

Committee(s): Corporate Services Committee Finance Committee	Dated: 6 September 2023 19 September 2023
Subject: Employee Rights Acts	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1, 2, 3, 5
Does this proposal require extra revenue and/or capital spending?	No
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: Remembrancer	For Information
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Summary

1. During this Parliamentary Session, three Private Member's Bills, which make provision providing some enhancements to employee rights, successfully completed their Parliamentary passage and received Royal Assent. The effect of these Acts on the Corporation, which has been highlighted to Corporation HR colleagues, is outlined below.
2. This Report also provides information on the High Court judgement in the Unison case as regards the quashing of the Regulations allowing the use of agency workers during strike action.

Recommendation(s)

3. Members are asked to note the report.

Main Report

The legislation/case-law and its application to the City Corporation

The Neonatal Care (Leave and Pay) Act 2023

4. This Act originated as a Private Members Bill introduced by Stuart McDonald SNP and received Royal Assent on 24th May 2023. The Act amends or inserts a number of provisions into the Employment Rights Act 1996 and the Social Security Contributions and Benefits Act 1992, providing powers to make regulations to create an entitlement to Neonatal Care Leave and Pay for eligible employees with parental or other personal relationship (these are referred to as parents for the remainder of this summary for brevity) with a child who is receiving, or has received, neonatal care. The Bill's powers allow provision (Regulations) to be made for the following:

- Neonatal Care Leave - a right for employed parents to be absent from work for a prescribed period (to be set at a minimum of one week) in respect of a child who is receiving, or has received, neonatal care. All employees who meet the eligibility conditions will be entitled to this leave, regardless of how long they have worked for their employer. The leave must be taken before the end of a period of at least 68 weeks beginning with the date of the child's birth.
 - Neonatal Care Pay – a right for those eligible parents who meet minimum requirements relating to continuity of employment (at least 26 weeks with their current employer) and earnings to be paid during that leave at a prescribed rate. In line with other entitlements to paid statutory leave, the Bill allows provision to be made for employers to reclaim payments from the Government.
 - Employment protections – parents taking Neonatal Care Leave will have the same employment protections as those associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption, Parental Bereavement and Shared Parental Leave). This includes protection from dismissal or detriment as a result of having taken leave.
5. Whilst the powers in the Act came into force on Royal Assent, the Explanatory Notes state that *“HM Revenue & Customs and commercial payroll providers usually require at least 18 months’ lead-in time to implement the changes which enable employers to administer new statutory payments. If the Bill successfully completes all of its Parliamentary stages in 2023 it is likely that implementation will take place at least 18 months after that date.”*. So these new rights are likely to be in force (i.e. with Regulations made under the Act in place) at some point in 2025.
 6. Officers in the Corporations HR Function were alerted to these measures in July 2023. The measures will mean that the Corporation's HR policies/systems will need revising in due course to reflect the new measures. It is unlikely that they will require any significant level of extra resource given that it would be a relatively small number of employees who would benefit from the new provisions in each financial year (and the ability for employers to reclaim payments from the Government, in similar manner to statutory maternity pay etc).

Employee Relations (Flexible Working) Act 2023

7. This Act originated as a Private Member's Bill that had Government support. The provisions in the Act implement the Government's response to a consultation it held on the flexible working provisions concerned. It received Royal Assent on 20th July 2023.
8. The Act makes amendments to the Employment Rights Act 1996 to:-

- introduce a requirement for employers to consult with an employee before rejecting their flexible working request;
 - allow an employee to make two statutory requests in any 12-month period (rather than the current one request);
 - reduce the decision period within which an employer is required to administer the statutory request from three months to two months; and
 - remove the requirement that the employee must explain in the statutory request what effect the change would have on the employer and how that might be dealt with.
9. The substantive provisions in the Act will be brought into force by Commencement Regulations at a future date: it is therefore not as yet known on what date the substantive changes will be “switched on”. Government communication on the provisions in the Act indicate that the Government is anticipating that the substantive changes will come into force one year after Royal Assent (so July 2024) to give employer’s the chance to prepare for the changes – and presumably for the Government to put in place the necessary Regulations under the Act to fully implement the new provisions. Government ministers in the House of Commons indicated that they will implement the changes so that the right of an employee to request flexible working is available on ‘day one’ of employment (rather than after 26 weeks of employment, which is the current position).
10. Officers in the Corporation’s HR Function are aware of the provisions in this Act and the timelines. The Act means that that the Corporation’s HR policies/systems will need revising in due course to reflect the new measures. It is unlikely that they will require any significant level of extra resource given the nature of the provisions.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

11. This Act originated as a backbench Private Member’s Bill introduced by Labour MP Dan Jarvis. It had Government Support and received Royal Assent on 24th May 2023. The Act makes amendments to the Employment Rights Act 1996 to:-
- provide a new power to enable provision to be made by Regulations about protection from redundancy during and after pregnancy;
 - amend existing powers to make Regulations to enable protection from redundancy on return to work from maternity, adoption or shared parental leave.
12. Currently, women on maternity leave and employees on adoption leave or shared parental leave have priority over other employees who are also at risk of redundancy. This means that where a redundancy situation arises during a woman’s maternity leave (or during an employee’s shared parental leave or adoption leave), they have the right to be offered a suitable alternative vacancy where there is one available.
13. The 2023 Act empowers the Secretary of State through regulations to extend the period over which redundancy protection is available. It is widely expected

that the regulations will extend the protection currently only available during maternity leave, so that it begins from when an individual tells their employer they are pregnant and ends 18 months after the birth. Equivalent protections are also expected to be extended to parents returning from adoption leave and shared parental leave (but not paternity leave). During the parliamentary debates on the Bill, Kevin Hollinrake, Parliamentary Under Secretary of State at the Department for Business and Trade, said that the Government is working with the Pregnancy and Maternity Discrimination Advisory Board in advance of settlement on the precise details of the Regulations. The debates also indicate that consideration is being given to a qualifying period, whereby a new parent must take six consecutive weeks of family leave to be entitled to the redundancy protections. Significantly, the protection may also apply post miscarriage since the new Act gives power to the Secretary of State to start calculating the period of protection from the end of pregnancy.

14. The effect of these provisions is that those returning from family leave are to be given first refusal to alternative employment opportunities for a longer period of time. The government believes that this will help shield new parents and expectant mothers from workplace discrimination, offering them greater job security at an important time in their lives.
15. The Act comes into force on 24th July 2023 (two months after Royal Assent) but extended protections under these enabling powers will not be in place until the Government makes the Regulations under the powers. Whilst it is as yet unknown when the new Regulations will be in place, it is envisaged that this would be within the next 12 months and this Office will monitor for and flag to the Corporation's HR function any Regulations brought forward under the new powers. The Act means that that the Corporation's HR policies will need revising in due course to reflect the new measures. It is unlikely that they will require any significant level of extra resource given the nature of the rights concerned.

Unison case

16. For more than 40 years, it was illegal in the UK to supply agency workers for employers to use to cover the jobs of staff on strike. In the Summer of 2022, the Government brought in new Regulations changing this position. In July 2023, the High Court upheld the claims of UNISON and other unions that the government acted unfairly, unlawfully and irrationally. The effect of the judgment was to quash the new Regulations: it is possible that the Government might bring forward further legislation in the future but in order to do so, the Judgement means there would have to be a rigorous consultation process. The effect of the judgement is that employers will not be able to use agency staff to fill in for striking workers during industrial action. Officers in the Corporation's HR Function are aware of the judgement and the need to take it into account in any planning around future strike action.

Conclusion

17. The Committee is asked to note the effect of these three Acts and the implications for the Corporation's HR function, as well as the judgment in the UNISON case.

Appendices

18. None.

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