Skadden

UK Employment Flash

Insights into the latest employment news

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In this issue, we discuss the UK government's various significant amendments to the Employment Rights Bill; a Court of Appeal ruling that highlights the challenges for employers in balancing competing beliefs in the workplace; the decision by the FCA and PRA to drop their proposed diversity and inclusion rules for regulated firms; and the government's efforts to counter noncompliance with employment rights and taxation by umbrella companies.

The UK Government's Latest Amendments to the Employment Rights Bill

In March 2025, the UK government set out significant amendments to key provisions in the Employment Rights Bill. The changes include further detail on how the reforms to zero hours contracts will apply to agency workers, the strengthening of trade union protections and changes to the rules on collective redundancy consultation.

The UK's Employment Rights Bill was published on 10 October 2024. Alongside the bill, the UK government commenced consultations on certain other proposals. The government has now published its responses to these consultations and put forward amendments to the bill in March 2025 ahead of further parliamentary scrutiny of the legislation. The bill has now progressed to be debated in the House of Lords.

Zero Hours Contracts

As discussed in our October 2024 article, the bill will introduce protections for workers on zero hours contracts, including a right to be offered guaranteed hours. The March 2025 amendments extend these protections to agency workers. The key protections provided in the amendments are:

- **Offer of guaranteed hours:** Employers must offer contracts with minimum guaranteed hours to agency workers that reflect their normal working hours during a "reference period," proposed to be 12 weeks. The contracts must be offered on terms that are no less favourable to the employee. In most circumstances, the end user of the agency worker's services, rather than the employment agency, will be responsible for providing the offer of guaranteed hours. If the offer is rejected, end users must make another offer in a subsequent reference period. End users may still employ agency workers on limited-term contracts for genuine, temporary assignments such as to meet seasonal or event demands.
- **Shift notice and cancellations:** Employment agencies and end users will be jointly responsible for providing agency workers reasonable notice of their upcoming shifts. Employment agencies will also be required to compensate workers for shift cancellations at short notice. While employment agencies will need to ensure that their contractual arrangements with end users provide a mechanism for them to recoup these costs, the government has announced that the bill will allow employment agencies to recoup these costs under contracts that were entered into before parties could reasonably be aware of these new rules.

In light of these changes, employers may want to consider their use of agency workers and whether it remains an appropriate option for their business models. Employers may also need to renegotiate their agreements with employment agencies.

The government has also announced plans to consult further about the scope of any exclusion from the guaranteed hours rules in cases of genuinely temporary work need, which may benefit seasonal employers and other employees that require genuine short-term engagements.

Trade Unions

The amendments reflect the government's stated commitment to strengthening trade unions, with key provisions relating to:

- **The right to join a union:** Employers have a new duty to inform all new employees of their right to join a union. This information must be provided to new hires in a written statement of particulars.
- **Industrial action ballots:** The requirement for a turnout of at least 50% of those entitled to vote on industrial action has been removed. Only a simple majority of those voting is now required. This change will be introduced later to coincide with the introduction of rules allowing for the use of e-balloting technology. Further, the mandate for action after a successful vote (this is the period during which action can be taken following the ballot) will be increased to 12 months from six, whilst the notice period required to be given by a trade union to an employer before engaging in industrial action will be reduced to 10 days from 14. The obligations on trade unions to provide detailed information to their members during the balloting process will also be reduced.
- **Access rights — enforcement in cases of noncompliance:** The Central Arbitration Committee (CAC) can now issue fines against employers for noncompliance with trade union access rights. Those rights also now account for virtual access as well as physical access to workplaces for trade unions.
- **Protection of the bargaining unit:** From 10 days after the CAC receives an application from a union for statutory recognition, the number of employees in the proposed bargaining unit will be fixed for the purpose of the recognition process. Therefore, employers will be prevented from recruiting new employees to dilute the number of employees in favour of union recognition.

Employers should anticipate a higher level of engagement from trade unions, and the strength of relationships with trade unions will become more important. There may also be an increase in the number of formal requests for recognition made to the CAC.

Collective Redundancy Consultation

The government has introduced a number of amendments relating to an employer's collective consultation obligations:

- **Retaining the "establishment" concept:** Presently, where an employer proposes to make 20 or more employees redundant in a period of 90 days at "one establishment," collective consultation is required. As noted in our October 2024 article, the original draft bill sought to remove the "establishment" concept, so that redundancies across the employer's UK workforce would be taken into account. This position has been reversed in the March amendments.
- **Threshold for collective consultation:** In addition, an alternative threshold to trigger collective consultation may be proposed. Currently collective consultation is triggered where 20 or more redundancies are proposed at one establishment in a 90-day period. The nature of the new threshold is not yet clear (including how it will interplay with the "establishment" rule) and will be clarified in further regulations. The threshold may state that collective consultation is required when a higher number of employees across the business, or a percentage of the workforce, is made redundant.
- **Nature of consultation:** The original bill proposed that all employee representatives across the business should be consulted as one unit. However, the March amendment proposes that when conducting collective consultations, the employer will not be required to consult all the employee representatives together or try to reach the same agreement with them all.
- **Increase in protective award:** Following a government consultation, the maximum protective award for an employer's failure to collectively consult has been increased to 180 days' gross pay per employee from 90 days' gross pay per employee.

While the proposal to remove the "one establishment" rule has been dropped, the doubling of the protective award would result in greater financial liability for employers when they do not properly collectively consult. The latest amendments have also dropped the proposal to provide interim relief to employees in fire-and-rehire cases, a decision which is favourable to employers.

Right to Switch Off

One policy proposal which was not included in the amendments was the "right to switch off" from work outside of working hours. The proposal was originally part of the "Make Work Pay" paper, but it appears that the government will not take it forward.

Higgs v Farmor's School: Balancing Competing Beliefs in the Workplace

The Court of Appeal held that a pastoral assistant at a secondary school had been unlawfully discriminated against when she was dismissed for sharing social media posts about her beliefs on relationships and gender. The case highlights the difficulties employers face when balancing conflicting views in the workplace.

Mrs Higgs worked at a secondary school as a pastoral assistant. Following an investigation, the school dismissed Mrs Higgs for gross misconduct after she shared and reposted several social media posts relating, among other things, her opposition to teaching that gender is fluid and not binary and teaching that equated same-sex and traditional marriage. Mrs Higgs brought a claim to the Employment Tribunal, alleging she had suffered direct discrimination due to her lack of belief in gender fluidity. The Employment Tribunal found that her beliefs were protected but held that there had been no direct discrimination. Mrs Higgs appealed, and the case progressed to the Court of Appeal.

The school argued that the dismissal was necessary and proportionate to protect its reputation. The Court of Appeal rejected the argument, finding that the school's decision to dismiss Mrs Higgs was disproportionate to her conduct, and therefore amounted to unlawful discrimination. The Court of Appeal stated that there was no evidence that the social media posts had caused damage to the school's reputation, particularly because the posts were mostly quoted from outside sources, critiqued government policies and were shared on a private group. Importantly, the Court of Appeal found that the posts shared by Mrs Higgs did not include her own view or commentary – they simply shared content that had been created by others. There was also no evidence that Mrs Higgs had expressed these views at work.

While these types of cases are highly fact specific, the case does emphasise the challenges employers face when seeking to ensure different views can coexist in the workplace. The Court of Appeal's decision also demonstrates that employers should carefully consider the appropriate level of intervention for conduct, such as this, that occurs outside of the workplace.

FCA and PRA Drop Their Proposed Diversity and Inclusion Rules for Regulated Firms

On 12 March 2025, UK financial regulators the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) announced their decision to drop their proposed diversity and inclusion rules for regulated firms. The reasons cited by the regulators for their decision were that the proposed rules were already covered by other legislative initiatives and to avoid additional regulatory burdens on firms.

Following a consultation in 2023 aimed at implementing a regulatory framework for diversity and inclusion in the financial sector, the FCA and PRA announced on 12 March 2025 they would be dropping their proposals.

The proposals were intended to improve workplace culture and governance by requiring regulated firms to develop diversity and inclusion strategies, which would be overseen by members of the board. However, feedback from the 2023 consultation highlighted that the financial sector should align its regulatory approach with existing and planned legislation covering the same issues. Industry stakeholders raised concerns that additional rules on top of the existing legislative initiatives could duplicate the provisions, leading to unnecessary costs and administrative burdens for firms. The FCA and PRA have instead shifted their focus to tackling non-financial misconduct and plan to provide further updates on their proposals by mid-2025.

The existing legislative initiatives covering the same topics include the consultation commenced by the government on 18 March 2025 on how to implement mandatory ethnicity and disability pay gap reporting for employers with 250 employees or more, including whether employers should be required to produce action plans to close any pay disparity identified. Subject to consultation, this reporting obligation would sit alongside the existing gender pay gap reporting requirements, which similarly apply to employers with 250 employees or more. Responses to the consultation, which is expected to close in June 2025, will help inform parts of the proposed Equality (Race and Disability) Bill, which was announced in July 2024.

UK Government Commitment To Tackle Noncompliance in the Umbrella Company Market

The UK government recently published its responses to the prior government's consultation during summer 2023 on noncompliance in the umbrella company market, addressing issues relating to enforcement of employment rights and tax compliance.

"Umbrella companies" are entities that engage workers for the benefit of or on behalf of a recruitment agency or an end-user business. They also can include "employers of record" or "professional employer organisations," which are entities that employ employees and operate payroll and benefits in relation to those employees on behalf of an end-user business. The umbrella company should typically be responsible for entering into an employment contract with the worker, for operating payroll and deducting and accounting for income tax and National Insurance contributions (NICs) via Pay as You Earn (PAYE), and for workers' employment rights. While umbrella companies are used in a variety of structures and for different legitimate purposes, the consultation responses note concern as to their use to evade employment rights, as well as widespread tax noncompliance in the industry (noting £500m was lost to disguised remuneration tax avoidance schemes in the tax year 2022-23, most of which was facilitated by umbrella companies).

Umbrella companies that are also professional employer organisations are often used in the context of international businesses that have no presence in the UK but are seeking to employ a small number of employees locally. The use of these companies in this way is largely untested in the English courts in business protection cases, particularly around the enforcement of confidentiality and intellectual property provisions and post-termination restrictions where the counterparty to the relevant agreement is the umbrella company but the restrictions seek to protect the end-user business. The use of umbrella companies can also give rise to issues with the operation of equity incentive schemes with various tax and regulatory issues potentially caused by the separation of the issuer from the underlying employment relationship.

The consultation responses set out the UK government's intention to do the following:

Employment Rights

The consultation responses state that umbrella companies will be brought within the scope of the Employment Agency Standards Inspectorate's remit (and subsequently that of the Fair Work Agency, the timing of whose setup is still to be confirmed) through an amendment to the Employment Rights Bill. The government's intention is to protect vulnerable workers and ensure all workers have comparable rights, whether they are employed by an umbrella company, agency or end-user business.

Tax Compliance

The consultation responses give context to the announcement in the Autumn Budget 2024 that legislation will be introduced, to take effect in April 2026, to provide that the responsibility to account for PAYE will move from the umbrella company that employs the worker to the relevant agency entity that supplies the worker (or end-user business, if there is no agency).

As the consultation responses note, these measures will significantly impact and likely contract the umbrella company market. Companies with affected entities in their labour supply chains should consider reviewing their arrangements and the impact of the shift in PAYE responsibility, in particular to ensure that where companies have delegated responsibility for PAYE to an umbrella company the end-user business has adequate protection from that umbrella company if it fails to deduct and account for taxes correctly.

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