



myerson

## Employment Newsletter Spring 2019

---

In this edition of our newsletter we will highlight all the important changes in employment law that, as an employee or employer, you should be aware of.

This includes:

- CEO Pay Gap
- Employee Engagement Scheme
- Gender Pay Gap reporting
- Itemised Pay Statements
- Payslips for workers
- Increase penalties for breaches of employment law
- Key Cases in 2019
- Key Consultations
- Other Potential Developments

[www.myerson.co.uk](http://www.myerson.co.uk)  
0161 941 4000

# EMPLOYMENT LAW UPDATE

## 2019

## The important changes in Employment Law to be aware of in 2019

### Key Dates

#### **1st January 2019:**

##### **CEO Pay Gap**

It is now a mandatory requirement that companies with over 250 staff are required to issue a report providing a ratio of CEO pay and average staff pay. This is intended to pressurise reductions in CEO packages and help raise the average salary of those large companies.

##### **Employee Engagement**

The Code requires listed companies from 1st January 2019 (or the beginning of their financial year if later), to adopt an employee engagement scheme. This can be achieved by appointing a director from the workplace to manage engagement, by creating a workforce advisory panel or by designating a non-executive director to oversee employee engagement. The intention of the scheme is to provide lower level employees with the opportunity to have more involvement in larger businesses where it is often limited.

#### **On/Before 4th April 2019:**

##### **Gender Pay Gap Reporting**

Private sector organisations with more than 250 employees must publish their second Gender Pay Gap reports with a snapshot date of 5 April 2018 for the calculations. This obligation also applies to companies who had 250 staff for the first time on 5th April 2018 but did not have to report last year.

#### **6th April 2019:**

##### **Itemised Pay Statements**

Companies, for the first time, will be required to provide detailed payslips outlining the number of hours worked for those staff who are paid hourly.

##### **Payslips for workers**

Companies will also be required, for the first time, to provide itemised payslips to workers as well as employees. This will have a big impact on those employers who have large numbers of workers as, if they do not currently issue payslips, there will be a notable additional administrative burden from April onwards.

## Increased penalties for breaches of employment law

Currently in draft, the Regulations propose an increase to the current penalty for aggravated breaches of employment law in the Employment Tribunal from £5,000 to £20,000. An aggravated breach of employment law is one in which the worker's rights have been breached deliberately or repeatedly. We currently await the government's decision as to whether the regulations are passed ahead of 6th April 2019.

## Key Cases

There are several important cases going through the courts in 2019, involving topics such as: restrictive covenants, employment status and discrimination.

### *Restrictive Covenants - Egon Zehnder Ltd v Tillman*

This leading case was heard in the Supreme Court in January 2019 and centres around restrictive covenants and their enforcement. Amongst other points, the Court of Appeal looked at the term in a non-compete covenant stopping a former employee from being "interested in" another business. This term is often used in contracts, but the Court of Appeal found it could include holding one share in a publicly quoted company and was therefore too wide and therefore unenforceable. Egon Zehnder have appealed this decision. This case is the first Supreme Court hearing to consider the construction of employment restrictive covenants in over a century and its decision will provide crucial insight and guidance for employers when drafting new covenants and their reliance upon current covenants in the event of termination.

### *Worker status - Uber BV and others v Aslam*

This case is to be heard in the Supreme Court this year. The Court of Appeal decided that Uber staff are workers and therefore are entitled to basic employment entitlements such as holiday pay and pension auto-enrolment. Though Uber were unsuccessful, they were granted the right to appeal the decision to the Supreme Court. This case continues to provide leading principles for the gig economy, employment status and the ever widening trend of employment rights

### *Perceived disability - Chief Constable of Norfolk v Coffey*

This case is due to be heard in the Court of Appeal between 19-20th February 2019. Previously, the Employment Appeal Tribunal (EAT) found that Mrs Coffey had been directly discriminated against based on a perceived disability regarding her hearing. Whilst a well understood principle, this was the first case that directly addressed the issue of

perceived disability discrimination under the Equality Act 2010. The Employer in this case has appealed the EAT's decision. The case, unless overturned, acts as a practical reminder that it matters not whether the employee has a disability, if they are perceived to have a disability and are treated unfairly, they will have a valid discrimination claim.

### *Agency worker rights - Kocur v Angard Staffing*

This case will be heard in the Court of Appeal in April 2019. The EAT found that agency worker entitlements cannot be considered as a package and an employer must offer at least the same entitlements to agency workers as permanent staff after 12 weeks, such as annual leave and paid rest breaks. The fact that an agency worker has a higher hourly rate of pay, does not allow an employer to offset this against other entitlements. This decision has divided opinion and the Court of Appeal's decision will be very important to employers who use agency staff.

### *Is veganism protected? - Casamitjana v League against Cruel Sports*

This case is to be heard in the Employment Tribunal in March 2019. It will consider whether 'ethical veganism' amounts to a philosophical belief which, therefore, is protected under discrimination laws. Ethical veganism is becoming a more common position in the UK and if it is to be considered protected, employers may have to review their current practices and employee attitudes to avoid claims of discrimination.

## Key Consultations

### *Sexual Harassment in the Workplace*

The Women and Equalities Select Committee compiled a report regarding sexual harassment in the workplace last year. On 18th December 2018, the Government announced 12 broad action points in response. The most notable of the 12 action points is the request to the Equality and Human Rights Committee (EHRC) to create a Statutory Code of Practice. When implemented, employers will be obliged to follow the Code and will face legal action if it does not.

### *Employment Tribunal Reform*

In September 2018, the Law Commission launched a 53-question consultation on employment tribunal reform.

Questions such as whether the three-month time limit for bringing a claim ought to be extended, and whether the £25,000 breach of contract cap should be lifted, were raised for consideration. The consultation period concluded in

January 2019 and we await the Commission's findings. The changes, if implemented, could have considerable effect on Employment Tribunal claims.

## ***Non-Disclosure Agreements and Employment Law***

Borne out of both the #metoo campaign and the revelations surrounding Sir Philip Green and Topshop, the Women and Equalities Committee has launched an inquiry into Non-Disclosure Agreements and their use in harassment and discrimination cases. The Committee has raised questions regarding the ethical nature of their use and whether they ought to be banned or restricted in such cases. The deadline for written submissions was 28th November 2018 and the Committee has since continued its inquiry by exploring the issues with employer groups. Upon completion of its inquiry, it is likely it will be presented to the Government and we anticipate changes in the future in this area.

## **Other Potential Developments**

**Other changes we may see in 2019 include:**

### ***New EU Directive on Whistleblowing***

The EU has proposed a new Directive that will give protection to whistle-blowers reporting breaches of EU Law. It remains to be seen in what capacity, if any, the UK will be bound by the Directive if implemented, following Brexit. However, given a considerable amount of UK employment law derives from EU law, employers should continue to watch EU developments and, importantly, comply with their obligations to staff who report any failings and as a result, receive whistle-blower protection.

### ***Tips and service charges***

In October 2018, the Government introduced plans to stop employers taking tips and service charges intended for employees. Whilst the plans were announced, we do not yet have a date for implementation. That being said, it would be good practice at this stage, if tips and service charges are withheld for any reason, to introduce new systems.

### ***Grandparental Leave***

The Government has stated its intentions to extend the current shared parental leave and pay entitlement to grandparents. It was the Government's intention to introduce this extension in 2018 although this has not come to fruition as yet. This would naturally have large implications if introduced, giving grandparents the right to request leave and pay.

## ***Tribunal Fees***

Following the decision of R (on the application of Unison) v Lord Chancellor, following which Employment Tribunal fees were abolished, the Ministry of Justice and the House of Commons Justice Committee have been considering a method to reintroduce Employment Tribunal fees in some capacity. It is understood the Government wishes to find a balance between safeguarding access to justice and increasing necessary tribunal funding. There do not appear to be immediate plans to issue a new fee regime, but some sort of new fee system is likely to be introduced sooner rather than later, given the vast increase in tribunal claims since the abolishment of fees.

## ***Pay changes***

In April 2019, we will see the following increases:

<i>Maternity/Paternity/Shared Parental/Adoption Pay</i>	<i>£148.68 per week</i>
<i>SSP</i>	<i>£94.25 per week</i>
<i>National Living wage</i>	<i>£8.21 per hour</i>
<i>21-24 years old NMW</i>	<i>£7.70 per hour</i>
<i>18-20 years old NMW</i>	<i>£6.15 per hour</i>
<i>16-17 years old NMW</i>	<i>£4.35 per hour</i>
<i>Apprentice rate</i>	<i>£4.35 per hour</i>

## ***Employment Law Seminar***

For a more in depth look at these and other key employment law issues of the day, please join us at our next Employment Seminar on 15th May 2019. If you are interested in attending this event, please contact **Jonathan Christmas** by emailing [events@myerson.co.uk](mailto:events@myerson.co.uk).

## ***And finally...***

We are delighted to announce our new [MyersonHR](#) retainer service. If you are looking for practical and helpful HR and employment law support, for a fixed annual fee, please contact **Joanne Evans** on 0161 941 4000 or email [joanne.evans@myerson.co.uk](mailto:joanne.evans@myerson.co.uk) for more information.

