

Employment Law Updates 13.7.23

Bills that have received Royal Assent

24 May 2023

- **Protection From Redundancy (Pregnancy & Family Leave) Act**
 - Added protections for person within in a protected period in respect of suitable alternative position in redundancy situations.
 - The protected period will run from the day in which the employer is informed of the pregnancy/adoption until 18 months after the birth of the child or the placement of the adoptive child.
 - It is designed to stop employers waiting out the maternity leave period before undertaking their redundancy process and to give those on shared parental leave/adoption leave period similar rights.

- **Carers Leave Act**
 - 5 days of unpaid leave per 12 months for any employee who has caring responsibilities (widely defined, so will capture caring for people with disabilities, as well as parents). The leave can be broken down and a full day does not have to be used, therefore allowing people to take half days, or maybe even hours.

- **Neo-natal Leave and Pay**
 - This is an additional right; the employee still retains all the other family friendly rights. Right to 12 weeks paid leave if a child requires hospital care for 7 days or more. To qualify the child needs to have had a stay in hospital for minimum of 7 days before they are 28 days old.

29 June 2023

- **Employment Law and the Retained EU Law Act 2023**
 - The sunset provision which would have seen significant changes to the employment law landscape, including TUPE and the Working Time Regulations, has been removed. Instead parliament listed circa 600 pieces of legislation that will be repealed by end of 2023. None of the list has any major impacts from an employment law perspective. This does provide some certainty for employers and employees.
 - However, from January 2024 the Act will abolish directly effective rights, bring to an end the supremacy of EU law and remove the EU interpretative principals from EU law.
 - Impacts?
 - Equal pay - the principle that men and women should received equal pay is from a EU directly effective right. The Equal Act principals will apply still but on a technical legal basis this will have an impact on how claims are made. A clear example of this are the thousands of female supermarket workers that are currently claiming pay

parity under Article 157 of the Treaty on the Functioning of the EU. The change will not affect these claimants, but it will prevent future claimants relying on it.

- Supremacy of EU law has played a huge role in words being read into the Working Time Regulations 1998 (all the holiday pay cases). This provision has substantially improved employee's protections.
 - Courts will no longer consider questions of interpretation in line with EU principles. This has featured heavily in TUPE cases, particularly in the area of defining what is an 'economic entity'.
 - The Act will undermine the existing body of case law, which has been determined from EU-derived law. This will undoubtedly create uncertainty in businesses understanding their obligations and employees being clear on their rights. It is likely an increase in disputes and litigated cases will follow.
- Next - it is anticipated the government will use the next 6 months, and post the Act to revoke, restate, or amend both primary and secondary legislation in respect of EU law provision. They can also write into domestic laws gaps that are unintended to change the current legal rights.

Fire and Re-Hire

The aftermath of the P&O Ferries fiascos still rumbles along. There has been a long consultation about whether permitting an employer to dismissed and re-engage on less favourable terms should remain a permitted fair reason in law. It seems it has landed that the ability to use this as a reason will remain, however, it should only be done so with caution and as a last resort. Proper and full consultation will be required. A Code has been under consultation, and this concluded mid-April 2023. The next step will be for this to be considered by the government. It is anticipated the Code will sit alongside the ACAS Code of Practice and it will contain a 25% uplift option for Tribunals to apply where the employers have not adhered to the Code.

Restrictive Covenants

This area of law has been under consultation for a while - discussions about whether they should be permitted at all and if so, whether the employer should be required to compensate the employee for the period they are restricted.

On 12 May 23 the government announced it will be introducing new legislation. It appears there will be no changes to solicitation restrictions or confidentiality. The focus squarely on competition and non-competes. It seems as though the position has landed that 3 months would be where the fair balance is struck between the employer protected a legitimate business interest and the rights of the employee to earn a living in their chosen and trained field. The suggestion the employer should compensate for this 3 month period as been squashed, believing that would be to onerous on businesses when they are genuinely seeking to protect legitimate interests.

April 2023 Rate Increases

- The National Minimum Wage came into force on the 1st April 2023 and the increases are not insignificant, most averaging around 10%. The rates are as follows:

- (i) For workers aged 23 and over (i.e. the National Living Wage), the rate will increase by 9.7% from £9.50 per hour to £10.42 per hour
 - (ii) For workers aged 21-22 inclusive, the rate will increase by 10.9% from £9.18 per hour to £10.18 per hour
 - (iii) For workers aged 18-20 inclusive, the rate will increase by 9.7% from £6.83 per hour to £7.49 per hour
 - (iv) For workers aged 16-17 inclusive, the rate will increase by 9.7% from £4.81 per hour to £5.28 per hour
 - (v) The apprentice rate will increase by 9.7% from £4.81 per hour to £5.28 per hour
 - (vi) The daily rate for the accommodation offset will increase by 4.6% from £8.70 to £9.10.
- Statutory Maternity Pay, Statutory Paternity Pay, Shared Parental Pay, Adoption Pay, Maternity Allowance, and Statutory Parental Bereavement Pay: The new rates come into effect 2nd April 2023. The maximum rate (i.e. the cap) for all of these family friendly payments will increase from £156.66 to £172.48 per week, which means that those eligible will be entitled to the smaller of £172.48 or 90 per cent of their average gross weekly earnings per week.

Maternity Allowance, will remain at £123.00 or more. With respect to Maternity Allowance, where an employee earns less than £123.00 per week on average, but was employed for 26 of the 66 previous weeks earning at least £30 per week (averaged over any 13 week period during the said 66 weeks), then they are entitled to the same.

- Statutory Sick Pay: The new rate will come into force on the 6th April 2023. The rate will increase from £99.35 to £109.40 per week
- The statutory cap on a week's pay for the purposes of calculating the basic award and statutory redundancy pay came into effect on the 6th April 2023 - increasing it from £571 to £643. This is a significant jump when compared to the increases from 2020 to date. It will absolutely impact the cost to businesses planning to make redundancies this year.