

| | |
|--|------------------------|
| Committee(s): | Date(s): |
| Establishment Committee – For information | 15 January 2018 |
| Subject: Developments in Employment Law | Public |
| Joint report of: Director of HR and the Comptroller & City Solicitor | For Information |
| Report authors: Carol Simpson, Town Clerk’s HR Jillian Bradbeer, Comptroller & City Solicitor’s | |

Summary

At a time when the European Union (Withdrawal) Bill dominates the headlines¹ and all existing EU legislation will be copied across into domestic UK law, it is important that employment legislation developments are not overlooked.

The purpose of this report is to update Members on employment legislation developments and their implications, including: i. updates following the earlier employment legislation report to Committee on 14 February 2017; ii. known forthcoming changes; and iii. proposed future changes.

Recommendation

Members are asked to note the report.

Main Report

Updates to previous report on 14 February 2017

- 1. Public sector exit cap and repayment arrangements** - Implementation date: Anticipated 6 April 2018

Whilst the regulations to enact these changes were expected last year², implementation is now proposed to be from 6 April 2018. The Local Government Association (LGA) are speaking with the Department for Communities and Local Government (DCLG) about the implications for local government as the final detail of the arrangements still need to be devised; and where subject to collective agreement negotiation with the relevant trade unions.

- 2. Gender pay gap reporting** - Implementation date: 30 March 2018

Public authorities must publish the stipulated gender pay gap data and one or more objectives in order to exercise its functions in accordance with the Gender Pay Gap

¹ Target date of 29 March 2019 for the UK’s exit from the European Union.

² The Small Business, Enterprise and Employment Act 2015 is amended by Section 41 of the Enterprise Act, enacted by The Enterprise Act 2016 (Commencement No. 2) Regulations 2017 SI 2017/70 and the Public Sector Exit Payment Regulations 2016.

Information Regulations³ by 30 March 2018. We are planning a test run ahead of the required publication date in order to identify any systems issues with the data collection. To note, that we will report as both a public and private sector employer, the latter for the purposes of covering for example the independent schools.

3. Trade union check off arrangements - Implementation date: 10 March 2018

The Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017 implement new arrangements for check-off for public-sector employers with the aim to reduce the administrative cost of check-off to the public sector and ultimately to the taxpayer. The trade unions will need to meet the Corporation's administrative cost in respect of making union deductions; however the unions continue to have the option for their members to pay their subscription by other means.

4. Salary sacrifice limitation - Implementation date: 6 April 2018

From 6 April 2017, only employer pension contributions, childcare benefits, cycle to work schemes and ultra-low emission company cars can be provided through salary sacrifice arrangements, although schemes in place prior to this date can continue to benefit from the tax advantages they provide until April 2018. Accommodation, school fees and other company cars may be provided under salary sacrifice arrangements until April 2021.

The current Employer Assisted Childcare Voucher Scheme will be replaced with the government's Tax-Free Childcare Scheme, this consists of a payment of up to £2,000 per child per year up to the age of 12 (£4,000 if registered disabled and under the age of 17). The new scheme will be administered through a government on-line portal. Whilst existing childcare voucher holders do not have to switch to Tax-Free Childcare if they do not wish to, the current scheme will only remain open to new entrants until April 2018; parents registered by this date will be able to continue using childcare vouchers for as long as their employer offers it. However, it is important to note, that under the new scheme, both parents (unless a single parent) must be working at least 16 hours per week and earning less than £100k per annum. For every 80p the parent contributes up to the maximum values stated per child, the government will top-up 20p. Information on the changes are available to staff on our provider Midcounties Co-operative's web site⁴ to assist in their decision making around the best options for them.

The Corporation's administration service charge to run the current voucher scheme is 3% on the total childcare voucher amount paid over to Midcounties Co-operative, however this is offset against typical savings of up to 13.8% on employers National Insurance Costs (NICs).

An e-petition has been started on the UK Government and Parliament website to keep the childcare voucher scheme open beyond April 2018 alongside tax-free childcare to give parents a genuine choice for the support that best suits their family. At present there are in excess of 100,000 signatures promoting a parliamentary debate on 15 January 2018, therefore further changes are possible.

³ The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. Enforcement of compliance rests with the Equality and Human Rights Commission (EHRC) who have the power to: investigate, issue unlawful act notices, require the production of an action plan and apply to court for an injunction to restrain unlawful acts.

⁴ <http://www.taxfreechildcare.co.uk/>

5. Immigration skills charge (Tier 2) - Implementation date: 6 April 2017

Any organisation sponsoring non-EEA skilled workers under Tier 2 of the points-based system now pay a £1,000 immigration skills charge per sponsored worker from 6 April 2017. The charge was recommended by the Migration Advisory Committee and confirmed by the government in March last year. Workers in PhD-level occupations, those switching from Tier 4 student visas, and graduate trainees on Intra Company Transfer visas are exempt.

The Corporation has to adhere to the criteria set by the UK Visas & Immigration (UKVI) prior to issuing a Certificate of Sponsorship. Specific information and documents are requested from the applicant and the recruiting department in order that the Certificate of Sponsorship can be raised on the Sponsorship Management System (SMS) which includes evidence of the Resident Labour Market Test. The sponsorship number is passed to the applicant for them to include on their visa application.

Details of the visa are recorded on City People once the document has been seen by HR, with the expiry date (if relevant). Monitoring reports are generated from City People and sent to the HR transactional team for review on a regular basis.

The City of London Corporation has sponsored 4 recent applicants, associated costs are borne at a departmental level.

Forthcoming changes

6. Taxation of termination payments - Implementation date: 6 April 2018

The government consultation on this issue closed in October 2016. It is proposed that from April 2018 changes are implemented to the taxation of termination payments amending the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The proposals include:

- removing the distinction between contractual and non-contractual PILONs (payments in lieu of notice) so that all PILONs are taxable and subject to Class 1 NICs.
- ensuring that the first £30,000 of a termination payment remains exempt from income tax and that any payment paid to any employee that relates solely to the termination of the employment continues to have an unlimited employee NICs exemption.
- aligning the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax).

7. Data protection changes - Implementation date: 25 May 2018

The General Data Protection Regulation 2018 (GDPR) will replace the Data Protection Act 1998 (DPA) with the aim to modernise data protection laws in the UK to make them fit for purpose for an increasingly digital economy and society.

The GDPR considers any data that can be used to identify an individual as personal data and introduces very restrictive, enforceable data handling principles. This includes the data minimisation principle which requires organisations: i. not to hold data for any longer than absolutely necessary; ii. not to change the use of the data

from the purpose for which it was originally collected; and iii. to delete any data at the request of the data subject where there is no compelling reason for its continued processing. Organisations will also have to obtain fresh consent before they can alter the way they are using the data they have collected. The new rules give individuals easier access to their own data, a right to be forgotten and to know when their data has been hacked.

8. Trade union facility time - Implementation date: 31 July 2018

The Trade Union (Facility Time Publication Requirements) Regulations 2017 (SI 2017/328) implement the requirement introduced by the Trade Union Act 2016 for specified public-sector employers (including local authorities), to report annually on paid time off provided to trade union representatives i.e. for trade union duties and activities. The first report must be published by 31 July 2018 on the employer's website and, where the employer publishes an annual report, it must be included in the annual report.

Proposed future changes

9. Parental bereavement time off - Implementation date: Expected 2020

The Parental Bereavement (Leave and Pay) Bill provides at least two weeks' leave for employees following the loss of a child under the age of 18. Employees with 26 weeks continuous service will be entitled to paid leave at the statutory rate and other employees will be entitled to unpaid leave.

10. Grandparental time off - Implementation date: To be confirmed

In October 2015, the government confirmed its plans to extend shared parental leave and pay to working grandparents by 2018. However, to date, no consultation has begun on this subject. Grandparents do however have existing rights to ordinary parental leave albeit in very limited circumstances i.e. where they have formal parental responsibility for a child either by adopting a child or by a residence order; or alternatively making a statutory request for flexible working.

11. Whistleblowers protected when applying for jobs in children's social care sector
- Implementation date: To be confirmed

The Children and Social Work Act 2017 includes a provision that provides protection from discrimination to job applicants who have previously made a protected disclosure when applying for children's social care local authority roles.

12. Increase of state pension age brought forward - Implementation date: Proposed between 2037 and 2039

The Pensions Act 2007, 2011 and 2014 put in place provisions to increase the state pension age. However, in July 2017 the government announced proposals to bring forward the increase in pensionable age to 68 to between 2037 and 2039 instead of between 2044 and 2046. These proposed changes would have to be approved by Parliament before they are agreed.

Addendum

13. Employment Tribunal and Employment Appeal Tribunal fees

Members will no doubt be aware that the Supreme Court ruled in July 2017 that the employment tribunal fee regime is unlawful under both domestic and EU law on the grounds that it prevents access to justice, revoking the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013.

Those who have brought cases since July 2013 will receive refunds of their fees. Those bringing new claims will not be required to pay fees. It is unclear what the government plans to do, if anything, to introduce an alternative system for future Employment Tribunal (ET) cases. A number of options are available, including introducing lower fee levels that are commensurate with other civil claims. In the meantime, it is anticipated that the number of ET claims will rise.

Conclusion

- 14.** The public sector exit cap, repayment and taxation changes are likely to deter the number of volunteers for redundancy and therefore produce a converse rise in compulsory redundancies. Whilst changes to the treatment of PILONs and compensation payments above £30,000 will increase costs to employer NICs on termination of employment.

Increasing onus is being placed on employers as record keepers and employment gate keepers through legislation invoking the monitoring of and validating of employment matters i.e. check off, TOFTUD recording, gender pay gap reporting, migrant appointment validation, extended family orientated leave and GDPR regulations. Although one concession for employers is that the replacement to the childcare voucher scheme will be run online through the digital government gateway, by-passing the employment relationship.

Under the GDPR changes data subjects have the 'right to be forgotten' which may give rise to concerns particularly over HR records being retained for longer periods than their original legitimate purpose if proportionate data retention periods are not adhered to. In the event of an organisation breaching the new rules a fine of up to 4% of global turnover may be imposed.

Lastly, the raising of the state pension age coupled with the earlier removal of the Default Retirement Age (DRA)⁵ means that the workforce is increasingly likely to contain a higher proportion of older workers as many people may need and/or want to continue working. The Corporation has an Inter-Generational Group which consists of a pre-selected range of employees across the organisation including those of different generations, to better understand the diversity of perspective on a range of strategic employment matters.

Background Papers

Developments in Employment Legislation, Establishment Committee, 14 February 2017 (Public).

Carol Simpson
Strategic HR Projects Manager

⁵ The Default Retirement Age (DRA) was finally phased out in October 2011.

T: 020 7332 3482

E: carol.simpson@cityoflondon.gov.uk