Employment Law Newsletter

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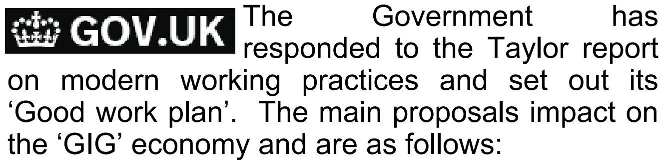
Taylor Report-Employment Law New Changes

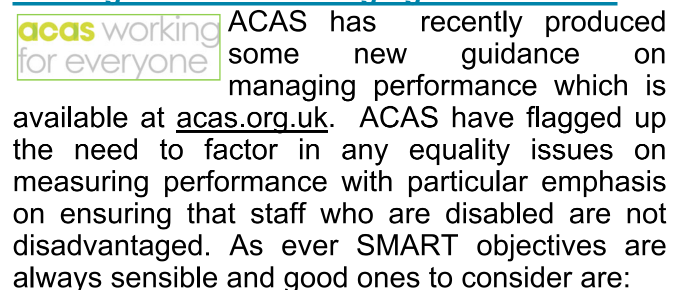


The Government has responded to the Taylor report on modern working practices and set out its 'Good work plan'. The main proposals impact on the 'GIG' economy and are as follows:

- extending the right to a day one written statement to workers (instead of just employees), and adding to the information employers are already required to provide requiring confirmation of: how long a job is expected to last, notice requirements, eligibility to sick leave and pay and details of other types of paid leave, such as maternity and paternity leave, as well as any probationary period, remuneration details and specific days/times of work;
- extending the time required to break a period of continuous service from one week to four weeks;
- extending the holiday pay reference period from 12 to 52 weeks, ensuring those in seasonal or atypical roles get the paid time off they are entitled to;
- repealing the so-called 'Swedish derogation' – which currently allows agency workers to be employed on cheaper rates than permanent counterparts so long as they are paid between assignments, but has allegedly been abused by some employers;
- quadrupling maximum Employment Tribunal fines for employers who are demonstrated to have shown malice, spite or gross oversight from £5,000 to £20,000;
- a commitment to aligning the tax and employment law on employment status (but the Government is only commissioning further research at this stage);
- enforcing vulnerable workers' holiday pay for the first time;
- introducing a new right to a payslip for all workers, including casual and zero-hour workers providing more financial security for those on flexible contracts;

- introducing a right for all workers, not just zero-hour and agency workers, to request a more fixed working pattern after 26 weeks of service;
- introducing a new naming scheme for employers who fail to pay Employment Tribunal awards, as well as other reforms to improve the experience of those using the justice system (backed by £1bn of investment);
- taking further action to ensure unpaid interns are not doing the job of workers;
- bringing forward proposals for a single enforcement body to ensure that vulnerable workers are better protected;
- introducing legislation to expand the remit of the Employment Agency Standards Inspectorate to cover umbrella companies – with action to focus on situations where agency workers have not received adequate pay;
- consulting on salaried hours work and salary sacrifice schemes to ensure National Minimum Wage rules do not inadvertently penalise employers; and
- reducing the threshold for employees to request the establishment of an information and consultation procedure (or 'domestic works council') from 10% to 2% of employees.

ACAS guidance on Managing Performance.



ACAS has recently produced some new guidance on managing performance which is available at acas.org.uk. ACAS have flagged up the need to factor in any equality issues on measuring performance with particular emphasis on ensuring that staff who are disabled are not disadvantaged. As ever SMART objectives are always sensible and good ones to consider are:

- leadership
- teamwork
- customer care
- promoting equality
- communicating effectively
- embracing change.

Whilst every effort has been made to ensure that the content of this newsletter is up-to-date and accurate, no warranty is given to that effect and nplaw does not assume responsibility for its accuracy and correctness. The newsletter summarises latest legal developments but is no substitute for specific legal advice after consideration of all material facts and circumstances.

Age discrimination- Real evidence needed to justify protection for older workers

A recent pension case focused on whether it was right to allow older members to remain in one pension scheme whereas younger members had to transfer to a new less generous scheme.

The Court of Appeal held that a mere 'visceral instinct' that older workers should be protected was not enough to amount to a legitimate aim and that real evidence was needed to justify this decision. In other words, analysis needed to be done to determine whether financial hardship could arise out of any changes and issues that arose due to a reduced amount of time to be in the new scheme.

The key points from this case are that without evidence, any prima facie discriminatory rule is unlikely to be justified and that it is important to remember that younger workers not just older workers can bring age discrimination claims.

Discrimination Arising from Disability

Professor S was recruited from overseas to a senior post at Edinburgh University. She raised grievances about the lack of support, delays and that her male colleagues seemed to be treated more favourably. From Jan 2010 she remained off work with depression until her dismissal in 2012. The University also refused her request to move departments. In April 2012 it dismissed her on the basis that it did not believe that her work permit would be extended unless she returned to work in the department where it had been granted. The Employment Tribunal accepted this reasoning and did not accept that her dismissal was because of her disability.

However, the EAT overruled this decision and held that the wrong test had been applied. The correct (and looser) test was whether the treatment had arisen in consequence of her disability. On the facts, Professor S's absence had been caused by alleged discriminatory treatment, which in turn had led to stress so that she could not return to where she was originally

This case highlights that a low threshold is needed to demonstrate that something arose from a disability, so employers should be able to justify their treatment in order to avoid liability.

Disability discrimination- medical retirement pensions

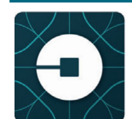
An employee was awarded ill-health medical retirement at the age of 38. Prior to this he had been working part-time. His ill-health retirement provision included payment of a lump sum and immediate access to his pension which would be enhanced as if he had worked until 67. He argued that he had been treated unfavourably by not being paid full time wages as he had only gone part time due to his disability.

The Supreme Court confirmed that he had not been subject to unfavourable treatment and noted that, if he had been fit and well, he would not have been entitled to any medical ill-health retirement and benefits.

Veganism

It is our understanding that a case is due to be heard where an employment tribunal will have to determine whether veganism is a protected philosophical belief. It is estimated that there are approximately 600,000 Vegans and rising. This case is of interest since it is possible to envisage claims based on unfavourable treatment due to being ethically Vegan.

Uber workers



The latest Court of Appeal case on status has involved Uber workers. By a majority, the Court ruled that Uber drivers were workers and not self-employed and that they were at work from the moment that they were available as opposed to when they did their first paid journey. Uber is arguing that they are only an intermediary providing booking and payment services.

Permission has been granted for an appeal to the Supreme Court.

Contact details

If you have any queries relating to this newsletter or wish to seek employment law advice or discuss training needs, please contact: **andrew.brett@norfolk.gov.uk, 01603 223101**

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