

MASSERS

EMPLOYMENT LAW UPDATE

September 2016

October changes to employment legislation

As of 1 October 2016, the following increases in the National Minimum Wage rates will apply:

- Workers aged 21 – 24: £6.95
- Development rate (workers aged 18 – 20): £5.55
- Young workers rate (non-apprentices under 18 but above compulsory school age): £4.00
- Apprenticeship rate: £3.40

The National Living Wage for workers aged over 25 will remain at £7.20.

We had anticipated that the new gender pay reporting rules would come into force at the beginning of October, however this now looks to be delayed until April 2017. The ban on corporate directors, which again had been expected to come into force in October, has also been delayed.

Use of zero hours contracts up 20%

ONS reports suggest that the use of zero hours contracts for April – June 2016 rose by an estimated 20% on the same period last year.

The use of zero hours contracts remains contentious. The TUC believes they are a cheaper way of employing staff and of restricting the employment rights open to them. On the other hand, advocates of the contracts praise their flexibility, particularly in industries where work is seasonal or staff want to fit it around childcare or studies.

Several large companies have spoken out about the use of zero hours contracts, with Greene King, Everyman Cinema and JD Wetherspoon all pledging to scrap zero hours contracts and instead to hire staff on a permanent basis.

Reasonable adjustments and pay protection following redeployment

In *G4S Cash Solutions (UK) Ltd v Powell* UKEAT/0243/15/RN the Employment Appeal Tribunal (EAT) found that in certain circumstances it may be considered a reasonable adjustment to keep an employee on a higher salary following redeployment into another role.

P worked for G4S as an engineer. Owing to a back complaint he was no longer able to continue in that role and was moved into the lower graded role of “key runner”, which involved delivering materials to engineers in different locations. For the first year, he maintained his existing engineer’s salary and believed this to be a permanent arrangement.

G4S subsequently told him that he could continue in the role of key runner, however his salary would be reduced by 10%. P was not prepared to accept the lower salary and was subsequently dismissed.

At first instance, the Tribunal held that G4S was required to keep P on his original pay and that this would be a reasonable adjustment. G4S appealed the decision.

The EAT held that the Tribunal was entitled to find that keeping P on his existing salary would constitute a reasonable adjustment. There was no reason to find that the duty to make reasonable adjustments should be taken to exclude the requirement to protect an employee's pay.

It is of note that the requirement to protect pay following redeployment may not be a reasonable adjustment in all cases. The EAT commented that such an adjustment may cease to be reasonable if the job disappeared or the financial circumstances of the employer changed.

It was relevant that P's salary had already been protected for around a year and he considered it to be a permanent change. If considering varying an employee's contract as a reasonable adjustment it would seem prudent to make sure that the terms of the new role are made clear from the outset. It also seems likely that, in considering whether pay protection would qualify as a reasonable adjustment, the financial resources of the employer would be taken into account.

Government remains silent on employment rights protection following Brexit

Margot James, Business Minister, has refused to guarantee that all existing employment rights will be maintained following Brexit, stating only that employment protections are a priority for the government. Liam Fox, International Trade Secretary and Priti Patel, International Development Secretary, have both previously given indications that employment protections may be weakened post-Brexit.

EHRC initiative: *Working forward – supporting pregnancy and maternity rights*

A number of large employers, including Barclays, Royal Mail and BT, have joined the EHRC's initiative which is aimed at eradicating discrimination against pregnant women and mothers.

The news follows a report by the Women and Equalities Committee which revealed that the number of expectant and new mothers forced to leave their jobs has almost doubled since 2005. The figures suggest that more than one in ten were dismissed, singled out for compulsory redundancy, or left their job because of poor treatment in the workplace. The report found that Tribunal fees of up to £1,200.00 act as a barrier to many women when considering legal redress.

Existing UK employment protections make it unlawful to dismiss a woman for reasons related to having a child, however it is still possible to make them redundant for other reasons at that time. The report has led to calls for further regulation.

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