = medium-term, action may be required Risk Rating High = imminent, immediate action may be required ** = new Update item * = amendment to existing Update item												

If you require any additional information in respect of this update please do not hesitate to contact any of the following or your usual contact within the Employment team.

Caroline Noblet
Partner

[mail to: caroline.noblet@ssd.com](mailto:caroline.noblet@ssd.com)

David Whincup
Partner

<mailto:david.whincup@ssd.com>

Matthew Lewis
Partner

<mailto:matthew.lewis@ssd.com>

Nick Jones
Partner

<mailto:nick.jones@ssd.com>

Charles Frost
Partner

<mailto:teresa.dolan@ssd.com>

Annabel Mace
Senior Associate Solicitor, Employment & Immigration (London)
<mailto:annabel.mace@ssd.com>

This Update has been prepared for information purposes only and should not be regarded as a substitute for taking legal advice.
Prepared by Squire Sanders Hammonds April 2011. Copyright Squire, Sanders & Dempsey (UK) LLP.