

Committee(s)	Dated:
Establishment Committee	23 June 2021
Subject: Developments in Employment Law	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	n/a
Does this proposal require extra revenue and/or capital spending?	n/a
If so, how much?	n/a
What is the source of Funding?	n/a
Has this Funding Source been agreed with the Chamberlain's Department?	n/a
Report of: Chrissie Morgan, Director of Human Resources	For Information
Report author: Carol Simpson, Town Clerk's – Human Resources Jillian Bradbeer, Comptroller & City Solicitor's	

Summary

The purpose of this report is to update Members on developments in employment law and implications for the City of London Corporation in 2021 and beyond where known.

Recommendation(s)

Members are asked to note the report.

Main Report

Update on employment law developments in 2021:

1. Covid-19

- i. The Furlough Scheme. The government has confirmed that the scheme will continue until 30 September 2021. Where the employee is furloughed for 100% of their work time, the employer contributions towards the cost of unworked hours will be 10% in July and 20% in August and September 2021. Employee's wages for hours not worked continues at 80% of their usual salary up to £2,500 per month, funded by the government unless the employer elects to top this up. Note also that flexible furlough continues, whereby employees are allowed to be brought back to work on a part-time basis, as has been the case since July 2020.

- ii. The government launched a consultation on staff having Covid-19 vaccines in care homes with older adult residents on 14 April which ran until 26 May 2021. If implemented, the Health and Social Care Act 2008 (Regulated Activities) Regulations would be amended to require that older adult care home providers could engage only those staff who have received the Covid-19 vaccination (or those with a legitimate medical exemption) in line with government guidance. The Equality and Human Rights Commission (EHRC) has said that it is a “proportionate approach” to requiring Covid-19 jabs for care home staff which could “help ease restrictions and allow them to perform their jobs safely, and residents to live more independently”. This is a hotly debated area and we await the outcome of the consultation to assess the likely implications for the wider social care and front-line workforce.
- iii. The government made interim provisions about the carry-over of any untaken statutory 2020 annual leave (the first 20 days for an employee who works for five days a week) where it has not been reasonably practicable to be taken as a result of the effects of the Coronavirus. Approved statutory annual leave that is carried over may be used in either the 2021 or 2022 annual leave year.
- iv. From 31 May 2021, the provision of the Employment Rights Act 1996 that protects employees from detriment for leaving or refusing to return to work if they believe themselves to be in 'serious and imminent danger' will be extended to 'workers'. The protection will be extended under the Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 and is significant as individuals are increasingly relying on this protection where they are concerned about travelling to or attending work during the Covid-19 pandemic.
- v. Employers are to continue with Covid secure guidance in workplaces and await further government guidance from 14 June 2021 about the further lifting of restrictions. It remains the case that anyone who tests positive for Covid-19, or has been told by NHS Test and Trace that they have been in contact with someone who has, has a legal duty to self-isolate (effective from 28 September 2020) or face a fine ranging from £1,000 - 10,000. They can, however, work from home if the nature of their work allows.

2. Brexit

i. Points Based Immigration System

Following the ending of freedom of movement between the UK and EU, a new points-based immigration system was introduced on 1 January 2021 that applies equally to EU and non-EU citizens. There are several changes to the former points-based system, including:

- Replacement of the Tier 2 General category with a Skilled Worker route (requires a job offer in an eligible skilled occupation from an approved sponsoring employer)
- Abolition of maximum six-year stay for workers in this category
- Gross basic salary must be a minimum of £25,600
- Skill level must be equivalent to A-levels

- Applicants must have an intermediate-level ability to communicate in English.

EU workers already resident in the UK on 1 December 2020 have until 30 June 2021 to apply for settled status enabling them to remain here.

3. Remuneration and taxation

i. Public Sector Exit Payment Cap of £95k

Consultations on the reform of public sector exit payments began in 2015 and culminated in a final consultation in September 2020. The cap was devised out of concern following a number of highly publicised, large public sector pay-out's, particularly where senior people in receipt of such payments went straight into another public sector job.

The Restriction of Public Sector Exit Payments Regulations 2020 which came into force on 4 November 2020 placed a cap on exit payments of £95k. Various legal challenges to the Regulations then ensued which highlighted that the inclusion of pension strain within the cap affected even those on modest earnings, therefore going beyond the original aims of introducing the cap. On 12 February 2021, the regulations were revoked on the grounds that a review had indicated unintended consequences arising from them.

The Treasury has recently issued internal guidance to Civil Service departments setting out criteria to be applied before agreeing a 'special severance payment', defined as payments over £100k. The Local Government Association has advised that it expects the Ministry of Housing, Communities and Local Government to issue similar guidance shortly to local authorities.

ii. New rates of the National Living Wage (NLW) and National Minimum Wage (NMW)

New rates came into force on 1 April 2021, following recommendations made in the autumn by the Low Pay Commission (LPC). The NLW now applies to all workers aged 23 and over. The previous age of eligibility was 25. This will come down again to 21 by 2024. These increases mark the first step on the path to the government's target of an NLW set at two-thirds of median earnings by 2024. The National Living Wage rate for someone aged 23 and over is now £8.91 (up by 2.2% from 2020). The City Corporation is however a London Living Wage employer, the London rate as such is currently £10.50 per hour.

iii. Gender Pay Gap reporting

Due to the pandemic, there was no expectation on employers to report their gender pay gap data last year and the deadline for the return of 31 March 2020 snap-shot data, was extended from 30 March 2021 to 5 October 2021. However, the City Corporation provided its submission within the

original reporting timeframe. Our figures were submitted to this Committee along with an update on our equality action plan (Ref: Equality and Inclusion Update including Gender, Ethnicity and Disability Pay Gaps, 27 January 2021).

iv. Ethnicity Pay Gap reporting

The government ran a consultation exercise on mandatory ethnicity pay reporting from 11 October 2018 to 11 January 2019 and the gov.uk website states that they are continuing to analyse the feedback received. The original expectation was that mandatory annual reporting would begin in April 2020. Notwithstanding that this is a more complex exercise than gender pay reporting in part due to the inconsistencies around the descriptions for recording different ethnic groups, that staff are not obliged to disclose their ethnicity and some staff will be unwilling to disclose it. The City Corporation has voluntarily reported its ethnicity pay gap annually since March 2017.

v. IR-35 taxation

From 6 April 2021, all public sector clients and medium or large-sized clients outside the public sector are responsible for deciding their off-payroll worker's employment status. An audit of all such workers has been conducted with HR support using the HMRC 'Check Employment Status for Tax' (CEST) service, to ensure compliance. Where the off payroll working rules apply, the worker's fees are subject to deduction of Income Tax and National Insurance contributions.

4. Workers' Rights

i. The Employment Bill

In the December 2019 Queen's speech, the government made its proposals to introduce an Employment Bill, which would include changes already anticipated by the 'Good Work Plan' (an independent review of working practices conducted by Matthew Taylor). These changes included: a new right for all workers to request a more predictable contractual working pattern; a new Single Enforcement Body to help workers enforce their rights and support business compliance; extended protection for pregnant employees from the point an employee informs her employer she is pregnant to six months after her return from maternity leave; a week's leave for unpaid carers; making flexible working the default where an employer does not have a good reason not to allow it; and measures to encourage employers to play their part in retaining disabled people. Whilst headway has been made on some initiatives the Employment Bill will not be introduced this parliamentary session; invariably progress has been impacted by Brexit and Covid.

ii. Working from home

In April 2021 the parliamentary Select Committee on COVID-19 published its report 'Beyond Digital: Planning for a Hybrid World'. The recommendations

include a legal right to Internet access and online healthcare. The government will start a public consultation later this year on how to extend flexible working, potentially ensuring that people who have transitioned to a hybrid of home and office working during the pandemic will be able to maintain that pattern.

iii. Extending redundancy protection for women and new parents

An employee at risk of redundancy while on maternity, adoption, or shared parental leave has the right to be offered any suitable alternative vacancy that is available.

The government is proposing to extend this protection to:

- pregnant employees, once they have told their employer of their pregnancy
- employees returning from maternity or adoption leave within the previous six months
- parents returning from shared parental leave (although how the limits on this right will operate is still to be worked out).

The government has said that legislation will be brought forward when Parliamentary time allows.

iv. Neonatal leave and pay

The Good Work Plan contained a commitment to introduce extra statutory leave and pay for all parents of premature babies needing specialist care in a neonatal unit. In March 2020, the government confirmed its intention to introduce 12 weeks' paid leave in addition to existing maternity and paternity pay provisions. The leave is expected to be introduced in 2023, and will be taken after maternity/paternity leave, in blocks of one or more weeks, and paid at the statutory rate for those employees with 26 weeks' service.

5. Conclusion

Clearly the employment law legislative timetable has been grossly affected by both Brexit and Covid. In a post-pandemic world, the legal debate around modern ways of working will evolve. As such City Corporation employment policies, procedures and practice will require revision; in order to be leading from a position of good employment practice.

This report does not contain a full statement of the law and it does not constitute legal advice. Legal advice should be sought, when needed, from the Comptroller and City Solicitor's department.

Background papers

'Equality and Inclusion Update including Gender, Ethnicity and Disability Pay Gaps',
Establishment Committee, 27 January 2021

Carol Simpson
Strategic HR Projects Manager

T: 020 7332 3482

E: carol.simpson@cityoflondon.gov.uk

Jill Bradbeer
Principal Lawyer

T: 020 7332 1669

E: jillian.bradbeer@cityoflondon.gov.uk