



The Good Work Plan & Employment Law Update 2020

New employment legislation and the Good Work Plan means employers should review their current practices.

The following table charts the forthcoming rules in 2020

	Changes	Current Law	New Law	Additional information
1	New right to a written statement of terms – ‘DAY ONE’ right from 6th April 2020	Currently, employees who have been continuously employed for more than one month must be provided with a written statement of terms within two months of employment commencing. This is in line with s.1 of the 1996 Employment Rights Act.	<p>From 6 April 2020, all new employees and workers will have the right to a statement of written particulars from their very first day of employment. Additional information will have to be included as part of the extended right. All Contracts of Employment we prepare for our retained clients already contain this information.</p> <p>Given the new obligation is to provide particulars on ‘day one’, employers should begin preparation of the revised statement of particulars during the recruitment stage and ensure that these include every element of the new requirement.</p> <p>Employers will need to consider who might qualify as a worker, issuing contracts of employment only to employees and using a separate template when issuing particulars for workers, or those we often perceive to be self-employed – they must have a very different form of agreement.</p>	<p>A statement of written particulars must include:</p> <ul style="list-style-type: none"> - The days of the week that the employee/worker is required to work, & if someone’s hours or days are variable, an employer will need to include details of how the variation will occur; - Any rights to paid leave, including maternity leave and paternity leave – it will be enough to sign-post employees to a staff handbook that contains policies concerning maternity leave and paternity leave; - Any probationary period, including its duration and any conditions; - Details of any training provided by the employer, any training the employee/worker is required to complete and any training of which the employer will not bear the cost; - Details of any other benefits or remuneration provided, e.g. health insurance, child-care vouchers; - Notice periods for termination; - Details regarding the length of temporary or fixed-term contracts; - Information concerning sick leave & pay; - whether or not the employer/worker will be required to work outside the UK for a continuous period of more than 1 month



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<p>2</p>	<p>Amendments to agency workers rules - from 6th April 2020</p>	<p>The Agency Worker Regulations 2010 entitles agency workers to receive the same pay and basic working conditions as direct recruits once they have completed 12 weeks' continuous service working in the same role. The 'Swedish derogation' currently provides an exemption to the right to equal pay, if agency workers are employed under a permanent contract of employment with the temporary work agency and are paid by the agency for periods between assignments.</p>	<p>From 6 April 2020, the 'Swedish derogation' will be abolished. Once agency workers have satisfied the 12-week qualifying period, they will be entitled to equal pay to workers who are engaged directly by the employer.</p> <p>On or prior to 30 April 2020, agency workers who have an existing contract that contains a Swedish derogation provision must be provided with a written notification by the agency that it will no longer have effect. It is likely that any increase in wages will be passed on to the end user so if agency workers form part of your workforce it would be prudent to check with your provider how the changes might affect your costs.</p>	<p>In addition, from 6 April 2020 all agency work-seekers must be provided with a key facts statement setting out the terms under which they will undertake the work. This may be a time to consider fixed or temporary term contracts of employment for roles currently occupied by agency workers particularly as, under the Good Work Plan, workers will also have the right to request a more predictable and stable contract after 26 weeks of service.</p>
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3	Changes to IR35 rules for the private sector	At present, the IR35 rules apply where an individual (worker) personally performs services for another person (client), through an intermediary (usually a personal service company, or PSC), and if the services were provided under a direct contract, the worker would be regarded for tax purposes as being employed by the client. Currently, it is the intermediary's responsibility to determine whether IR35 applies.	From 6 April 2020, changes to IR35 rules will be implemented for medium and large businesses in the private sector and will largely mirror changes that took effect in the public sector in 2017. The new rules mean that private sector employers will be responsible for assessing their provisions if they have: <ul style="list-style-type: none">○ More than 50 employees○ An annual turnover of 10.2 million○ A balance sheet worth over 5.1 million	Under the new rules, for all contracts entered into, or payments made on or after 6 April 2020, the onus will shift from the PSC to the end user client to make a status determination. Responsibility for accounting for tax and national insurance will shift to the party who pays for the individual's services, known as the 'fee-payer'. In anticipation of these changes, it is essential that medium and large businesses carry out an assessment to determine whether the new rules under IR35 apply to their independent contractors and review their contracts and pay arrangements.
4	Holiday pay reference period adjustment	Since the introduction of the Working Time Regulations, holiday payment has been a contentious issue and Employment Tribunal outcomes in recent years have identified that the calculation of holiday pay can be complicated, particularly for those with variable hours and fluctuating rates of remuneration. Currently, the holiday pay reference period is 12 weeks.	From 6 April 2020, the holiday pay reference period will increase from 12 weeks to 52 weeks. Employers will be required to look back at the previous 52 weeks where a worker has worked and received pay, discarding any weeks not worked or where no pay was received, to calculate the average weekly pay. It is hoped that this change will help to even out the variation in pay for workers, particularly those in seasonal or atypical roles.	<i>Note: the statutory allowance for yearly holiday accrual of 5.6 weeks, which translates to 28 days per annum, for a full-time employee/worker will continue to apply and the new law only impacts on the way holiday pay is calculated</i>



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5	Information and Consultation Rights	<p>Under the terms of the Information and Consultation of Employees Regulations 2004 (ICE) individuals working for employers with 50 or more employees have the right to request formal arrangements to inform and consult them on issues facing the employer's business, such as its economic situation and any planned major changes.</p> <p>The arrangements are not automatic and have to be formally requested by the employees and currently this requires the support of at least 15 employees or 10% of the workforce, whichever is greater.</p>	<p>Introduces a lower threshold for agreement to inform and consult with staff. From 6 April this threshold is to be reduced from 10% to only 2% of the workforce. The requirement for the request to be made by a minimum of 15 employees remains in place.</p>	<p>The new threshold is part of the Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/731)</p>
6	Breaks in Continuous Service	<p>Currently a gap of one week in employment with the same employer can break what counts as continuous service for calculating employment rights</p>	<p>To reflect the changing world of work, The Good Work Plan will legislate to extend the break in service to 4 weeks, allowing more employees to gain access to employment rights.</p>	<p>Employers should consider the impact of continuous service accrual on their short-term contracts"</p>



OTHER EMPLOYMENT LAW NEWS

Aside from the changes driven by the Good Work Plan, there are other employment law updates to consider:

	Changes	Current Law	New Law	Additional Information
7	New parental bereavement law	There is no existing law on bereavement leave and current practices mean that employers may have an 'in house' policy on bereavement leave and most employers will be guided by the circumstances of their bereft employee.	The Parental Bereavement (Leave and Pay) Act 2018 is expected to come into force on 6th April 2020 and means that bereaved parents will have the right to two weeks of leave following the loss of child under the age of 18, or a stillbirth after 24 weeks of pregnancy. Bereaved parents will be entitled to take their leave in one two-week block or in two separate blocks of one week. The leave must be taken before the end of a period of at least 56 days beginning with the date of the child's death. Bereaved parents employed with a minimum of 26 weeks' continuous service will also be entitled to receive statutory parental bereavement pay. Those with less than 26 weeks' continuous service will be entitled to take two weeks of unpaid leave.	Under the new legislation, employers will not be entitled to request a copy of the child's death certificate as evidence of an employee's right to the entitlement. However, be aware that, under the Data Protection Act 2018 , employees have the right to keep details of their child's death confidential so be clear on how much detail employees would like their colleagues to know, and ensure that their wishes are respected. While introducing a legal entitlement to two weeks' parental bereavement leave is undoubtedly a positive step, it is important to consider that people recover at different rates and we encourage employers to be flexible, supportive and sensitive to your employee's needs during such a difficult time.
8	Tax on termination payments	In 2018 the government introduced new rules on tax on Payment in Lieu of Notice (PILONs) and terminations payments which meant that any payments in excess of £30000 would fall under taxation requirements	The government plans to make any part of termination payment over the sum of £30000, subject to NICs, will become a legal requirement from 6 th April 2020.	This forms part of the legislation on Taxation on PILON's and termination payments which was introduced in 2018.



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9	Executive Pay Gap Report	Introduced in January 2019, regulations made under the Companies Act 2006 require UK listed companies with more than 250 UK employees to report annually on the pay gap between their chief executive and their average UK worker private and voluntary sector	CEO pay ratio reporting commenced on 1 st January 2020 and from 6 th April 2020 businesses with an average of 250+ employees in a year will be required to submit their Executive Pay Gap Report.	The rules require businesses to report the comparison of their CEO's most recent remuneration against the full-time employees along with an explanation on the information provided.
10	BREXIT!	<p>On 31 January 2020, the UK officially left the EU. During the transition period up to the end of 2020, current EU rules on trade and employment rights will continue to apply in the UK.</p> <p>The government has indicated that after the transition period, existing EU-based employment legislation will continue to apply in domestic law.</p> <p>There is now a transition period until the end of 2020 while the UK and EU negotiate additional arrangements.</p>	The current rules on trade, travel, and business for the UK and EU will continue to apply during the transition period which runs until the end of 2020 and the new rules will take effect on 1 January 2021.	As the new rules on trade and employment rights will take effect on 1 January 2021 employers will, amongst other things, need to review their current workforce, work with their European employees or workers to ensure their right of stay and that their workforce planning is sustainable enough to maintain their required skill-set!

Given that, through the Good Work Plan, the government is also committed to increase penalties for employers that repeatedly breach their employment law obligations it is imperative that employers interpret the changes correctly. This coupled with the reality of BREXIT means that employers need to ensure appropriate strategies and that their businesses meet employment legislation requirements.