

Insight: Employment

January 2013

UK Employment Reforms in 2013

The UK's Department for Business, Innovation and Skills has issued the 'Fifth Statement of New Regulations' (the "**Statement**"), which provides details of regulatory reforms and implementation dates for 2013.

Whilst the Statement covers regulatory reforms from those governing wild animals in travelling circuses to the deregulation of the Code of Practice for Ice-Cream Van Chimes, a raft of changes relevant to employers will take place in March and April 2013.

March 2013 changes

- An **increase in the number of weeks of parental leave** from 13 to 18 weeks per parent per child and an extension of the right to request flexible leave to employed agency workers on return from parental leave (Revised Parental Leave Directive (2010/18/EU)).
- Removal of liability on employers for **harassment** of their employees **by third parties** such as customers (*Equality Act 2010*: section 40 (2)-(4)).
- Removal of the obligation on an employer to respond to requests "from persons that have a potential harassment case" (*Equality Act 2010*: section 138). It is assumed that this is a reference to the planned **abolition of discrimination questionnaires** as proposed under clause 58 of the *Enterprise and Regulatory Reform Bill 2012-2013*.

April 2013 changes

- Reduction from 90 to 45 days **consultation where 100 or more employees are to be made redundant** (Sections 188-198 of the *Trade Union and Labour Relations (Consolidation) Act 1992*).
- Revision of **Employment Tribunal rules and procedure** to encourage effective management, flexibility and proportionality in Employment Tribunals following proposals from Lord Justice Underhill. The UK government is yet to publish its response to the consultation on the proposed new rules; it is therefore not yet known which of Lord Justice Underhill's proposals will be adopted.
- Amendments to the *Employment Rights Act 1996* relating to the **protection of whistleblowers** such that disclosures are only protected if they can reasonably be said to be 'in the public interest'. A worker will be unable to bring a whistleblowing case relating to a breach of their own contract that is not in the public interest.



Stephen Ravenscroft

Partner

+ 44 20 7532 2118

sravenscroft@whitecase.com

Johanna Johnson

Associate

+ 44 20 7532 2173

jjohnson@whitecase.com

White & Case LLP
5 Old Broad Street
London EC2N 1DW

Tel: + 44 20 7532 1000

Fax: + 44 20 7532 1001

- Simplification of company law provisions on the **buy back of shares**, including for the purposes of employees' share schemes. This simplification is related to the UK government's proposal to introduce a new type of employee ownership arrangement, under which employees would give up some of their employment rights in exchange for shares in their employer. Complicated rules on companies buying back shares from employees were identified as a barrier to greater employee ownership.
- Alleviation of administrative burdens in cases of **bulk transfer of pension scheme membership** without member consent from contracted-out schemes to formerly contracted-out schemes, and amendments to ensure bulk transfer of accrued rights can be made without member consent to non-UK pension schemes within the European Economic Area (*Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2013*).
- Removal of the employers' strict liability for **injuries to employees** in the workplace (*Enterprise and Regulatory Reform (ERR) Bill – Strict Liability Amendments*).

Spring 2013 changes

- Creation of a **portable Criminal Records Bureau check** which employers can view instantly online.

More generally, the UK government intends to introduce "One-in, Two-Out" in January 2013, requiring government agencies to find deregulatory measures of at least twice the value of the expected costs of any proposed regulation. This is a step-up from the existing "One-in, One-Out" rule which has been in force since April 2011. Where the Department for Business, Innovation and Skills and the Department for Work & Pensions/Health & Safety together made up over 90% of the cumulative deregulation savings for January 2011 to December 2012, this general change suggests that an increase in deregulation of employment legislation is on the cards. Noting the primarily employer-friendly reforms to date, this is likely to be good news for employers.

Increase in limits on UK tribunal awards

In addition to the reforms identified in the Statement, from **1 February 2013** the following limits on tribunal awards will increase:

- Maximum compensatory award for unfair dismissal will increase from £72,300 to £74,200;
- Maximum limit on a week's pay will increase from £430 to £450; and
- Minimum basic award for certain unfair dismissals (dismissals for reasons of trade union membership or activities, health and safety duties, pension scheme trustee duties or acting as an employee representative) will increase from £5,300 to £5,500.

Introduction of fees for tribunal claims in the UK

It is expected that the UK government will introduce fees for employment tribunal claims in the **summer of 2013**. The UK government has indicated that it will proceed with its proposal to implement a two-stage fee structure, under which the claimant would pay an issue fee when they presented their claim, then a hearing fee before the claim reaches a tribunal hearing.

The amount of the fees is expected to vary according to the type of claim and whether it is an individual claim or a claim brought by multiple claimants.

The UK government has stated that the policy rationale behind the introduction of fees is to transfer part of the cost burden of the tribunal system from taxpayers to users. No doubt the introduction of fees will be welcomed by employers as a potential deterrent to vexatious and/or "weak" claims.