Changes to employment legislation

Introduction

The Government has announced a raft of changes to employment legislation affecting all the smaller aspects of employment law. These changes would, if implemented, affect all employers in one way or another. However, now that we have had a chance to review the details of the proposals, it is clear that the changes are not quite as dramatic as the Government would like to portray, though they are undoubtedly important and generally helpful to employers.

It is noticeable that many of the changes are, in fact, only proposals at this stage, some of which will need to go through a further consultation period before legislation is even contemplated. This means that there are likely to be some disappointed employers, who feel that the pace of change is too slow. On the other hand, it is going to mean that employment and employment obligations are going to be at the forefront of the news for some time yet.

Changes coming into force by the end of April 2012

- The Government has asked for a review of the Employment Tribunal Regulations, which govern the conduct of Tribunal cases. This is expected by the end of April 2012, although there is no timescale after that for implementing any regulations which might be required.
- The qualifying period for unfair dismissal claims is to increase to 2 years continuous service. There is no guidance as yet about what will happen with individuals who have more than one year's service at the moment, but who would then, potentially, lose the right to claim unfair dismissal in April 2012 until they had got up to two years' continuous service.
- There is to be an increase in the sums which a Tribunal can order to be paid by way of a deposit, as a condition for being allowed to continue a Tribunal claim, and for costs which can be awarded directly by a Tribunal against a party who has acted unreasonably in conducting the litigation. This is part of the ongoing programme to weed out week or unmeritorious cases.

Changes subject to a further consultation process

- Development of rules relating to "protected" conversations. The Government envisages enabling employers to have, in effect, off the record conversations to enable a full and frank dialogue. This will not permit the protection of discriminatory acts.
- Rapid resolution process. The aim of this is to avoid the need for smaller claims to go through a full Tribunal process. The Government plans to develop these proposals and then put them forward for consultation.
- Financial penalties for employers who breach employment legislation. The Government is proposing that a fine would be levied, payable to the Exchequer. It is proposed that the amounts would be capped at £5,000. No timescale has been announced for this introduction.
- Fees to be introduced for those who wish to use the Employment Tribunal system. It would seem likely that this will apply to claimants only. The consultation process for this is due to start shortly.
- Increased role for mediation in attempting to resolve Employment Tribunal disputes. This is a long term aim but a pilot scheme is to be set up to monitor its effectiveness.

- Changes to format of compromise agreements. This will permit blanket compromise agreements to be entered into, together with a number of smaller tidying up changes. Consultation is to be launched shortly.

Uncertain timescale

The Government has announced that it is going to amend the whistleblowing legislation. As has become increasingly apparent, the legislation, which was intended to cover matters of public interest and to grant protection to whistleblowers, is increasingly being used by individuals to claim protection for their own grievances as a way of increasing the pressure on the employer.

The Government has announced that it is going to take an employee's concerns over his or her work contracts out of the scope of the legislation. Our view is that this is likely to be a very helpful change, and would undoubtedly restrict the legislation back to the areas for which it was produced. Nonetheless, we anticipate that there will still be scope for arguing about what is in or out of scope.

No timescale is specified for this, and it is likely to require primary legislation. The Government has said generally that where primary legislation is required it will introduce a bill as soon as the Parliamentary timescale permits it.

Request for evidence

The Government has launched a survey seeking information about two proposed areas of change:

- For larger scale collective redundancies, whether it is appropriate to retain a 90 day consultation period or whether this should be reduced to 30, 45 or 60 days?
- Are the Transfer of Undertakings Regulations too complex and can they be simplified?

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