

## E-ALERT | Employment

February 20, 2013

### SPRING 2013 - SUMMARY OF U.K. EMPLOYMENT LAW CHANGES

#### WHAT TO EXPECT IN THE COMING YEAR

On 17 December 2012, the U.K. Government set out the proposed dates and changes for new legislation due to come into force in 2013, including some planned reforms to employment law. The key changes are discussed below.

#### Collective consultation

As of 6 April 2013, the required consultation period for an employer making 100 or more redundancies in one "establishment" will change. Currently, employers are required to undertake a minimum 90 day consultation period with representatives of affected employees before the first redundancy can take effect. However, as part of the Government's initiative to facilitate flexible and cost-efficient business restructuring, the minimum consultation period will be reduced from 90 to 45 days.

Furthermore, employees whose fixed term contracts expire during the consultation period will be excluded from the consultation process.

The Government has also asked the U.K. Advisory Conciliation and Arbitration Service (ACAS) to produce a new non-statutory code of practice to facilitate good practice during consultations. The code will also clarify the meaning of "establishment" - likely by reference to geographical location, management structure, cohesion of the workforce, nature of the work undertaken/service provided and the contractual relationship between the employer and its employees.

#### Employee owners

As explained in our November 2012 Client Alert, employee ownership is due to be introduced in April 2013 by the Growth and Infrastructure Bill. The new employee owner status would see employees agreeing to give up the majority of their employment rights, such as unfair dismissal claims, statutory redundancy pay etc., in exchange for shares in the company. The shares will range from a value of £2,000 to £50,000 and will be exempt from capital gains tax.

#### Top rate tax

The top income tax rate has been reduced for tax year 2013-14. Those earning £150,000 or more per year will now pay 45% tax on their earnings, as opposed to the previous rate of 50%.

#### Whistleblowing: Disclosure must be in the public interest

Whistleblower legislation is to be amended by the Enterprise and Regulatory Reform Bill 2012-13 (ERRB). Employees will only be protected from whistleblower-related dismissal or detriment if the disclosure is made in the "public interest"; it may not in future concern the employee's own employment rights. The change is due to take effect in April 2013.

## Early conciliation

On 17 January 2013, the Government launched a consultation on its proposals to impose a duty on disputing parties, and ACAS, to attempt pre-claim conciliation. The Government outlined four steps to the procedure:

1. the claimant must send prescribed information to ACAS before lodging a claim;
2. ACAS will provide a copy of the information to a conciliation officer;
3. the conciliation officer will encourage settlement within a prescribed period. The Government has suggested that this prescribed period will be one month; and
4. if settlement is not reached, the conciliation officer will issue a certificate to that effect. Only then may the claimant submit the claim.

The consultation is due to end on 15 February 2013.

## The Disclosure and Barring Service (DBS)

As of 1 December 2012, the functions of the Criminal Record Bureau (CRB) and the Independent Safeguarding Authority merged to create the DBS. The DBS will take over the administration of criminal record checks for employers and individuals. The three categories of criminal record checks will largely remain the same. However, the way in which employers apply for these checks will change.

The information provided by DBS checks will become portable, meaning that employers need only apply for a DBS check once. Thereafter, the information will be accessible through an online system for all registered employers. Upon the payment of an annual fee, the employer will be able to access information to ascertain whether the employee has any new entry on their record, rather than applying for a new check.

In addition, all DBS checks will become free for volunteers.

## WHAT ELSE IS ON THE AGENDA FOR 2013?

- The rules relating to third party harassment of employees under the Equality Act 2010 will be repealed in March 2013. The Government considers that employees have adequate protection from harassment by third parties, such as customers and clients, under existing legislation and common law.
- Discrimination questionnaires are to be abolished when the ERRB comes into force.
- The Department of Business, Innovation and Skills has announced that it will impose a cap on the unfair dismissal compensatory award of up to 12 months' pay. The upper limit will still be capped at the current rate of £74,200, even where the employee's annual salary exceeds this amount. The exact date of implementation has yet to be announced.
- Further consultation on the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is due to close on 11 April 2013. TUPE is to be amended to remove "service provision changes" from the definition of a transfer, as well as repealing the Employee Liability Information provisions.
- On 17 January 2013, the Government published its response to the consultation on pre-termination negotiations between employers and employees. The proposal would only apply to unfair dismissal claims, and would mean that negotiations aimed at settling an unfair dismissal dispute would be inadmissible before a court.

## WHAT TO EXPECT IN 2014

- Under the Children and Families Bill 2012-13 (CFB), which was introduced into the House of Commons on 4 February 2013, a new system of shared parental leave will be established. Eligible mothers will continue to be entitled to a total of 52 weeks' leave and to 39 weeks' statutory pay. All of this leave and pay, bar the first two weeks of compulsory maternity leave, will be available for sharing. The mother can choose to end her leave early and share the remaining leave with her partner, or the couple can decide to take leave concurrently, as long as the total time taken does not exceed the joint entitlement. Employees on shared leave will enjoy similar protection to that afforded to women on statutory maternity leave.
- The CFB will also allow pregnant women and their partners unpaid time off to attend ante-natal appointments. Prospective adoptive parents will be allowed time off to attend adoption meetings.
- Finally, the CFB will give all employees the right to request flexible working. Employees with the requisite period of service (26 weeks) will be entitled to request a change to their hours or place of work, irrespective of whether the employee is a parent or carer. The employer must handle their requests in a reasonable manner and within a reasonable period of time.
- The Government is planning to introduce a new Health & Work Advisory and Assessment Service in 2014. The service shall provide, among other things, state-funded occupational health testing for employees who are off sick for more than four weeks.

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If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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