New rights for atypical workers under the Good Work Plan
15 January 2019

The government’s Good Work Plan implements the recommendations of the Taylor Review on modern working practices. Its stated aim is to provide fair and decent work for all and to eliminate uncertainty for those with atypical working arrangements. The Good Work Plan outlines wide-ranging changes to the rights of agency workers, zero-hours contractors and casual workers. Three sets of regulations implementing around half of the Good Work Plan proposals have now been published.

What new rights for workers do they introduce?

Agency workers – Right to equal pay with permanent counterparts

- All agency workers will become entitled to receive the same rate of pay, as a comparable permanent employee of the end-user, after 12 continuous weeks of an assignment. The right to receive equal pay with permanent counterparts is currently subject to an exemption which applies where the temporary work agency pays the agency worker between client assignments. This exemption, known as the Swedish Derogation, will be removed.
- Temporary work agencies must provide written statements to those agency workers whose terms include the exemption from the right to equal pay. The statement must confirm that the exemption no longer applies from 6 April 2020.
- Agency workers will be granted protection against unfair dismissal by the temporary work agency and the right not to be subjected to a detriment in connection with enforcing their new rights.

Written statements of terms and conditions – Day 1 right for employees and workers

- Workers will be given the same rights as employees to receive a written statement of terms and conditions.
- The statement must be given on or before commencing work, rather than within two months of starting under current rules.
- The information to be contained within the statement has been expanded to include rights to other types of paid leave (e.g. maternity and paternity), details of any probationary period, training requirements and entitlements. For individuals with variable working hours, the statement must also include details of how variations to the hours and days of work are determined.
Compensation of 2-4 weeks’ pay (subject to the statutory cap on a week’s pay) is available if the right is breached.

Information and consultation agreements – Change to threshold to trigger negotiation

- The percentage of employees required to support a request to negotiate an information and consultation agreement will be reduced from 10% to 2% (subject to a minimum of 15 employees). This significantly lowers the bar for triggering negotiation of an agreement. An information and consultation agreement gives staff the right to be consulted about workforce changes.

Holiday pay reference period – Extended to 52 weeks

- The reference period for the calculation of holiday pay has been extended to 52 weeks or, if an individual has less than 52 weeks’ service, the total number of weeks worked. The change will eliminate seasonal fluctuations in rates of holiday pay. The reference period applies to workers who either have no normal working hours or whose working hours vary due to the nature of the work or the time at which it is performed.

Tribunal penalties for employer breaches – Maximum fine increased to £20,000

- Following determination of a tribunal claim, a tribunal has the power to impose a penalty award where an employer has committed an aggravated breach of employment rights (for example where a breach was deliberate or malicious). The maximum penalty which a tribunal can award is to be increased from £5,000 to £20,000. The penalty must be paid to the Secretary of State.

What about employment status?

At the heart of the Taylor Review is the concern that the gig economy has transferred too much risk from businesses to individuals and that relationships are being constructed with one-sided flexibility. The government has acknowledged the need for greater clarity on employment status and in the Good Work Plan commits to:

- Improve the clarity of the employment status tests to reflect the reality of modern working relationships.
- Align the employment status frameworks for the purposes of employment rights and tax to reduce differences between the two systems.
- Improve guidance and online tools to assist in determining status.
- Legislate to prevent businesses misclassifying staff.
None of these proposals feature in the regulations published in December 2018 and we await further announcements.

Next steps

The rights are due to come into force in April 2020, with the exception of the increase to the maximum tribunal penalty award. The new maximum award will apply to breaches which occur on or after 6 April 2019.

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