Employment 2015 – A year in review

Philip Bartlett & Rebecca Lally

09 December 2015
We will cover:

- Statutory payments/SPL/Fit for work
- Case law developments
- What’s expected in 2016 (and beyond)
Statutory payments and compensation

- Statutory Payments – week’s pay rates
  - Statutory maternity, paternity and adoption pay up from £138.18 to £139.58
  - Maternity allowance increased from £138.18 to £139.58
  - Statutory sick pay increased from £87.55 to £88.45
  - Statutory redundancy pay increased from £464 to £475
  - No increases in any of these payments will be made in 2016-17

- Compensatory award for unfair dismissal
  - Upper limit rose from £76,574 to £78,335 (or 52 weeks’ pay, whichever is lower)
Shared Parental Leave (SPL)

- SPL has been available (subject to eligibility) from April 2015 for any parent and primary carer's partner for whom
  - Their child’s expected date of birth is on or after 5 April 2015; or
  - Their child’s date of placement is on or after 5 April 2015

- Maternity/Ordinary Adoption Leave remains the default. Mother/primary adopter needs to opt out of Maternity/Adoption Leave and into SPL regime

- Entitlement to share up to 50 weeks of SPL and up to 37 weeks of Shared Parental Pay

- Additional Paternity Leave no longer available

- Eligibility requirements apply to both parents or both carers
Fit for Work Scheme

- GP or employer can refer to scheme

- Employers can make referrals for employees who are
  - absent from work for 4 weeks due to illness
  - have reasonable likelihood of at least phased return
  - not already referred within 12 months/have Return to Work plan
  - have provided consent

- Employee is referred for occupational health assessment and Return to Work plan drawn up (operates in same way as fit note)

- Free web and telephone advice for employers

- Tax exemption of up to £500 (per year, per employee) on medical treatments recommended to help employees return to work.
Case law developments – Unilateral variation of contracts

- **Norman & ors v National Audit Office**
  - “Subject to amendment” did not establish right to make changes

- **Hart v St Mary’s School (Colchester) Ltd**
  - “may be subject to variation” did not give unilateral power to vary

- **Sparks & anor v Department for Transport**
  - Only entitled to make changes which were not detrimental to employees
Case law developments – Holiday pay/working time

- **Lock v British Gas**
  - Commission to be included in calculation of holiday pay

- **Plumb v Duncan Print Group Ltd**
  - Where a worker is unable/unwilling to take leave due to sickness, they should be permitted to take annual leave within 18 months of end of the year in which leave arose

- Two year backdating limitation introduced for holiday pay claims brought on or after 01 July 2015

- **Federacion de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL & anor**
  - “Working time” includes (for peripatetic workers) travel time to first and last jobs of the day
Case law developments – TUPE / Collective Consultation

- **USDAW & anor v WW Realisation 1 Ltd (in liquidation), Ethel Austin Ltd, Secretary of State for Business, Innovation and Skills**
  - Number of dismissals do not need to be aggregated across establishments

- **Rynda (UK) Ltd v Rhijnsburger**
  - Single employee may constitute an “organised grouping of employees”

- **BT Managed Services Ltd v Edwards & anor**
  - A permanently incapacitated employee was not “assigned” to grouping
Case law developments – Social Media

- **Game Retail Ltd v Laws**
  - Tribunal wrong to find dismissal for offensive tweets on a personal twitter account was unfair
  - Test is whether employer’s decision was within range of reasonable responses
  - Relevant factors in this case: employee was following other stores; followers included other stores; employee knew stores were following him; followers not restricted to social acquaintances; employee had not created a separate account for private use

- **Williams v Leeds United Football Club**
  - Sending pornographic images to male friends and junior female employee amounted to repudiatory breach of contract
Case law developments – HR processes

- **Stevens v University of Birmingham**
  - In the circumstances, refusing a chosen companion breached implied terms of trust and confidence
  - The employee had few choices as to who should accompany him
  - The chosen companion had been allowed to accompany previously and had specific relevant knowledge/expertise

- **Ramphal v Department for Transport**
  - Decision to dismiss should not be unduly influenced by HR
  - HR to confine advice to matters of law and procedure, ensuring necessary matters have been addressed and achieving clarity
Case law developments – Restrictive Covenants

- Re-Use Collections Limited v Sendall & May Glass Recycling Ltd
  - Restrictive covenants not enforceable as no consideration provided
  - Continued employment did not amount to consideration
Case law developments – Whistleblowing

- Chesterton Global Ltd v Nurmolahmed
  - The test is not whether disclosure is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest
  - Worker’s belief must be objectively reasonable
  - Contractual dispute between employer and employees can be in public interest

- Underwood v Wincanton plc
  - Tribunal wrong to strike out claim on the basis that individual contractual matters could not satisfy the requirement that the disclosure be “in the public interest”
Case law developments – Data Protection

- **Dawson-Damer & ors v Taylor Wessing LLP & ors**
  - High Court holds that search (for the purpose of a subject access request) was not reasonable and proportionate and therefore was not required

- **Maximillian Schrems v Data Protection Commissioner**
  - Safe Harbor agreement between EC and US government no longer valid
Case law developments – Discrimination / Victimisation

- **CHEZ Razpredelenie Bulgaria AD v Komisia za Zashtita ot Diskriminatsia**
  - Associative discrimination can apply in relation to indirect race discrimination

- **Thompson v London Central Bus Company Ltd**
  - Associative victimisation possible
What’s expected - Regulatory

- Senior Managers Regime
  - New rules come into effect 07 March 2016
  - To improve accountability in regulated banks, building societies, credit unions and some investment management firms
  - Current two categories (approved persons and others) will become four:
    a) senior managers performing SMFs
    b) employees covered by the certification regime (also known as “significant harm function” employees)
    c) other staff who don’t fall into either of these categories but who are also subject to Conduct Rules, and
    d) specific ancillary roles excluded from the Conduct Rules
  - Extension to all sectors of financial services proposed by 2018
What’s expected - Regulatory

- Regulatory References
  - Joint PRA/FCA consultation paper issued – new rules in place by March 2016
  - Detailed requirements for new template regulatory reference
  - New rules for references and record keeping for all authorised firms

- FCA / PRA - Whistleblowing
  - Responsibilities must be assigned to a whistleblower’s champion by 07 March 2016
  - Other requirements introduced in relation to whistleblowing policies and arrangements
  - Firms to comply with requirements by 07 September 2016
What’s expected - Tax

- Tax treatment of termination payments
  - HMRC consultation on simplification of tax and National Insurance treatment of termination payments now closed
  - Should all termination payments - contractual and non-contractual be taxed as earnings?
  - Should there be one “simple”, redundancy and length of service based tax exemption?

- IR35 Consultation
  - Government consultation on reform of IR35 now closed
  - Considering imposing responsibilities on those who engage workers through personal service companies
What’s expected - Other

- Gender pay
  - Publication early 2016 of response to consultation on gender pay gap reporting
  - Further consultation on draft regulations (to be in place by 25 March 2016)
  - Bonuses to be included in pay calculations
  - Extension of reporting requirements to public sector

- New review of women in senior management roles in financial services – consultation closes mid December 2015

- Shared parental leave extension to cover grandparents
  - Consultation expected 2016 with extension of SPL by 2018
What’s expected - Other

- Trade Union reform
  - Trade Union Bill in Parliament proposes:
    - a 50% threshold for ballot turn out, and
    - an additional threshold of 40% of those entitled to vote must support industrial action in six key areas: health, education, fire, transport, border security and energy sectors
    - two weeks' notice of any action to be given to an employer
    - a ballot mandate for industrial action expires after four months
    - requirements on unions for supervision of picketing