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March Bytesize Employment Law

Mind the gap!

The final Gender Pay Regulations apply to private and voluntary sector businesses that employ 250 employees or more as at 5 April 2017. Employers will need to gather data from 5 April 2017 but employers will not be required to publish any information until 5 April 2018. The information that employers are required to publish include:

- When calculating the pay gap figure, the regulations apply to full-pay employees only, so an employee who receives statutory maternity pay or sick pay during the pay period should not be counted.
- The mean and the median gender pay gap figure for bonuses.
- The percentage portion of men and women receiving a bonus.
- The number of men and women in each quartile of their pay distribution . It is now clear that pay quartiles involve dividing the workforce into 4 equal parts based on hourly pay, rather than on the level of pay across the organisation.
- The government has also recommended that employers should produce a narrative to help explain how they came to their gender pay gap figure although there is no legal requirement to provide this.

The published data should be available on the company website for three years as well as providing the information to the government.

Although there is no enforcement procedure in place for employers who fail to produce their gender pay gap information, the government hopes that pressure from employees as well as external pressure with regard to reputation will encourage compliance without the need for any further regulation.

New tools to try!

The HMRC has created an online tool to determine whether an individual is an employee or self-employed for tax purposes. Use the link below to try it out: -

https://www.tax.service.gov.uk/check-employment-status-for-tax/setup

Unfair dismissal and insolvency – Who can be sued?

A recent tribunal decision has ruled that if an employee is unfairly dismissed by an insolvent company, they can bring their unfair dismissal action against a successor company, if it is connected to the insolvent company.

In this case, a 35% share in the employer company was owned by the first claimant at which the second claimant also worked as an employee. They bought their action based on the fact that they were forced out by the other owners after the owners rejected their proposal to take over the company.

After the claimants began their unfair dismissal claim against the company, it then went into administration and the assets of the company were sold to a business wholly owned by one of the owners of the company.

The claimants applied to add this new company to the unfair dismissal claim, citing that their redundancy had been a sham and was just a way for the assets to be sold to the new business.

The tribunal held that there was commonality of ownership and directorship between the two companies so the claim was allowed to continue against the new company.

https://www.theguardian.com/business/2016/dec/18/former-tory-mps-company-faces-unfair-dismissal-case-in-landmark-ruling

Salary sacrifice – draft legislation published

For salary sacrifice arrangements put in place after April 2017, any tax advantages are going to be removed with only certain benefits such as cars, accommodation and school fees being protected until 2021.

Separate charging provisions apply to targeted salary sacrifice arrangements. For example, where an employee has a choice of receiving cash or a benefit in kind, if the benefit is chosen, it will be taxed based on either the amount of cash that would have been received or the cost of the benefit, whichever is higher. Regardless what the employee has chosen, the benefit will not be taxed as salary. It will be taxed as a benefit in kind and will therefore not be subject to NICs or PAYE.

The legislation also establishes that loans and outright cash payments will also be treated as a benefit in kind taxable on the full amount advanced together with annual interest.

Resignation must be in response to a breach by the employer

To qualify as a resignation for constructive dismissal purposes, the resignation must be in response to a breach made by the employer and not for any other reason, a recent tribunal hearing found.

In this situation, a postman was involved with an altercation with a member of the public whilst he was delivering his post round. The employee told his employer he had been attacked, but CCTV footage revealed that he kicked out at the person.

The employer therefore invited him to a disciplinary hearing, citing that he had been dishonest and exhibited abusive behaviour as he had not given an accurate description of the events.

On the day of the hearing, the employee resigned alleging that the employer had breached its obligations to him by putting him on unsuitable duties knowing that he suffered from foot problems and could only undertake certain routes on his round.

The Employment Appeals Tribunal confirmed the original tribunal finding that he had resigned to avoid the disciplinary action, not as a result of the employer's breach. The reasons for this were that the breach had been ongoing for two months and it was not a coincidence that the employee resigned on the very day he was due to have his disciplinary interview.

Ishaq v Royal Mail Group Ltd

http://www.employmentcasesupdate.co.uk/site.aspx?i=ed33755

Gig economy decisions – plumber a 'worker' for employment law purposes

In the most recent in the line of cases regarding employment status, the court of appeal has upheld the decision of the employment tribunal that Mr Smith, a plumber, was under an obligation to provide his services personally as there was no express or implied right of substitution or delegation. He was an integral part of Pimlico's operations and subordinate to Pimlico. They found Mr Smith to be self-employed for tax purposes but nevertheless a 'worker' under the Employment Rights Act 1996 and the Working Time Regulations 1998 and an 'employee' under the extended definition of the Equality Act 2010.

Pimlico Plumbers Ltd and anor v Smith

http://www.employmentcasesupdate.co.uk/site.aspx?i=ed24566

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Tribunal reform proposals

A consultation on reforming the Employment Tribunal System has recently concluded. The consultation follows the recent proposals for reform of the wider court and tribunal system that have already been published.

The proposals include digitising the entire claim process including having online decision-making in certain claims and delegating routine tasks from judges to caseworkers.

With regard to digitisation, although approximately 90% of employment tribunal claims are submitted online, thereafter, the claims are dealt with on paper. The consultation proposes to deal with correspondence entirely electronically. There is to be further clarification in regard to online-decision making and the cases that might be suitable, for example some simple wage claims, while complex claims such as discrimination might be unsuitable.

The consultation states that the judicial functions should be delegated to relevant staff in employment tribunals. The activities to be delegated under the powers will be a matter for senior tribunal judiciary based on the needs of the employment tribunal system.

The Government envisages that the employment tribunal reforms will be among the last to be implemented due to the amendments that are required to the Employment Tribunals Act 1996.

Employment & HR – we can help

Our team of employment lawyers don't just provide legal advice on all people issues.

We spend our time learning about your business and understanding your objectives - enabling us to provide commercial solutions, delivered on time, and tailored to fit.

We'll advise throughout the employment relationship from recruitment and selection through to discipline and dismissal - and everything in-between.

Experience

Our clients are a mix of small to medium sized, owner managed businesses and large, household names. As a result, we are used to dealing with, and tailoring our language and approach to meet the needs of both growing businesses and large organisations, dealing with directors and HR professionals.

Stay up to date

Employment is one of the most rapidly developing areas of law. To help guide you through, we'll ensure you are kept up to date with all the latest changes through our series of email updates and regular breakfast seminars.

Training courses

We provide a range of training courses tailored to meet your needs. Our aim is to equip delegates with the skills to be able to deal with new and difficult employment and HR issues.

Through case studies, covering real life transactions, we'll bring the topic to life and provide delegates with an opportunity to put their training into practice!

Included below is a snapshot of some of the training courses we have run in the past, and we can also create specific training courses.

Conducting employee investigations	Managing a TUPE transfer	Dealing with discrimination	Managing sickness absence
Managing poor performance	Family friendly rights	Dealing with discipline & grievance	Essential employment law
Managing stress	Avoiding unfair dismissal	Data protection	Navigating the employment tribunal

Key contacts

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Claire has over 20 years' experience acting for employers in all types of employment disputes.

She has particular expertise in more complex cases involving multiple redundancies, collective consultation, TUPE, data protection, whistleblowing and discrimination claims.

Claire joined Actons in 2004 having previously worked at national firms DAC Beachcroft and Shoosmiths.

Nic Elliott
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Nic deals with a broad range of employment law issues, regularly advising on complex and commercially sensitive litigation.

He advises on the exit of senior employees and directors, complex absence management issues and provides general advice on day to day employee relations matters.

He also runs and advises on employee investigations.

He joined Actons in 2012 after 8 years at international law firm, Wragge & Co.