

What UK Employers Need to Know: UK Employment Law Changes in April 2011

BY SUZANNE HORNE

At a Glance

April means the first tranche of the year's employment law changes come into force and the Coalition Government has been busy. We summarise the new laws, guidance, rates and limits to ensure you stay current.

Table of Contents

1. Draft Guidance Published On Agency Workers Regulations	1
2. Guidance To Bribery Act Published.....	2
3. Micro & Start Up Employers Three Year Exemption From Domestic Legislation	2
4. Additional Paternity & Adoption Leave Rules in Force.....	2
5. Post-P45 Termination Payments & Tax Treatment Of Childcare Vouchers.....	3
6. Equality Act 2010 Progress.....	3
7. Repeal Of Flexible Working Regulations Extension.....	3
8. No Extension Of Time-Off For Study Or Training	4
9. Default Retirement Age Abolished	4
10. Statutory Compensation Limits And Statutory Benefit Rates For 2011	4

1. Draft Guidance Published On Agency Workers Regulations

On 1 April 2011 the Department of Business, Innovation and Skills ("BIS") published its draft guidance on the Agency Workers Regulations 2010 which has been developed with key stakeholders. The draft guidance is available for comment until 15 April 2011. BIS anticipates publishing the finalised guidance at the end of April 2011. The Regulations are due to come into force in October 2011. In essence, the Regulations provide for equal treatment in pay and conditions for a temporary agency worker ("TAW") as compared to a permanent employee or worker of the hirer after a 12 week qualifying period. The guidance covers:

- Who is covered by the Regulations;
- Qualifying for equal treatment and identifying basic working and employment conditions;
- What is meant by 'pay' under the Regulations and pay between assignments ;

- Working time and holiday entitlements;
- Responsibilities in respect of pregnant workers and new mothers; and
- Dealing with information (both requests and compliance information).

A link to the guidance can be accessed here: <http://www.bis.gov.uk/policies/employment-matters/strategies/awd>.

The Regulations implement the EU Agency Workers Directive (2008/104/EC) ("AWD") which seeks to apply the principle of equal treatment to temporary agency workers ("TAWs") in respect of basic working and employment conditions such as pay and working time and address certain restrictions and prohibitions across the EU. The AWD is due to be implemented by all Member States by 5 December 2011. Unlike the UK, Ireland and the Baltic States, most other Member States already have some regulation in respect of equal pay and treatment for TAWs. However, the legislation is still leading to lengthy and controversial debates between the key stakeholders in many countries.

It is estimated that there are 1.3 million TAWs in the UK and in excess of 8 million across the EU. In light of continuing pressure on employers in respect of headcount and flexibility, these numbers are only set to increase. Therefore, all EU employers will need to consider how to deal with their use of TAWs during the course of the year. As regards the UK, we will issue further details of what the Regulations will mean for UK employers once the guidance is finalised.

2. Guidance To Bribery Act Published

On 30 March 2011 the Ministry of Justice ("MoJ") published guidance on what constitutes adequate procedures under the Bribery Act 2010. The detailed guidance sets out the safeguards which commercial organisations should put in place to take advantage of the statutory defence to a charge of failing to prevent bribery under Section 7 of the Act. At the same time, the MoJ published a Quick Start Guide for SMEs. The Act will come into force on 1 July 2011. UK employers should be reviewing group-wide policies and procedures on recruitment, induction, gifts and hospitality, expenses, staff incentives, whistleblowing, investigations and disciplinary action to satisfy itself that these issues are addressed in light of the new guidance. In addition, they will need to be mindful of the activities of consultants, suppliers, agents and third parties.

For a more detailed examination of the guidance see [UK Bribery Act Guidance Part 1: Guidance Overview](#).

3. Micro & Start Up Employers Three Year Exemption From Domestic Legislation

As part of the Budget 2011 and *Plan for Growth* announced at the end of March, as of 1 April 2011 start ups and micro businesses (the latter defined as those businesses that employ less than 10 employees) will be exempt from having to comply with new domestic legislation for three years. BIS estimates that nearly 96% of businesses in the UK employ less than 10 employees – providing over a third of private sector employment. However, micro and start up employers will not be exempt from legislation that originates from the European Union so it is relatively unclear how the moratorium will operate in practice.

4. Additional Paternity & Adoption Leave Rules in Force

On 3 April 2011, the additional paternity and adoption leave rules came into force. (See [UK Employee Law: The Hot Topics](#) for the further details). It is reported that a survey by the charity Working Families found that four in 10 UK employers are still unprepared for the changes. Aside from a need to update the paternity leave policy to reflect the right, UK employers who pay enhanced statutory maternity pay to their female employees also face a dilemma as to whether to

pay enhanced pay to male employees or seek to treat men and women differently and run the risk of a discrimination claim.

5. Post-P45 Termination Payments & Tax Treatment Of Childcare Vouchers

As of 6 April 2011, Her Majesty's Revenue and Customs ("HMRC") introduced new regulations which change the treatment of termination payments under PAYE rules where a payment is made to departing employees after the issue of their P45. A new OT code will need to be applied to the payment and the ex-employee will only be entitled to 1/12th of their annual basic and higher rate bands for that month. Therefore, the employer will have to deduct more tax from the termination payment. As a result, the cash flow advantage to the employee of only paying basic rate tax at 20% and then accounting to HMRC for the balance no longer exists. This change will be of particular importance to employers who make payments under compromise agreements.

In addition, HMRC has abolished the tax relief for higher and additional rate tax payers who are new joiners to an employer supported childcare voucher scheme. Higher and additional rate tax payers who already participate in a scheme and basic rate tax payers are unaffected by this change.

6. Equality Act 2010 Progress

The main provisions and key changes of the Equality Act 2010 ("EqA") which sought to harmonise and strengthen discrimination law came into force in October 2010. In December 2010, the Government announced that it was scrapping the introduction of compulsory gender pay audits. However, some provisions set out in the EqA were not due to come into force until this year and 2012.

On 5 April, section 149 of EqA came into force. It provides for a general public sector equality duty to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between different groups and foster good relations between different groups. On 6 April, section 159 of EqA came into force. This section allows employers to voluntarily take positive action in recruitment and promotion where it has two candidates who are equally qualified to address under representation in the workplace. However, the use of quotas or positive discrimination is still unlawful. On the same day, the Equality & Human Rights Commission's EqA Employment Statutory Code of Practice and the Equal Pay Statutory Code of Practice also came into force. At 326 pages and 62 pages respectively, the codes are a detailed explanation of the Act. Like similar statutory codes, they do not impose legal obligations on an employer per se but an employer will need to explain why it failed to follow the guidance if it is in breach of the code. As regards the other provisions of the EqA, the latest series of announcements by the Government confirm that it will:

- delay the implementation of the specific public sector equality duty which aims to help public bodies meet the general duty until July 2011;
- consult on the repeal of an employer's vicarious liability for harassment under the EqA for the actions of third parties towards its staff;
- not bring into force the new concept of 'dual discrimination' where an individual has at least two protected characteristics;

The prohibition of age discrimination in relation to goods, services and public functions is not expected until 2012.

7. Repeal Of Flexible Working Regulations Extension

The Government has announced that it will be repealing the planned extension of the right to request flexible working to parents of 17 years olds. However, the Government did say in May

2010 in its publication, *The Coalition: our programme for government*, it intended to extend the right to request flexible working for all employees. Therefore, it may revisit the issue at a later stage.

8. No Extension Of Time-Off For Study Or Training

As previously reported in [UK Employee Law: The Hot Topics](#), the Government will not be extending the right of employees to request time-off for study or trainings if they work in organisations with fewer than 250 employees at this time.

9. Default Retirement Age Abolished

The highly publicised abolition of the UK's default retirement age took effect on 6 April 2011. The transitional provisions now apply. Therefore, unless the employer issued a notice of intended retirement on or before 5 April 2011 to any employee who was due to turn 65 on or before 30 September, it will no longer be lawful for employers to retire them at a fixed compulsory age unless there is a clear justification for doing so. To avoid claims of age discrimination and unfair dismissal, employers need to review offer letters, contracts of employment, benefits schemes, policies and procedures.

10. Statutory Compensation Limits And Statutory Benefit Rates For 2011

Statutory Compensation Limits and Statutory Benefit Rates	Amount/Award
Statutory Maternity, Adoption & Paternity Pay	£128.73 (as of 3 April)
Statutory Sick Pay	£81.60 (as of 3 April)
National Insurance Contributions – Employees', Employers'	12% of £139 to £817 and 2% above £817, 13.8% (as of 6 April)
One Week's Capped Pay	£400 (as of 1 February)
National Minimum Wage – Standard Rate, 18-20 yr olds, under 18s.	£5.93 from £5.80, £4.92 from £4.83, £3.64 from £3.57 (as of 1 October 2011)
Compensatory Award for Unfair Dismissal	£68,400 (as of 1 February)
Maximum Basic Award for Unfair Dismissal	£12,000 (as of 1 February)
Maximum Statutory Redundancy Payment	£12,000 (as of 1 February)
Maximum Failure to Give Statement of Particulars	£1,600 (as of 1 February)
Maximum Breach of Flexible Working Regulations	£3,200 (as of 1 February)
Limits on Payments Recoverable from National Insurance Fund	Arrears of Pay £3,200 (8 weeks' capped pay), Statutory Notice £4,800 (12 weeks' capped pay), Holiday Pay (6 weeks' capped pay)



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

London

Suzanne Horne
44.20.3023.5129
suzannehorne@paulhastings.com.com

Paris

Deborah Sankowicz
33.1.42.99.06.79
deborahsankowicz@paulhastings.com

New York

Erika Collins
1.212.318.6789
erikacollins@paulhastings.com

Shanghai

K. Lesli Ligorner
86.21.6103.2968
lesliligorner@paulhastings.com

