Advisory Bulletin

Employment Law Update
January 2020: No. 676

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Welcome

A belated Happy New Year to all our readers in what is (at the time of writing) the last Advisory Bulletin written while we are a full member of the European Union and subject to all its laws and the judgments of the European Court of Justice. From 11.00pm on 31st January 2020 the UK leaves and we enter the transition period from the old membership status to a new relationship with the EU. During this time most legal questions will remain pretty much the same. The transition period is scheduled to last until 31 December 2020 although there is potential for this to be extended. We do not yet know what the eventual new relationship will ultimately be and what impact it will have on UK employment law and related workforce issues. We will of course follow "Brexit stage 2" and the Government's own legislative programme and inform readers of relevant developments as they arise.

Returning to the here and now we include two case reports with different European dimensions. The first*, Q v Secretary of State for Justice*, is a UK unfair dismissal case that invoked considerations of the European Convention on Human Rights, which of course is entirely separate from European Union law. The Government has given no indication that it wishes to withdraw from its obligations under this convention (agreed after World War II) although it has indicated an intention to review the way in which the rights are enforced in the UK via the Human Rights Act 1998. In this particular case, involving a probation service employee, the EAT judged that the employer had not breached the employee's right to a private life under Article 8 when it took safeguarding issues concerning her own child into account in relation to her role.

The second case report, covered very briefly, is a European Court of Justice case which had been referred by the Finnish Labour Court. It confirms the position that ECJ judgments about carry over of holiday entitlement apply to the EU Working Time Directive, i.e. four weeks/20 days and not additional leave provided by domestic legislation or collective agreements which will be governed by their own rules (for example the additional 1.6 weeks/8 days provided in the Working Time Regulations 1998).

In this Bulletin we also include news on the new rights to parental bereavement leave and pay, changes to employer obligations in respect of providing written statements of particulars, the extension of the reference period for calculating holiday pay where earnings vary and the removal of the Swedish derogation affecting the ability of agency workers to claim comparable pay with employees of the host organisation.

There is also the new National Minimum Wage rates to apply from April 2020, EHRC guidance on sexual and other forms of harassment and information on new obligations on public sector and large and medium private sector employers in respect of the administration of IR35 tax rules.

Finally this is your last opportunity to book a place at the next LGA Employment Law Update (taking place at Smith Square on 13 February) and for reference the Employment Law Timetable.

Further information

Receiving the bulletin	The Advisory Bulletin is available to local authorities by registering on our website at www.local.gov.uk and selecting the 'Employment Law Update' from the list of email updates available at http://www.local.gov.uk/about/news/e-bulletins. For other organisations the Advisory Bulletin is available through subscription. If you have any queries about the bulletin please e-mail eru@local.gov.uk.
The employment law advisers	Philip Bundy, Samantha Lawrence and Kelvin Scorer will be pleased to answer questions arising from this bulletin. Please contact us on 020 7664 3000 or by e-mail on eru@local.gov.uk
Address	The Workforce Team, Local Government Association, 18 Smith Square, London SW1P 3HZ
Website	https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations
Obtaining legislation and other official publications	Copies of legislation can be found at www.legislation.gov.uk

Key data

SMP, SPP, ShPP and SAP basic rates	£148.68 or 90 per cent of normal weekly earnings if lower from 7 April 2019
SSP	£94.25 from 6 April 2019
'A week's pay'	£525 – statutory limit for calculating a week's pay from 6 April 2019
	£547 in Northern Ireland from 6 April 2019

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UNFAIR DISMISSAL: HUMAN RIGHTS CONSIDERATIONS

In **Q v Secretary of State for Justice** UKEAT/0120/19 the EAT upheld a finding that a probation officer had been fairly dismissed for failing to keep her employer informed of child protection matters involving her own daughter and the dismissal was not a disproportionate interference with the officer's right to a private life under Article 8 of the European Convention on Human Rights.

The facts

Q was employed by the Secretary of State for Justice (the employer) as a Probation Service Officer (PSO). In 2014 there was an incident at Q's home involving Q, her partner and her teenage daughter. It was alleged, which Q denied, that she had been violent towards her daughter. After Social Services involvement the daughter was placed on the Child Protection Register (the Register).

Social Services told Q that she should tell her employer about the matter, because of the safe-guarding implications of her job. Q failed to do so, and so Social Services raised the matter with Q's employer. This then led to a disciplinary process in which she was found guilty of gross misconduct for failing to inform her employer of the matter. However, instead of being dismissed she was given a final written warning and demoted to the role of Case Administrator.

In February 2015 Q then told the Head of her department (Mr H) that her daughter was no longer on the register. However there was then a further altercation between Q and her daughter resulting in a further allegation against Q, involving the police and social services. Q emailed Mr H about it and he asked her to keep her line manager, Mr S, informed of events. There were then further exchanges between Q and Mr H in the course of which she mentioned her daughter was on the at risk register. Following an investigation and disciplinary process Q was then dismissed for failing to report the matter fully and promptly, in circumstances where following the previous incident and warning she should have been aware she was required to do so.

Q brought an unfair dismissal claim.

The employment tribunal

The employment tribunal dismissed the claim, finding that dismissal was in the band of reasonable responses in all the circumstances. Q was already

subject to a final written warning for almost identical circumstances, and as a result she was aware of the obligation to her employer to inform it of any further issues between her and a family member, involving Social Services.

In the course of its decision the tribunal considered whether Q's Article 8 rights under the European Convention on Human Rights (the Convention)/Human Rights Act 1998 were engaged. Article 8 sets out an individual's right to a private family life and provides that there should not be any disproportionate interference with that right. The tribunal found those rights were engaged in that Q's home life and very personal issues surrounding domestic violence and her child's welfare were considered by her employer when dismissing her. Those issues were not in the public domain. However when considering whether Q's dismissal was still within the range of reasonable responses, the tribunal concluded the employer's interference with that Article 8 right had been proportionate. The probation service is an integral part of the criminal justice system and therefore its employees can be held to account for relevant matters in their private life. Further, the probation service is required to work as a statutory partner with social services and to ensure its staff behave in a commensurate way in terms of safeguarding children and vulnerable adults. Information about Q's private life was capable of bringing her employer into disrepute and therefore the employer was justified in considering those private matters when considering dismissal.

Q appealed, the main part of her appeal concerning the tribunal's Article 8 finding.

The EAT

The EAT rejected the appeal.

Q argued that the tribunal had erred in finding that the employer's actions in respect of her Article 8 rights were proportionate, when consideration was given to the intensely private and sensitive nature of the subject matter. Further the tribunal found that those matters were not in the public domain and so Q questioned whether the matter could adversely affect the employer's reputation.

In dealing with the appeal, the EAT reviewed the relevant case law, including the case of *Hill v*

Governing Body of Great Tey Primary School [2013] ICR 691. In that case it had been correctly identified that where a claim is against a public body an additional legal consequence applies – in addition to a tribunal having a duty to weigh the impact of a dismissal against an individual's Convention rights, a public body also itself has that same duty when taking its decision. However, the EAT was doubtful whether that additional duty on a public body in its role as employer had any real practical impact in an unfair dismissal claim, as it is always the tribunal's view on whether the dismissal is fair or unfair in relation to Convention rights which is determinative. That will be the case regardless of whether the employer had its own duty to consider Convention rights, applied its mind to them, and whatever conclusion it came to.

The EAT then found that the tribunal had correctly applied its mind to the question of whether Q's Convention rights were engaged.

Turning then to justifying the interference with those rights and whether it was proportionate, the tribunal had found that the employer's purpose in imposing the requirement on Q to tell it about the events in her private life was to protect the effective functioning of its probation services. This was necessary to protect its reputation and relations with local authorities, having regard to its statutory partnership with social services and issues to do with safeguarding. The employer was entitled to conclude that the matters in this case could damage its reputation and relationship with statutory partners, even if the public at large did not learn of them. Accordingly the tribunal had correctly found that the decision to dismiss was not a disproportionate infringement of Q's Article 8 rights and so the EAT dismissed the appeal.

Comments

This case provides some reassurance for local authorities and other employers whose work involves safeguarding issues which impacts on what is expected from their employees. As this case demonstrates, even though an employee's right to a private life may be triggered when considering disciplinary issues, interference with that right will in many cases be justified once safeguarding and reputational issues are taken into account.

CASE IN BRIEF: WORKING TIME ANNUAL LEAVE

In **Terveys-ja sosiaalialan neuvottelujärjestö (TSN) ry v Hyvinvointialan liitto ry** and **Auto-ja Kuljetusalan Työntekijäliitto AKT ry v Satamaoperaattorit ry** ([2019] EUECJ C-609/17), the European Court of Justice (ECJ) held that where national legislation or a collective agreement makes provision for a greater leave entitlement than the four weeks provided by the Working Time Directive it is for member states to determine the conditions for granting and extinguishing those additional days. There is no requirement to comply with the protective rules which the ECJ has laid down in respect of the four week minimum period.

Comments

This decision confirms that the ECJ case law only applies to the four weeks' leave provided by the Working Time Directive and does not apply to the additional 1.6 weeks' leave provided by Regulation 13A of the Working Time Regulations 1998. Therefore, a worker's rights in relation to those additional 1.6 weeks' leave under the Working Time Regulations are as set out in those Regulations. This means, for example, that an employer can limit the amount of carryover of leave to 20 days, rather than 28 days, if an employee has not been able to take any leave in the leave year due to sickness absence.

PARENTAL BEREAVEMENT LEAVE AND PAY

The Government has published the draft regulations which will introduce the right to parental bereavement leave and statutory parental bereavement pay, in circumstances where a child dies on or after 6 April 2020. The regulations are complex, but in effect provide for the right broadly in line with what was expected, following the Government's response to the consultation on this right (see Advisory Bulletin 665). The key aspects of the right are set out below.

The Parental Bereavement Leave Regulations 2020, set out the right to leave, and the Statutory Parental Bereavement Pay (General) Regulations 2020 the right to pay.

Who is covered?

There is no qualifying period of employment for the right to leave. However, for the right to statutory parental bereavement pay to apply the employee must have at least 26 weeks' continuous service with their employer and weekly average earnings over the lower earnings limit (£118 per week for 2019 to 2020). In both cases it applies to:

- a child's legal parents, so both natural and adoptive parents,
- a parent's partner, in an enduring family relationship; and
- others with a caring relationship to the child, such as a 'parent in fact', who are defined as a person who for a continuous period of at least four weeks before the child's death has lived with the child in the person's home, and had day to day responsibility for the child's care (provided they are not paid for that role, foster payments excepted).

How long is the leave and when can it be taken?

Up to two weeks' paid leave can be taken, either as one block or in two one week blocks. It may be taken at any time within 56 weeks of the child's death.

What are the notice requirements for taking leave?

If the leave is to start within 56 days of the child's death, notice must be given to the employer before the day the leave is to start, or where that is not possible as soon as is reasonably practicable. If the leave is to start after that 56-day period, at least one week's notice must be given.

When giving notice the employee must specify:

- the date of the child's death,
- the date on which the employee intends the leave to start, and
- whether the period of absence is for one week or two weeks.

The Regulations do not provide that the notice has to be in writing, so it is assumed that oral notice could satisfy the requirements. See below for the more stringent and different notice requirements concerning pay.

What are the notice requirements for pay?

In order to receive parental bereavement leave pay, notice must be given to the employer in writing within 28 days of the start of the week's (or weeks') leave or, if that is not reasonable practicable, as soon as is reasonably practicable. That notice must include the parent's name and the date of the child's death. Further, on the first occasion leave is taken, the parent must also provide a written declaration that they meet one of the qualifying conditions in terms of their relationship with the child. If notice is given before the start of the leave, it is possible to withdraw that notice.

How much is the pay?	The rate of statutory parental bereavement pay is the smaller of: • £151.20 per week or • 90% of the employee's normal weekly earnings. The employer can set off the statutory pay against any contractual pay paid for the leave period.
What protections are there for employees exercising the right?	The legislation contains protections against detrimental treatment and dismissal for those exercising the right to leave and pay. It also contains 'right to return' provisions after the leave has ended.
What is the interaction with existing contractual rights to bereavement leave	Where an employee has a contractual right to bereavement leave they cannot exercise the statutory right and their contractual right separately. Instead in taking the leave for which the two rights provide, they may take advantage of whichever right is, in any particular respect, more favourable.
LGA comments	Many local authorities will already allow bereaved parents to take a period of paid leave and therefore this right is not expected to have any substantive impact on the current situation. However, the fact that the statutory pay can be offset by the employer against contractual pay may mean that authorities will, where reasonable, seek to ensure that employees exercise their right to the statutory leave and pay.
KEY EMPLOYMENT LAW CHANGES – 6 APRIL 2020	As reported in previous advisory bulletins (for details see the Employment Law Timetable at the end of this Bulletin), there are a number of employment law changes coming into force on 6 April 2020 which are set out below. However, there is no news on the proposed extension, from one to four weeks, of the period of time which breaks continuous service.
Written statement changes	Changes to the requirements relating to written statements of particulars of employment contained in the Employment Rights Act 1996 (ERA) will come into force on 6 Aril 2020. This note sets out details of the changes that those dealing with written statements should be aware of.

Workers entitled to receive statement

From 6 April 2020, employers will have to provide statements of particulars to workers, as well as employees. Employers will already be familiar with the concept of worker, which is defined in section 230 ERA as:

"an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual".

This means that anyone, other than a person who is genuinely self-employed and running their own business/professional service, will be entitled to a statement. It is worth noting that the ERA definition of worker is the same definition as that in the Working Time Regulations 1998. Therefore those workers that the organisation has determined are entitled to statutory leave will now also be entitled to a written statement.

Day one right

From 6 April 2020, employers will have to provide a statement to a worker no later than the beginning of employment. The particulars must also be included in a single document. However, there are some exceptions.

In relation to:

- a sickness scheme,
- any 'other' paid leave, (ie other than holiday)
- pension issues, and
- training entitlements

reference can be made to another document that is readily accessible to the employee.

In relation to notice periods, reference can be made to legislation or to a collective agreement that is readily accessible to the employee.

Furthermore, information can be given in instalments and within two months of the start of employment in relation to:

- pensions
- collective agreements directly affecting terms and conditions of employment
- training entitlement
- disciplinary and grievance procedures

This information must be given even if the worker leaves before this.

Continuous employment

The requirement to provide the date of continuous service on the statement only applies to employees. However, the employer must include the date employment began for both employees and workers.

Hours of work

The statement must include any terms and conditions relating to hours of work, including any terms and conditions relating to:

- normal working hours,
- the days of the week the worker is required to work, and
- whether or not such hours or days may be variable, and if they may be, how they vary or how that variation is to be determined.

The latter two bullet points are new requirements. Therefore, in addition to the information currently provided about normal working hours, from 6 April 2020 the employer will need to specify the days the employee is required to work and details (as above) about variable working hours.

Training

Details must also be given of:

- any training entitlement provided by the employer,
- any part of that training entitlement which the employer requires the worker to complete, and
- any other training which the employer requires the worker to complete and which the employer will not bear the cost of.

In relation to training entitlement, as set out above, it is acceptable to refer the employee to some other document that is readily accessible to the worker and information can be given in instalments and must be provided not later than two months after the beginning of employment. Therefore, full details of the training entitlement can be set out elsewhere. However, the information referred to in the latter two bullet points must be contained in the statement itself. Therefore, for example, in the statement, the employer could refer the employee to training information contained on its website, if this is readily accessible to the worker. However, the statement should specify which, if any, of the programmes are mandatory and also specify any other training they will be required to do that the employer will not pay for.

Other new information requirements

There are also new requirements to include information on any other paid leave (other than holidays and sick leave) and any other benefits provided by the employer. Details must also be provided of any probationary period, including any conditions and the duration of that probationary period.

Extension of reference period for calculating holiday pay

From 6 April 2020, in circumstances where a worker's pay varies from week to week, the current reference period of 12 weeks for calculating holiday pay under the Working Time Regulations 1998 will be increased to 52 weeks, or, the number of weeks for which the employee has been employed if this is fewer than 52 weeks. As is currently the case, weeks in respect of which no remuneration was payable by the employer to the worker are excluded and earlier weeks are brought in instead. However, the length of time for which an employer must go back to find weeks where pay was received is limited to 104 weeks.

Where there are no weeks to take into account (e.g. a new employment), an assessment has to be made of the amount that fairly represents a week's pay taking into account such things as the amount offered to the employee as remuneration in respect of the employment or the amount received by other workers engaged in comparable employment.

Removal of the Swedish Derogation

The 'Swedish Derogation' in the Agency Workers Regulations 2010, which has prevented certain agency workers from gaining rights to pay equivalent to comparable workers employed directly by the hirer, if they are paid a minimum rate between assignments with the hirer, will be removed from 6 April 2020. Organisations should ensure that the employment businesses/agencies which they use are complying with this change.

NATIONAL MINIMUM WAGE INCREASES

The Government announced on 31 December 2019 the new rates for the National Minimum Wage including the National Living Wage rate that will apply from 1 April 2020.

The National Living Wage rate (for over 25 year olds) will increase 6.2% from £8.21 to £8.72.

The National Minimum Wage rate will rise across all other age groups, as follows:

- A 6.5% increase from £7.70 to £8.20 for 21-24 year olds
- A 4.9% increase from £6.15 to £6.45 for 18-20 year olds
- A 4.6% increase from £4.35 to £4.55 for Under 18s
- A 6.4% increase from £3.90 to £4.15 for Apprentices.

EHRC GUIDANCE ON SEXUAL HARASMENT AND OTHER FORMS OF HARASSMENT

The Equality and Human Rights Commission has published comprehensive technical guidance on sexual harassment and harassment at work. The guide is designed to help employers and workers understand the extent and impact of harassment, the law in relation to harassment and best practice for effective prevention and response. The guidance is also intended to give tribunals and courts clear guidance on the application of the law and best practice. Therefore while there is no obligation on employers to follow it at this stage, a tribunal could choose to refer to it in determining whether an employer is liable for harassment. It is expected that a statutory code of practice will be produced in the near future, which tribunals will have to consider.

The guidance covers and includes many practical examples concerning not only sexual harassment, but harassment of LGBT people, and harassment related to race, religion or belief, age and disability. It

also covers victimisation issues.

Measures to prevent harassment

In terms of preventing harassment, the guidance sets out the following points:

- Employers should put in place effective policies and procedures, which should be evaluated throughout their use and made available through, for example, external facing websites, so people can access them at all times, even when they are not at work. Amongst other factors those policies should confirm which employees/workers they cover, what amounts to harassment, address third party harassment and set out an effective procedure for receiving and responding to claims of harassment.

- Policies should not over emphasise the extent of malicious complaints and it should be made clear that workers will not be subjected to disciplinary action simply because their complaint is not upheld.

- Employers should proactively seek to be aware of what is happening in the workplace. Sickness absences, changes in behaviour and performance or comments in exit interviews may be warning signs that harassment is taking place.

- Workers should be provided with training, so they know what harassment and victimisation is, and how complaints will be handled.

- Employers should promote a culture of transparency, where workers feel able to speak up without fear of being victimised. Related to that employers must only use non-disclosure agreements ('gagging clauses') where lawful (see Advisory Bulletin 672).

- Where agency workers are used, the agency and hirer should clearly set out responsibilities for how any harassment complaints will be handled. Often it will be most appropriate for the hirer to investigate complaints, but where it concerns a complaint by an agency worker made against an agency worker supplied by the same agency, it may be more appropriate

for the agency to investigate it.

- Employers should consider what action they can take to protect staff in instances of power imbalances, for example between senior and junior workers, and where a worker with a particular protected characteristic is in a minority in the workplace.

Turning then to steps employers should take when responding to harassment taking place, the guidance highlights the following:

- Procedures should set out reporting channels and processes for formal resolution, but also explain how workers can raise and seek to resolve issues informally (where they feel that may be appropriate), for example with the help of a third party such as a trade union representative.

- Employers should ensure complaints are kept confidential by making sure (for example) that any witnesses who are spoken to are told the matter is confidential.

- If a worker raises a complaint but asks that no action is taken an employer should still consider whether taking steps to resolve the matter could be appropriate, for example, by providing the worker with support to address the matter informally. Ultimately though the employer might need to take action because the risk of not doing so outweighs the complainant's request. Similarly if the harassment amounts to a criminal offence the employer may need to report the incident to the police, even if the complainant does not want to do so.

- Employers should consider and take appropriate steps to prevent further harassment or victimisation during an investigation. That may involve limiting the contact between the parties by redeploying the alleged harasser.

- Where appropriate the outcomes of an investigation and process should be disclosed to the complainant. The guidance addresses

the data protection issues involved and how they can be resolved.

Comments

Many local authorities will already have policies and procedures in place which will meet the standards set out in the guidance. Nevertheless, in all cases the guidance is still worth reviewing against policies, as it might be they could be updated to expressly incorporate some of the points in the guidance. It is also worth noting that in addition to the guidance, the EHRC has produced a short seven step guide on preventing sexual harassment at work, which HR professionals may find a useful tool to give to line managers.

IR35 UPDATE: CHANGES FROM APRIL 2020

IR35 refers to off-payroll working rules introduced in 2000 to ensure that someone undertaking work, but through a company (like a personal services company or a sole trader), paid similar taxes to other employees. A worker in this position was required to arrange their own tax affairs, i.e. make an assessment whether the IR35 rules applied to the work undertaken and declare and pay tax to HMRC accordingly. In April 2017 changes were made to the tax rules for public sector bodies ("clients") who receive services from a worker through their intermediary company which shifted the liability of that tax from the individual to the engager. From April 2017 public sector clients were required to make the 'employment status' assessment and if a worker was deemed an 'employee' for tax purposes, it was required to deduct and pay appropriate tax and National Insurance Contributions directly to HMRC.

Following a consultation exercise in 2019 (see Advisory Bulletin 668) the Government intends to extend this principle to larger private sector employers. The changes also include some adaptation of the rules and obligations placed on both public and private sector bodies in terms of the administration of the system and resolution of disputes. The draft legislation which is open for consultation until 19 February 2020 can be viewed on the gov website.

Before the consultation on the draft legislation has even concluded or changes have been implemented, on 7 January 2020 the Government announced a review of the implementation of the changes to off-payroll working rules. This raised the possibility that

the changes, i.e. extension to the private sector might be postponed or scrapped. However the Government has stated that the purpose of the review is to address any concerns from businesses and affected individuals about how the changes will be implemented. In particular it will determine if any further steps can be taken to ensure the smooth and successful implementation of the reforms.

Therefore at this stage all formal indications are that the changes will take place on 6 April 2020 as expected. However, we will await the outcome of the review, which the Government states will be completed by mid-February, to see if anything significant changes as a result.

Extension to private sector

In addition to all public sector clients the rules will be extended to medium and large sized private sector clients. This includes third sector clients such as some charities.
For these purposes, in line with the small companies regime, this means it will apply to private sector and third sector companies which meet two or more of the following conditions:

- an annual turnover of more than £10.2 million
- a balance sheet total of more than £5.1 million
- more than 50 employees

In addition a simplified test applies if a client is neither a company, a limited liability partnership, an unregistered company or an oversees company. In this case the rules will apply if it has an annual turnover of more than £10.2 million.

The rules cover connected and associated companies so if a parent of a group is medium or large and so covered by the rules then its subsidiaries will be covered also.

Improved tax status determination tool

HMRC provide an online tool to check employment status for tax (CEST) which has been improved to take into account recent case judgments. There is no obligation to use the tool but along with it being relatively easy to use (compared to studying the case law) it should be noted that it has the added advantage that HMRC will be bound by the output of the service unless it has been obtained fraudulently.

When the questionnaire has been completed, the CEST gives an assessment of employment status and instructs the party that has completed it (client, worker or agency paying the worker's intermediary) on what steps to take next.

Informing parties involved of tax status determination

Currently a public sector client only has to provide the outcome of the HMRC employment status determination to the party it contracts with. In some cases that will be the worker through their Personal Service Company (i.e. the company and worker are effectively the same), but where a third party such as an agency is involved it may be that third party.

From 6 April 2020 public sector and newly affected private sector clients will need to:

- pass the determination and the reasons for the determination to the worker **and** the person or organisation it contracts with,
- make sure to keep detailed records of employment status determinations, including the reasons for the determination and fees paid, and
- have processes in place to deal with any disagreements that arise from individual determinations

Resolving disagreements

From April 2020 a client is expected to have a system in place to resolve disagreements where possible. If a worker or an agency paying the worker's intermediary disagrees with a client's determination the client will have to:

- consider the reasons for disagreement provided by the worker or agency paying their intermediary,
- decide whether to maintain the determination if the client believes it is correct and give reasons why – or alternatively provide a new determination if the client now believes the original one was wrong, and
- keep a record of determinations and the reasons for them, as well as records of representations made by workers or agencies.

	If a worker or agency disagrees with the client's employment status determination the client must provide a response within 45 days of receiving notification. During that time the client should continue to apply the rules in line with the original determination. Failure to respond within 45 days will transfer tax liability to the client.
Further information	Further information on all aspects of IR35 can be found on HMRC's dedicated IR35 web pages.
LGA EMPLOYMENT LAW UPDATE: 13 FEBRUARY 2020	The next LGA Employment Law Update event will be taking place on 13 February 2020 at our offices in Smith Square, Westminster, London. Darren Newman will provide an update on key cases and legislation from the past 12 months. The afternoon will then feature updates on local government pay negotiations and issues affecting the LGPS. There will also be a session on equalities and mental health in the workplace. Only a few places remain at time of publication. For further details about the day and to book a place please see our website.
EMPLOYMENT LAW TIMETABLE	We set out some of the key recent employment law developments, as well as those to look out for over the coming months.
Delayed from March 2018	Trade Union Act: check off provisions (see Advisory Bulletin 646). Due to lack of Parliamentary time, the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017 have not yet been brought into force. We await information on when they will.
6 April 2018	Changes to tax and national insurance treatment of termination payments (see Advisory Bulletin 653).
April 2019	National Minimum Wages increases (see Advisory Bulletin 664). Changes to itemised pay statements (see Advisory Bulletins 658 and 665).
1 April 2020	Increase in National Minimum Wage rates (see this bulletin).
6 April 2020	Changes to employer national insurance treatment of termination payments over £30,000 (see Advisory

	Bulletin 653). Was originally due to come into force in April 2019 but has been delayed (see the Budget 2018 feature in Advisory Bulletin 664). Good Work Plan developments: • removal of Swedish derogation in the Agency Workers Regulations 2010 • changes to written statement entitlement • reduction in employee numbers required to request employer to negotiate an agreement in respect of information and consultation from 10% to 2% • statutory holiday pay reference period increases from 12 to 52 weeks. For further details see Advisory Bulletin 665, Advisory Bulletin 670 and this bulletin. Introduction of parental bereavement leave and pay (see Advisory Bulletins 662, 665 and this bulletin).
6 April 2020 (to be confirmed)	Changes to IR35 rules and extension of obligations to large and medium private sector organisations (see this bulletin).
To be confirmed – exit payment cap and pension reforms	Implementation of various proposals to reform exit payments in the public sector which include: • Recovery of exit payments made to high earners who leave the public sector on or after the implementation date if they return to the public sector within 12 months of leaving. This was referred to in the Conservative Party Manifesto. • The fixing of a cap on exit payments made to employees departing public sector employers. Consultation on draft legislation closed on 3 July 2019 (see Advisory Bulletin 669 and Advisory Bulletin 671). We await the Government's response. • Other associated reform of redundancy payment limits and related pension scheme provisions.
No set date	Extending redundancy protection for women and new parents (see Advisory Bulletin 672)

Measures to prevent misuse of confidentiality clauses (see Advisory Bulletin 668 and Advisory Bulletin 672)

Extension of period required to break continuous employment from one week to four weeks.