

# MASSERS

## EMPLOYMENT LAW UPDATE

April/May 2017

### Increases to Statutory Payments

From 2<sup>nd</sup> April 2017, the standard rates of statutory maternity, paternity, adoption and shared parental pay rose from £139.58 to £140.98 per week (or 90% of a person's average weekly earnings if lower).

From 6<sup>th</sup> April 2017 the standard rate of statutory sick pay increased from £88.45 to £89.35 per week.

### Brexit: Article 50 Triggered

On 29<sup>th</sup> March 2017, the Prime Minister, Theresa May, gave the European Council formal notification in a letter of the UK's intention to leave the European Union (EU).

The letter triggered Article 50 which obliges the EU to negotiate and conclude an agreement with the UK "setting out the arrangements for its withdrawal, taking account of the framework of its future relationship" and it gives 2 years to conclude that agreement.

A significant proportion of the UK's employment law comes from the EU and includes discrimination rights, collective consultation obligations, transfer of undertaking regulations, family leave, working time regulations and duties to agency workers.

The Government has also issued a White Paper detailing how it will replace EU legislation with national laws. The Great Repeal Bill, as it is known, repeals the European Communities Act 1972, which says EU Law is supreme to that of the UK.

Whilst the UK government could repeal all of this it is unlikely for several reasons:

- Some EU employment laws were already provided by the UK and preceded EU anti-discrimination obligations, such as equal pay, race and disability discrimination laws. Further, there was a right under UK law to return from maternity leave before EU maternity leave rights were implemented.
- Even if certain pre-existing UK rights did not exist, it is unlikely the government would repeal such employment protection. Some UK employment laws relating to family leave, discrimination rights and even the right to paid holiday is regarded by employers and employees alike as a good thing and UK family leave rights go further than EU law currently requires.
- Perhaps the most important reason for the UK to continue to observe EU law is the need to stay in a relationship with the EU.

As stated above, Article 50 provides 2 years to conclude the agreement for Brexit during this period the EU and the UK will negotiate the terms of the departure and it is likely that new trade agreements will be put in place. The government could then repeal EU-derived employment laws, but in reality it is more likely to modify them and EU law is likely to exercise a significant influence on UK law even after Brexit.

Brexit Minister, David Davis has also said there will be no overnight changes to workers' rights currently enshrined in UK laws.

Particularly in the short term therefore, it seems unlikely that UK employment law will be transformed in significant way.

### **Increase to Statutory Redundancy Pay**

On 6<sup>th</sup> April 2017 statutory redundancy pay increased from £479 to **£489** per week.

An employee must have at least 2 years' continuous service to qualify for statutory redundancy pay, subject to a maximum 20 years'.

The maximum statutory redundancy payment that an employee can receive has also now increased to **£14,670**.

### **Employment Tribunal Awards £25,000 to Apprentice**

An Employment Tribunal has recently awarded £25,000 for breach of contract to an employee whose apprenticeship was terminated early. In the case of Kinnear – v - Marley Eternit Limited t/a Marley Contract Services, Mr Kinnear became an apprentice roof tiler in October 2014 and his contract was due to run until November 2018.

In June 2016 there was a downturn in work and his employment was terminated on the basis of redundancy. Mr Kinnear appealed against the Company's decision but his appeal was rejected.

Mr Kinnear issued proceedings in the employment tribunal for breach of contract but the Company did not enter a defence.

The employment tribunal upheld Mr Kinnear's claim and as there were 122 weeks left to run under his apprenticeship agreement, assessed that he would have been paid £24,217 for the remainder of the apprenticeship.

The employment tribunal acknowledged that a lack of roofing qualification might disadvantage him in the labour market in the years to come. The employment tribunal accepted that Mr Kinnear's losses were likely to reach at least £25,000 which is also the maximum an employment tribunal can award for breach of contract.

The employment tribunal made the award to Mr Kinnear on the above basis.

In light of the decision, it is important for employers to express caution when terminating an apprenticeship early.

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