

MASSERS

EMPLOYMENT LAW UPDATE

MAY 2015

Changes to Employment Law following the General Election 2015

Following the General Election on 7 May 2015, we report on the new Conservative Government's plan for Employment Law based on their manifesto pledges.

The Queen's Speech will be delivered on 27 May 2015 and based on the key pledges in the Conservative Party's manifesto, the following policies and implications are expected:

Zero hours contracts - eradicating exclusivity clauses in zero hours contracts making them unenforceable.

Trade Unions and industrial action - significant changes to strike laws to include the introduction of a minimum turn out requirement for strike ballots in essential services, tackling the intimidation of non-striking workers, requirement that strike action cannot be called on the basis of historical ballots and allowing agency workers to cover striking employees.

The TUC has said the proposals would make strike action "close to impossible".

British Bill of Rights - a proposal to repeal The Human Rights Act 1998 and replace it with a British Bill of Rights.

Further key pledges include:

Apprenticeships - creation of an extra 3 million apprenticeships over the next 5 years.

Equality - the Conservative's propose to halve the disability and employment gap by getting hundreds of thousands of disabled people into employment. Promoting gender equality by requiring companies with more than 250 employees to publish the difference between the average pay of their male and female employees.

National Minimum Wage and Living Wage - increase of the National Minimum Wage (NNW) to £6.70 an hour by Autumn 2015, with a view to increasing the NNW to over £8.00 an hour by the end of 2020.

Work and Families - entitlement to free childcare to be increased to 30 hours for all children of working parents aged 3 and 4 years old.

Migrant Workers - tackle illegal working and exploitation by introducing stricter labour market regulations and action on employers who do not pay the NMW.

Public Sector Termination Payments - the proposed introduction of new legislation to cap public sector enhanced redundancy payments to £95,000.

Fitness to Work - those suffering from long-term yet treatable conditions, such as obesity or addictions, may have benefits reduced if such individuals refuse recommended treatment. Support to those suffering from mental health problems which prevent them from working.

Paid Volunteering Leave - the introduction of 3 days paid volunteering a year for people working in large companies in the public sector.

Rejection of Claim by Tribunal with incorrect early conciliation number

In the case of *Sterling v United Learning Trust UKEAT/0439/14* the Employment Appeal Tribunal (EAT) upheld an Employment Tribunal's decision that it had no jurisdiction to hear a claim that was submitted out of time.

In this case Mrs Sterling was dismissed by United Learning Trust on 20 February 2014 and following an extension of time due to the early conciliation period, the last date by which she had to present her claim was Saturday 5 July 2014.

Mrs Sterling submitted her claim form to the Tribunal on 1 July 2014, however the form was returned to her as it contained an incorrect ACAS early conciliation number. The Tribunal returned the form to her but it was addressed incorrectly by Tribunal staff and by the time she received it, corrected it and resubmitted it on Monday 7 July 2014 she was out of time.

The Tribunal regarded the claim as being received on Monday, 7 July, but at a subsequent Hearing, an Employment Judge held that the Tribunal had no jurisdiction to hear the claims as it was out of time.

Mrs Sterling's representative did not pursue any arguments that it was not reasonably practicable for her to have presented her claim by the due date.

Mrs Sterling appealed to the Employment Appeal Tribunal (EAT), arguing that the Tribunal was not entitled to infer that the claim form did not contain the correct information in respect of the ACAS certificate number and further, the Tribunal was wrong to conclude that it was reasonably practical for her to have presented her claim by the deadline of 5 July 2014, relying upon the incorrect addressing of the letter which was sent by the Tribunal. Mrs Sterling argued that if had it arrived at her house on Friday 4 July she could have re-submitted it on the same day and her claim would have been in time.

The EAT upheld the Tribunal's decision that the claim was presented out of time.

The burden of proof in this case was on Mrs Sterling to show that it was not reasonably practicable to present her claim in time and no such argument was made. The decision seems harsh but may have been decided differently if Mrs Sterling had raised this argument.

To avoid this situation arising, Claimants must avoid submitting claim forms at the last minute and ensure that information provided on claim forms is correct. Further, if a claim form is rejected, Claimants should make an application for re-consideration as soon as possible.

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