Advisory Bulletin

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Welcome

There have been a lot of changes since our last Advisory Bulletin in July. A new Prime Minister, a new King and a new Growth Plan. Plus, as the Government continues to take action in respect of the effects of the decision to leave the European Union there are likely more change to come. So this month we deal with the current and start to glimpse the future.

Dealing with the current, we include a feature on the implications of the case of The Harpur Trust v Brazel, commonly known as the Brazel case, which looks at statutory holiday pay under the Working Time Regulations for term-time only and other types of workers. Related to that, we summarise the recent Retained EU Law (Revocation and Reform) Bill, which provides the tantalising prospect of changes to some elements of UK law derived from EU law, which could potentially include amendments to the Working Time Regulations, which have their origins in EU law. However, the Government has not as yet signalled any intention to reduce workers' EU derived rights. The messaging so far has been the opposite, which is to retain UK workers' EU derived rights and to build on them. We will have to wait and see how things develop and when the Government makes its legislative intentions clear.

However, looking at other future developments, the Government is supporting changes to provide rights for parents whose children require neonatal care, as it is supporting a private members bill to that effect. Although it may take some time for the changes to come to fruition.

We also know that the Government is consulting on an administrative control process for exit payments made by bodies that are classified as Central Government. Although this does not apply to local authorities or maintained schools it does apply to academies and maybe provides an indication of where the Government might go next in respect of local authority compensation payments.

The launch of the Government's Growth Plan was also big news in September. It will have impacts across the economy and the labour market and of particular relevance for employment law is that it sets out intentions to repeal the 2017 and 2021 IR35 reforms and to amend industrial action legislation. Again, we await further details.

Finally we include features on the new BEIS guidance on employment status and Acas guidance on suspension, plus the Employment Law Timetable.

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BRAZEL: ISSUES AND APPLICATION

This report sets out some of the issues and queries that have arisen since the Supreme Court's decision in The Harpur Trust v Brazel case (commonly referred to as the 'Brazel' case), which concerns statutory holiday pay entitlements for term-time only and other workers.

Summary of the issues in the case and the decision

A full report of the Supreme Court's decision and the facts of the case are in Advisory Bulletin 704. In summary though the facts and decision are as follows.

Mrs Brazel is a visiting music teacher on a zero-hours contract, who works mainly during school term times only. Under regulation 16 of the Working Time Regulations 1998 (WTR) she is entitled to 5.6 weeks' annual leave, and her contract stipulated the same. In respect of that the employer had followed a common practice based on Acas guidance of paying an additional 12.07% for each hour that the worker was engaged in order to provide pay for the statutory annual leave entitlement.

Mrs Brazel brought a claim arguing that this was not correct. Under the WTR she was entitled to 5.6 weeks' leave, which regulation 16 provided had to be paid in accordance with the week's pay provisions at sections 221-224 of the Employment Right Act 1996 (the ERA). Under those ERA provisions, and in particular, section 224, where a person does not have normal weekly working hours, their week's pay is calculated by working out the average week's pay over the previous 52 weeks (at the time of Mrs Brazel's claim it was 12 weeks although this was later extended to 52 weeks). Any week in which no pay was payable by the employer is excluded and the pay from the previous week where remuneration was earned is then taken into account instead (subject to going back to a maximum of 104 weeks).

Applying that ERA calculation method to Mrs Brazel, and workers with a similar part year working pattern, results in a higher figure than paying 12.07% of the amount earned during each period. This is because a week's pay is calculated by taking an average of that paid during the previous 52 weeks, but crucially discounting any weeks in which no remuneration was payable. Therefore the average ERA week's pay figure does not factor in any pro-rating to reflect the fact such workers only work part of the year and results in a figure which is proportionately more than for a full time

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or part-time worker working across the year. This is because the fewer the number of weeks in a year that someone works, the greater the disparity between how much they work for the employer and the amount of holiday pay they need to be paid to comply with the WTR. This has the effect that the holiday pay entitlement for such workers is of greater value compared to their working time than is the case for equivalent all-year-round workers

The claim worked its way through the tribunals and the courts and ultimately the Supreme Court upheld Mrs Brazel's claim. In summary it held that she was entitled, as are other workers, to 5.6 weeks' leave under the WTR, irrespective of the number of weeks they work in a year, and the week's pay provisions in the ERA then applied to the calculation of what was the correct week's pay during that leave. In doing so it rejected the employer's arguments that the legislation should be interpreted to provide for an element of pro-rating to reflect Mrs Brazel's part-year working pattern. There was no such requirement in the Working Time Directive, from which the right to statutory leave derives, and such an approach would run counter to what the court viewed as a policy choice by Parliament to adopt the definition of a week's pay in sections 221-224 of the ERA for the purpose of calculating annual leave pay under the WTR.

Does the decision impact on the ability to pro-rate contractual leave?

The Brazel decision only concerns statutory leave. Accordingly there remains the ability to pro-rate a term-time only and other part-time workers' contractual leave, provided in doing so they still receive the same or more than what is their 5.6 weeks' leave entitlement and pay under the WTR.

In respect of that the following provisions in the WTR are relevant.

Regulation 17 provides:

"Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.".

Therefore regulation 17 deals with the situation, which will normally be the case, where there are two rights: one to 5.6 weeks' statutory leave and one to contractual leave, whether pro-rated or not. It provides that the employee will be entitled to whichever is the greater of the two rights. Therefore, where the pro-rata contractual leave is less than the 5.6 weeks' statutory leave, the employee is entitled to 5.6 weeks' statutory leave. Where the pro-rata contractual leave is more than 5.6 weeks, the employee is entitled to the pro-rata contractual leave. The employee is not entitled to 5.6 weeks' statutory leave, plus a pro-rata amount of the excess contractual leave over and above the statutory leave. They simply get their pro-rata contractual leave if this is greater than the 5.6 weeks' statutory leave.

In terms then of payment for leave, regulation 16(5) states:

"Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period."

Therefore paying for contractual leave discharges an employer's duties to pay for statutory leave, and vice versa.

Finally, in terms of pro-rating contractual leave, regulation 5(3) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 specifically provides that a pro-rata approach is permissible when assessing whether a part-time worker has been treated less favourably than a full-time one.

Term-time only workers: Green Book guidance

The National Joint Council for Local Government Services issued joint guidance on the treatment of term-time only workers which can be found at Part 4.12 of the Green Book. This was most recently updated in 2021 and will be revised to reference the Supreme Court's decision. Pending that update though that current version can still be relied on as it reflects the EAT and Court of Appeal's decisions, which the Supreme Court has upheld.

The guidance sets out the method of providing pro-rated Green Book annual leave, bank holidays and extra-statutory days for term-time only workers. It also provides that where the pro-rated entitlement is less than 5.6 weeks the amount of paid leave that the worker should be given should be increased to 5.6 weeks to comply with the Court of Appeal decision in Brazel. Employers are advised to refer to that guidance in determining leave for term-time only workers, and in doing so should factor in the additional two days Bank Holidays that have taken place in 2022 (albeit falling in two separate school calendar years). The NJC circular of 13 September 2022 sets out guidance on that. The Green Book guidance also makes it clear that any additional holiday pay that is made in order to ensure compliance with the WTR is made because of those requirements, i.e. it is not a contractual entitlement. This is because it remains possible that in the future the WTR could be amended to allow for the pro-rata treatment of the statutory entitlement for part year workers.

Term-time only workers paid in 12 equal monthly instalments

Since the Supreme Court's decision in July this year there has been some debate as to whether the section 224 ERA week's pay calculation applying to Mrs Brazel is the same one which should apply to term-time only workers who work a regular pattern during term time, and who are paid in 12 equal monthly instalments throughout the year. That may be for reasons of administrative convenience or otherwise. Such arrangements differ from Mrs Brazel's, where her hours of work varied during term-time and she was not paid in equal monthly instalments.

Underlying that debate would appear to be an assertion that because they are paid the same amount throughout the year both during school closure periods and during time-time, they have been paid each week throughout the year and so they have already received the correct week's pay in accordance with the ERA during their 5.6 weeks' holiday entitlement. Accordingly, there is no need to calculate the average of the previous 52 weeks' pay, discounting weeks in which no remuneration was payable. However, it is important to note in this respect that in the case of Gilbert & Ors v Barnsley MBC [2002] UKEAT674/00, the EAT has held that when calculating a statutory week's pay under the ERA for a term-time only worker paid in 12 equal monthly instalments, a week's pay

must relate to a week's work. The case was specifically concerned with calculating a week's pay for statutory redundancy pay purposes, but the principles in it apply to calculating a week's pay for the purpose of statutory holiday pay. Therefore there is a binding EAT authority which provides in effect that for such workers a Brazel-type calculation of a statutory week's pay applies.

GMB letter

We are aware that some authorities have received a letter from the GMB asking them to confirm the following in respect of term-time only employees:

- that they are applying the guidance at Part 4.12 of the Green Book
- that the 5.6 weeks' [statutory] leave paid to term-time only employees has not included any "additional contractual leave"; and
- that all term-time only employees within your authority have received paid leave for contractual entitlement above the 5.6 weeks' leave on a pro-rata basis.

In responding to that letter authorities may wish to keep in mind the following:

- the Green Book guidance referred to is the 2019 version, not the current 2021 version, which was updated to reflect the additional day's leave added to the Green Book minimum entitlement as part of the 2020 pay deal.
- the second request infers that contractual leave (whether pro-rated or not) cannot be used to discharge entitlements in respect of statutory leave and vice versa. However, based on the regulations 16(5) and 17 referred to earlier in this feature, that is not the case. Contractual leave can be used to discharge the 5.6 weeks' statutory entitlement.
- on the third request, as set out before, employees are entitled to whichever is the greater of their pro-rata contractual leave entitlement or the statutory leave. If authorities have followed the Green Book guidance, or a calculation method to the same effect, then that

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will be the case.

Application of Brazel to casual/variable hours workers

The issues that arise in the Brazel case may also apply in relation to 'casual' and other variable hours workers depending on the circumstances of any particular worker. Such problems have the potential to arise where a person would still be classed as a worker during periods when they are not carrying out any work.

A worker is defined in regulation 2(1) of the Working Time Regulations 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 …"

Therefore, the statutory requirements for worker status are having a contract to perform work personally where the work is not carried out as part of a profession or business undertaking. (For further details on other relevant issues see Employment Status and Rights: Checklist for employers and engagers).

Many of those who work on an ad hoc basis may find it hard to show that they have a contract during periods when they are not carrying out any work. For there to be a contract there needs to be mutuality of obligation. This is usually a commitment on the part of the "employer" to offer work and on the worker to accept work. Many terms of engagement are drafted with express terms which deny the existence of any such commitments. Therefore, unless a tribunal finds that such terms do not genuinely reflect the true nature of the agreement, a person who is engaged to work on this basis may only be able to show that they are a worker when they are actually carrying out work. Such workers will accrue annual leave while working under the contract, but this can be paid in lieu on termination

of each individual engagement.

Where the terms of engagement of the worker do have on-going commitments that apply during non-working periods, then subject to the other parts of the above test being fulfilled, the worker may be able to show that they have a permanent contract. This situation has the potential to lead to similar issues that applied in the Brazel case. As the worker does not have normal working hours, they are entitled to have their pay for annual leave calculated using the averaging method which excludes weeks where no work was carried out. This has the effect of increasing the average week's pay. Where an employer is for example using a 12.07% supplement to pay for annual leave, then this may amount to less pay than the worker is entitled to under the calculation method required by the Working Time Regulations (as occurred in Brazel).

Employers should carry out an audit of their variable hours workers and determine whether they could be classed as workers in between periods of work. Where such cases arise, the level of risk will depend on the difference between the amount of pay provided by the current method of paying for annual leave and that provided by the average pay method required by the Working Time Regulations. This difference is likely to increase as the number of non-working weeks increases. Once the extent of any potential discrepancies has been established, employers may wish to consider whether or not the current method of engagement is the most suitable and whether the use of discreet, fixed-term contracts, where payment in lieu of annual leave on termination could be made would be more appropriate. However, other factors may come into play in making this decision, such as the administrative burden of using short, fixed-term contracts, having to carry out pre-employment checks where this is relevant and any problems that may arise due to the potential for losing the commitment to future work of current workers.

Time limits for bringing claims

A worker who believes they have not been given the correct amount of pay for 5.6 weeks' leave under the WTR may either bring a claim under the WTR or, alternatively, under the unlawful deduction provisions of the ERA.

A worker must bring a claim within 3 months of a failure to pay for working time leave or an unlawful

deduction (or the last in a series of unlawful deductions), unless a tribunal considers that it was not reasonably practicable to bring a claim within that time.

Where employers have previously introduced practices that comply with Brazel and therefore employees have been receiving the correct holiday pay entitlement for more than the 3-month period, any claim will most likely be ruled to be out of time. For example, where long-serving employees have been receiving an additional annual leave entitlement and have therefore been correctly paid for 5.6 weeks' leave or more for more than 3 months, they should not have a claim under the above provisions.

Where a claim is made under the unlawful deduction provisions, any claim for a series of deductions will be limited to 2 years. Depending on the circumstances of any particular case, there may have been a break of 3 months in the series, where either holiday pay was correctly paid or there was no holiday taken. In this case, an employer may argue that this breaks the series of deductions, following the case of Bear Scotland v Fulton (see Advisory Bulletin 619). However, some doubt has since been cast on the merits of this decision. It is also less likely to be relevant where someone has not been provided with the correct amount of holiday (i.e. 5.6 weeks' leave in the year), and the claim is for that.

The entitlement to 5.6 weeks' leave is a statutory entitlement and therefore, provided employees have had the correct pro-rata contractual paid leave entitlement, they should not have a claim for breach of contract. (If they did, a 6-year limitation period applies.) The Working Time Regulations were amended in 2015 to specifically provide that the right to paid leave under the Regulations does not confer a contractual right.

Future developments

We will report any developments in this area in future bulletins. In the meantime though it is worth noting that the Government has recently announced its Retained EU Law (Revocation and Reform) Bill, which if brought into law could result in changes to the statutory holiday regime, that regime originating from EU law.

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CONSULTATION: CONTROL PROCESS FOR CENTRAL GOVERNMENT EXIT PAYMENTS

The Government is consulting on an administrative control process for exit payments made by bodies that are classified as Central Government. It is also proposed that the process would apply to bodies that do not have "a specific right to make exit payments as set out in its Framework Document, Articles of Association, Board Terms of Reference or elsewhere".

The proposals do not therefore apply to local authorities and fire and rescue authorities. Further, as they do not apply to local authorities they will not apply to staff in maintained schools where the local authority is the employer. They will though apply to academies.

As the proposals do not apply to local authorities we do not intend to respond to the consultation in full. However, one of the proposals in the consultation provides that the body making the payment should consider repayment obligations for the employee in respect of the discretionary elements of exit payments, and they should cover:

"an appropriate scope of new employment, with clear justifications given. This might cover return to the same employer or overall central government sector or compensation scheme operator (e.g. the Civil Service, the NHS), or extend more broadly across central government."

Even though no express reference is made to new employment with a local government body, we intend to respond to say that it should be made clear that any repayment obligations should not be applied to new employment with a local government body, those bodies being outside the scope of the proposals. This is particularly important considering the acute recruitment difficulties in our sector, as repayment obligations could in some cases place a limit on the pool of available recruits. Further, we will ask that those difficulties should be taken into account were consideration being given to applying repayment obligations on the local government sector.

We also intend to respond to the consultation to say that the bodies in scope for the control processes should be listed in full, rather than using broad generic categories where it is not always clear whether a body is in scope. This will ensure there is clarity from the outset.

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The consultation closes on 17 October 2022 and full details of how to respond and the proposals are set out in the consultation document and proposed guidance. In summary though the proposals set out two approval processes as follows:

- where an exit payment is over £95,000 the relevant Secretary of State must approve the payment; and

- where an exit payment of any size includes any element of a special severance payment it must be signed off by HM Treasury.

Similar to the existing statutory guidance, which applies to local authorities when making special severance payments, such payments are defined in the proposed guidance as "payments made to employees, officeholders, workers, contractors, and others outside of their normal statutory or contractual entitlements when leaving employment in public service whether they resign, are dismissed, or reach an agreed termination of contract." Further details of the local authority statutory guidance are in Advisory Bulletins 702 and 703 and we still await responses from the Department for Levelling Up, Housing & Communities on the issues highlighted in those bulletins.

NEONATAL LEAVE

Following the Government's consultation "Good Work Plan: Proposals to Support Families" (see Advisory Bulletin 672), the Government has announced that it will back a private members bill to introduce neonatal leave and pay. The Neonatal Care (Leave and Pay) Bill has passed through the second reading and committee stage in the House of Commons and is currently at the report stage.

The Bill provides for a day one right of at least one week's additional leave for parents whose baby requires care in a hospital or other setting for seven days or more within 28 days of the day following the birth. However, statutory neonatal care pay (yet to be defined) will also be made available for that leave for those with 26 weeks' service by the week before the child starts to receive neonatal care. Statutory pay will be available for up to 12 weeks. Neonatal leave must be taken within 68 weeks of the birth of the child.

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The Bill provides a basic framework essentially requiring the Secretary of State to make Regulations which will set out full details of how the new right will apply. According to the explanatory notes, if the Bill completes all Parliamentary stages during 2023, it is likely to be a further 18 months before the new right is implemented.

THE RETAINED EU LAW (REVOCATION AND REFORM) BILL

The Retained EU Law (Revocation and Reform) Bill was introduced into Parliament on 22 September 2022. It is a complex piece of legislation providing for what will happen to various elements of our UK legislation derived from EU law now that the UK has left the European Union, although that is still very much dependent on the Government's decisions regarding retaining, amending or repealing the various pieces of legislation. The Bill also contains provisions as to how previous EU case law is to be treated. The Bill will have to pass through the Houses of Parliament and so there will no doubt be some amendments before it can become an act of Parliament.

Retained EU Law is a defined category of domestic law created at the end of the transition period and consists of EU-derived legislation that was preserved in our domestic legal framework by the European Union (Withdrawal) Act 2018. It was not the intention that the retained laws would remain in place forever but that the Government would assess the relevant legislation and decide which bits to keep.

Essentially the Bill provides that all EU derived law will expire on 31 December 2023 unless by then the Government has decided to retain it. The Bill also contains the possibility of extending that deadline to 31 December 2026, should the Government wish.

With a little over 12 months to go before the 31 December 2023 deadline it is hoped that all elements of the economy will get some clarity as soon as possible on what the legislative framework will look like on 1 January 2024. There are 2400 pieces of legislation which contain EU retained law and which the Government will need to decide whether to keep, repeal or amend. To consult and make any necessary amendments to the tomes of legislation in such a short space of time seems a hugely ambitious task with such a short deadline.

The range of affected employment law is wide ranging

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including:

- working time rights to rest and paid holiday
- maternity provisions
- parental leave provisions
- fixed-term workers' rights
- part-time workers' rights
- agency workers' rights
- TUPE
- equal pay
- discrimination law

The question remains as to whether there will be any changes to such employment laws, although the government has made previous commitments that this will not be the case, and when announcing the Bill, the Business Secretary Jacob Rees Mogg stated

"The Government has engaged, and will continue to work, with a range of organisations and stakeholders to ensure the best possible outcome when reforming retained EU law. This ensures the UK's high standards in areas such as workers' rights and the environment are kept, also giving the UK the opportunity to be bolder and go further than the EU in these areas."

So we can only await the next developments to be sure. However, once the exact future of UK employment legislation is established the Bill contains provisions for disregarding judgments of the European Court of Justice when interpreting it, which could provide new challenges for HR teams and employment lawyers for some years to come.

BEIS EMPLOYMENT STATUS GUIDANCE

The Taylor Review of Modern Working Practices identified that increasing clarity in the employment status framework was one of the major challenges for public policy. Whilst the employment status of individuals for employment rights is very clear for most people it is not always the case given that the variety of working relationships are required to fit into the three categories of employee, worker or self-employed. The distinctions have been the subject of attention in recent years given the growth in 'gig economy' practices. Understanding is also perhaps affected by the fact that for tax purposes there are only two categories of employed and self-employed and therefore the systems are not interchangeable. As a result, in 2018, the Department for Business, Energy and Industrial Strategy (BEIS) conducted a detailed consultation of

stakeholders around the issue of employment status.

BEIS has now issued its response to the consultation. A large number of respondents were supportive of employment status reform but there was no overall consensus on what action the Government should take. Respondents agreed that there was no easy solution, and it would be complex to implement any reform around employment status.

The majority of respondents also felt that the worker category remained helpful and should be retained, with some citing the flexibility it allows individuals and businesses in an evolving labour market. Overall support for the retention of the worker status came from almost all stakeholder groups.

Many respondents were in favour of introducing improved guidance on the employment status boundaries and examples on how to apply the rules to different scenarios.

The response indicates that the Government recognises that the employment status framework for rights works for the majority, but that boundaries between the different statuses can be unclear for some individuals and employers. However, the benefits of creating a new framework for employment status are currently outweighed by the potential disruption associated with legislative reform. Although such reform could help bring clarity in the long term, it might create cost and uncertainty for businesses in the short term, at a time where they are focusing on recovering from the pandemic.

BEIS has therefore chosen to publish employment status guidance for employment rights, with the intention of making it easier for individuals to work out their own status while ensuring that the employment status system remains flexible and continues to adapt to modern working practices. It remains separate from tax status guidance.

The detailed new guidance complements the existing GOV.UK Employment status guidance, and provides practical advice and examples for HR professionals on:

- employment status and how it determines the employment rights individuals are entitled to and for which employers are responsible

- factors determining an individual's employment status
- special circumstances and recent developments in the labour market
- how employment status should be determined for different sectors; and
- where to go for further information

There are two additional pieces of guidance for:

- individuals, to help them understand their employment status so that they know their rights, can have informed discussions with their employer about them, and can take steps to claim them and have them enforced where necessary

- employers or engagers, to help them understand individuals' employment status so they comply with the law, helping ensure individuals receive the rights they are entitled to, and to avoid unnecessary disputes and associated costs

ACAS GUIDANCE ON SUSPENSION

Acas has updated its guidance on suspension to provide clearer advice for employers. It deals with medical suspension, pregnancy suspension and also suspension in order to undertake disciplinary investigations.

The guidance covers:

- deciding whether to suspend someone
- the process for suspending someone
- supporting an employee's mental health during suspension; and
- pay and holiday during suspension

In relation to suspension while a disciplinary matter is investigated the guidance emphasises that decisions to suspend require an assessment of:

- the facts ascertained so far in relation to the case
- the seriousness of any risks of suspending or alternatively not suspending an employee; and
- consideration of alternatives to suspension.

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GROWTH PLAN 2022: IR35 And INDUSTRIAL ACTION

On Friday 23 September the Government published its Growth Plan 2022. The plan contains a wide range of actions designed to stimulate growth in the economy. Various measures in relation to the reduction of tax and National Insurance and the cancellation of the Health and Social Care Levy will have personal impacts on individuals and also impacts on the costs to employers of employing people. In addition The Growth Plan includes references to IR35 and industrial action provisions.

IR35

The plan states that the 2017 (see Advisory Bulletin 643 and Advisory Bulletin 646) and 2021 (see Advisory Bulletin 676) reforms to the off payroll working rules (also known as IR35) will be repealed from 6 April 2023. From this date, workers across the UK providing their services via an intermediary, such as a personal service company, will once again be responsible for determining their employment status and paying the appropriate amount of tax and NICs.

We would expect that there will be further guidance on this issue at some point.

Industrial Action

The Plan makes two references in respect of industrial action.

- Firstly, the Government will introduce legislation that will ensure minimum service levels can be put in place for transport services, limiting the impact that industrial action can have on the public's ability to make the journeys that are essential for day-to-day life.

- Secondly, the Government is taking action to make it easier to settle industrial disputes by ensuring meaningful employer pay offers are put to employees.

There is no clarity on what these measures will be or when they will be implemented. Presumably they will require legislative changes and we will provide further information when the position becomes clearer.

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

Trade Union Act: check off provisions (see Advisory

2018	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.
4 November 2020	Introduction of a £95,000 cap on public sector exit payments (see our webpage on local government exit pay reforms). **Note:** On 12 February 2021 the Government announced that the cap was disapplied with immediate effect. On 25 February the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (the Revocation Regulations), were then placed before Parliament which came into force and formally revoked the Exit Cap Regulations on 19 March 2021. More detail on this is in Advisory Bulletin 688.
6 December 2021	Increase in maximum salary for political assistants in local authorities in England (see Advisory Bulletin 695).
1 April 2022	Increase in National Minimum Wage rates (see Advisory Bulletin 696).
To be confirmed – further exit pay and pension reforms	Implementation of further proposals to reform exit payments in the public sector: • DLUHC (previously MHCLG) reforms to exit pay for local government workers (see Advisory Bulletin 688) • 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 2019 Conservative Party Manifesto. • Following revocation of the £95,000 cap on public sector exit payments, the reintroduction of different legislation to cap or place additional limits on certain public sector exit payments.
No set date	Extending redundancy protection for women and new parents (see Advisory Bulletin 672) Introduction of carers' leave (see Advisory Bulletins 679 and 694) 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. Duty to prevent sexual harassment (see Advisory Bulletin 694). Extending the ban on exclusivity clauses in contracts of employment (see Advisory Bulletin 702).

Key data

SMP, SPP, ShPP, SAP and Statutory Parental Bereavement Pay basic rates	£156.66 or 90 per cent of normal weekly earnings if lower from 3 April 2022
SSP	£99.35 from 6 April 2022
Lower Earnings Limit	From 6 April 2022-23 limit: £123 per week
'A week's pay'	£571– statutory limit for calculating a week's pay from 6 April 2022 £594 in Northern Ireland from 6 April 2022

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

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