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Employment Reforms in the Enterprise and Regulatory Reform Bill

The Government recently published its Enterprise and Regulatory Reform Bill, which contains a number of employment related measures aimed at creating "strong, sustainable and balanced growth" in the UK economy. Although some employers have welcomed the proposals, the true impact of this prospective legislation remains to be seen. The key proposals are:

1. **Dispute resolution** - in order to facilitate agreement of employment disputes without the need for an employment tribunal hearing and thereby save time and costs, a prospective claimant must first submit the details of their claim to Acas before they can lodge their claim at an employment tribunal. An Acas conciliation officer will then be required to try and achieve a settlement within a prescribed period. Only if a settlement is not possible will the prospective claimant be able to lodge his/her claim at a tribunal. In addition, appointed 'legal officers' may determine the outcome of certain claims where the parties' consent in writing.

   This mandatory process could be successful if the conciliation officer takes a more pro-active role. Questions remain over whether Acas has the resources to run this process effectively. It is likely that complex high value disputes will continue to be litigated in the employment tribunal.

2. **Power to limit unfair dismissal compensatory awards** - the Secretary of State will have the power to limit such awards to a maximum between the national median earnings and three times the median earnings, i.e. between £26,000 and £78,000 based on 2011 figures. Alternatively, unfair dismissal compensatory awards could be limited to one year's earnings. Different levels of compensation could be set for different kinds of employer.

   This is potentially the most far reaching measure in the Bill and could significantly reduce the cost of unfair dismissal claims for employers.

3. **Power to impose fines on employers** - in order to encourage employers to meet their legal obligations, employment tribunals could impose a financial penalty on any employer found to have breached the employee's rights and where the breach had one or more aggravating features. This is intended to penalise deliberate and repeated breaches of employment law. The penalty can be up to 50% of the financial award (but capped at £5,000). Given that the penalty must be paid to the Government rather than the employee, tribunals may be reluctant to use this power.

4. **Whistleblowing to be restricted to disclosures "in the public interest"** - protection for whistleblowers will be limited to public interest disclosures only. This would exclude disclosures of a more personal nature rather than those made in the public interest. For example, if an employee complains about a breach of his contract of employment, the intention is that this would not qualify as a disclosure under the whistleblowing legislation. This measure is intended to limit the scope of the whistleblowing legislation. Employers will undoubtedly welcome this change and it should result in a significant drop in the number of whistleblowing claims, many of which feature disclosures relating to a breach of an individual's employment contract.

If you have any questions or require specific advice on the matters covered in this Update, please contact your usual Mayer Brown contact or:

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