



Welcome to the RBA Spring 2017 Newsletter.

The clocks have moved forward, Spring has arrived as we welcome a new dawn.

Well perhaps not quite. However we do know that Britain will leave the European Union at the end of March 2019, with or without a negotiated deal on the movement of people and trade.

Much had been said by the leave campaign about Britain being able to write its own rules and being free from the European Court. The reality of this is being set out in the “Great Reform Bill” and the starting point is to put all of the existing bits of European law into UK law! Then work out what we want to keep and what to change. All with a limited amount of debate because there’s a lot to do”!

So what for employment law. It’s still too early to say, this is going to take many years and will continue way beyond 2019 - the current position for the foreseeable future is “No Change”

Domestically the government has gone ahead with the gender pay reporting legislation. The legislation for reporting had broad cross party support, the differences of opinion were about what to do about the inequality! It is yet to be seen if reporting will make any change to pay policy. Immigration changes are continuing to make sponsorship of overseas non EU nationals difficult. Training levies are back – well in the form of a 0.5% levy on a payroll of over £3 million to fund apprenticeship programs. Also we are going to see a change to the way severance payments are taxed from next April.

NEWS AND VIEWS

Gender pay gap reporting begins

Private, voluntary and public sector organisations with 250 or more employees will be required to publish gender pay gap information.

Employers will be obliged to release information relating to employee pay and bonus pay, as well as information on the number of men and women in each quartile of the organisation’s pay distribution.

The first report is expected to be 4 April 2018, based on pay and bonus data from 2016/17.

Apprenticeship levy on large employers introduced

Employers with an annual payroll of more than £3 million will be required to pay a 0.5% levy on their total pay bill starting on 6 April 2017.

Large employers will be able to access levied amounts, plus a government top-up of 10%, to fund apprenticeships from accredited training providers.

Smaller organisations that are not required to pay the levy will also be able to receive funding for accredited apprenticeships by contributing 10% towards the cost of an apprenticeship, with the Government paying the remaining cost.

The new system of funding is expected to operate from 1st May 2017.

Immigration Skills Charge

Employers sponsoring foreign workers with a tier 2 visa will be required to pay an immigration skills charge of £1,000 per worker (£364 for small employers and charities) beginning on 6th April 2017. It is designed to cut down on the number of businesses taking on migrant workers and to incentivise the training of UK nationals to fill those jobs.

In April 2017, the minimum salary threshold for “experienced workers” applying for a tier 2 visa will also increase to £30,000. In most cases, before sponsoring an employee under Tier 2 (General), the employer must carry out the resident labour market test, which means advertising the position for at least 28 days in accordance with strict Home Office requirements.

The Government has indicated that the purpose behind these changes and the cost increases is to try to deter UK employers from hiring non-EEA nationals and to encourage UK employers to focus on recruiting from the UK workforce.

You can find further information on the Gov.uk website.

General Data Protection Regulation compliance efforts under way

Although the EU General Data Protection Regulation (GDPR) does not come into force until May 2018, the scope of the changes under the new Regulation means that preparing for the GDPR will be a high priority for employers in 2017.

Employers will need to carry out audits of the employee personal data they collect and process to ensure that it meets GDPR conditions for employee consent.

New governance and record-keeping requirements mean that employers will also have to create or amend policies and processes on privacy notices, data breach responses and subject access requests.

As the GDPR will come into effect before the UK exits the EU, organisations that are not compliant by May 2018 risk fines of up to €20 million or 4% of annual worldwide turnover, whichever is higher.

New HMRC Employment Status Tool

HMRC have come up with an online tool to determine for tax purposes whether an individual is an employee or self-employed, and whether they might be covered by IR35. That's different, of course, to whether they have 'worker' status - something which the taxman doesn't recognise. But it's a very useful tool.

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

Changes to Taxation of Termination Payments

The Government has announced that with effect from 6 April 2018, a change related to the tax-free element of termination payments is that employers' NICs will then need to be paid on compensation payments that are above the £30,000 tax-free amount. For example, if compensation of £45,000 is to be paid, the first £30,000 is tax free but the remaining £15,000 will be subject to both income tax and employers' (but not employees') NICs.

At the same time, changes will also be made to the treatment of pay in lieu of notice (PILON) payments. Under current rules, where an employment contract specifically permits the company to make a PILON, these payments are treated as earnings and they are subject to income tax and NICs. However, non-contractual PILON payments are not subject to tax and NICs because they are classed as compensation. This distinction will be removed and all PILON payments will be taxable from April 2018.

LEGISLATION UPDATE

National Minimum Wage Changes

On 1st April 2017 the National Living Wage increased further to £7.50 per hour. Please note the other increases below effective from April 2017

CURRENT RATES

Statutory Sick Pay	£89.35 p.w.
Statutory Maternity and Adoption Pay	6 weeks at 90% of average earnings then 33 weeks at £140.98 p.w.
Statutory Paternity Pay	2 weeks at £140.98 p.w.
Shared Parental Pay	£140.98 p.w.
Week's pay for statutory redundancy	£489 p.w.
NI Contributions Lower Earnings Limit	£113 p.w.
Minimum annual paid holiday	5.6 weeks (28 days for 5 day week)
Guarantee Pay	£27.00 per day £135 for 5 workless days

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Minimum Wage	Age 21 – 24	£7.05 per hour
	Age 18 – 20	£5.60 per hour
	Age 16 – 17	£4.05 per hour
	Apprentices	£3.50 per hour
National Living Wage	Aged 25+	£7.50 per hour

RECENT CASES OF INTEREST

A Supreme Court ruling about whether a bus driver should compel other users to vacate a wheelchair space has implications for all employers

Mr Paulley, a wheelchair user, attempted to board a bus operated by First Group plc. The bus had a designated space marked by a notice stating: ‘Please give up this space for a wheelchair user.’

When Mr Paulley attempted to board the bus there was a woman with a pushchair in the space. The bus driver asked her to move but she refused and Mr Paulley then had to wait for the next bus.

Mr Paulley brought proceedings against the bus operator for unlawful discrimination on the grounds of his disability, claiming that the company had failed to make reasonable adjustments.

Initial findings

At the Employment Tribunal, it was held that the company could have made reasonable adjustments to avoid the situation by changing the notice to require non-disabled passengers occupying the space to move if a wheelchair user needed it and adopting a policy requiring non-disabled passengers to leave the bus if they didn’t comply. The judge found in Mr Paulley’s favour and awarded him £5,500 in damages. The company appealed against the decision.

In overturning the Tribunal’s decision, the Court of Appeal stated that the question was not simply whether a disabled person is at a substantial disadvantage but whether the bus company’s practice, provision or criterion put him at a disadvantage. In deciding in favour of the company, the court found that the regulations “imposed no duty at all on passengers, and the duty imposed on the driver does not allow him to turn passengers off the bus”. Mr Paulley then appealed to the Supreme Court.

Supreme Court

The Supreme Court allowed Mr Paulley’s appeal and upheld the initial decision that bus companies should implement a ‘require not request’ policy. It rejected Mr Paulley’s primary claim that the driver should have insisted on the wheelchair space being surrendered by a non-disabled passenger and enforced that insistence if necessary, but accepted that drivers should be required to do more than simply make the request. The court said the duty to make reasonable adjustments indicated a policy of ‘require

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and pressurise', under which the drivers must go as far as they feel reasonable under the circumstances to insist the space is vacated.

RBA Comment

This judgment shows employers the importance of ensuring that employees are equipped to deal with situations involving people with disabilities that could affect their day-to-day duties.

Employers are ultimately responsible for the actions of their staff during their working hours, and it highlights the value of ensuring that all employees are adequately trained and equipped to act correctly in similar situations.

British Gas has been refused leave to appeal by the Supreme Court in the long-running case regarding the payment of commission during holiday.

Last October, the Court of Appeal upheld the Employment Appeal Tribunal's decision in the case of British Gas Trading Ltd v Lock. To summarise, the Court ruled that contractual results-based commission should be taken into account for the purposes of calculating holiday pay

The Supreme Court has now considered British Gas's application to appeal against the Court of Appeal's judgment and has refused permission. That means a point of finality on this key issue of principle has been reached.

The key issues of whether Mr Lock was actually underpaid and by how much remain to be decided - also what the appropriate reference period for the calculation should be. The Employment Tribunal now also needs to consider whether the commission scheme was operated in such a way that it effectively compensated for the period of annual leave, even if the arrangement was not in accordance with the legal provisions about how and when holiday pay should be paid.

Only after that decision is given - and any subsequent appeals resolved - will we have greater clarity about how to calculate holiday pay for those earning results-based commission.

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FUTURE TRAINING EVENTS

Available for you and your team RBA Limited will be delivering training events in your area. Please call to check availability and reserve a place.

Equality & Diversity Training

This Equality and Diversity training session has been designed to help learners understand more about their responsibilities for promoting equality and diversity in the workplace.

Training Overview

The session provides an introduction to the Equality Act 2010 and details each of the protected characteristics so you can learn more about what they are and how to avoid discrimination through your words and actions. The Session looks at which behaviour is prohibited by the Equality Act and aims to help you to promote a fairer, more tolerant and more diverse working environment.

Who Should Take This Training?

This session is suitable for learners of all levels, including employers, managers, supervisors, full-time and part-time workers, as everyone in the workplace has a responsibility for supporting equality and diversity. The session has been designed as an introductory level and so no prerequisite training is needed.

Aims of the Training

By the end of this session learners will:

- Understand their workplace responsibilities as stated by the Equality Act 2010.
- Have knowledge of the protected characteristics that are covered by the law.
- Understand what is meant by discrimination and be able to recognise the different types.
- Understand what is deemed as prohibited conduct within the Equality Act.
- Be aware of the importance of equality and diversity training so that the workplace can become more tolerant and understanding.