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Client Alert

Global Human Capital and Compliance

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Do or DEI - New Ethnicity and Disability Pay Gap Reporting and Other Updates

This month's update includes plans to significantly expand pay gap reporting, increases in pay rates case law warnings for employers on disciplinary action and holiday pay exposure – and the Competition Regulator's power to sanction companies for sharing pay information.

NEW MANDATORY PAY GAP REPORTING - CONSULTATION

On 18 March 2025, the government launched a new consultation on ethnicity and disability pay gap reporting. The framework mirrors gender pay gap reporting – applying to employers with 250+ employees, using the same pay elements and breakdown (differences in mean and median hourly pay and bonus broken down by quartiles), and assessed on the same timeframe.

However, these new rules involve significantly more difficult questions. What lengths do employers have to go to persuade employees to disclose their ethnicity and any disabilities? This information will not be generally available to them as gender is. And can a breakdown of ethnicity be meaningful? The government proposes using the multiple different categories captured in the UK census, unless there are fewer than 10 employees in any category, given privacy obligations considerations. Should employers have flexibility to group the ethnic makeup of their particular workforce in a different way? And is the proposed 'fall back' of White British versus 'ethnic minority' of any value? And should employers be required to produce action plans to address any pay gaps?

The consultation closes on 10 June 2025 and it is estimated that the new rules could be implemented in 2027. Employers can contribute to the consultation via King & Spalding or directly at this link: Introduction: Government consultation: mandatory ethnicity and disability pay gap reporting.

CHANGES TO COMPENSATION LIMITS AND STATUTORY PAYMENT RATES

Annual changes to compensation limits and statutory payment amounts will take effect from 6 April. In the case of termination this means where the effective date of termination (rather than the date on which notice was issued or a settlement agreement signed) is on or after 6 April 2025.

The key changes are as follows:

- The limit on compensatory awards for unfair dismissal will increase from £115,115 to **£118,223**;
- The limit on a week's pay for the purposes of calculating statutory redundancy pay, and other compensation limits to certain employment tribunal awards, will increase from £700 to **£719**;
- The minimum basic award in cases where a dismissal is unfair because of certain health and safety, working time, employee representative, trade union, or occupational pension trustee circumstances or reasons, will increase from £8,533 to **£8,763**; and
- The 'Vento' bands – for injury to feelings awards in discrimination and whistleblower cases – will also increase. The lower band will be **£1,200 to £12,100**, the middle band will be **£12,100 to £36,400**, and the upper band will be **£36,400 to £60,700**, based on the seriousness of the case.

WHEN IS PAY A COMPETITION / ANTI-TRUST ISSUE?

The UK's competition regulator, the Competition Markets Authority, has made an unusual finding that four sports broadcasters illegally 'benchmarked' rates for freelancers such as camera operators and sound recorders over a 7-year period. The broadcasters received fines of up to £1.7 million ($2.2 million) – the CMA has the power to impose fines of up to 10% of global turnover. The case is a reminder to avoid information-sharing on pay or terms.

The challenge was sponsored by a union. UK unions are increasingly focused on protecting the rights of freelancers and casual workers, not only 'traditional' employees.

EMPLOYMENT RIGHTS BILL: MORE CHANGES ANNOUNCED

The Employment Rights Bill continues to take shape as consultations close. Some key changes are as follows:

- **Collective consultation** – the maximum protective award for failure to meet collective consultation requirements will increase from 90 days to 180 days, plus a potential increase 25% uplift if an employer fails to comply with the Code of Practice on Dismissal and Reengagement where 'firing and 're-hiring'.
- **Zero-hours workers** – the Bill required employers to offer guaranteed hours contracts to zero-hours and low-hours workers, provide reasonable notice for shifts, and compensation for short-notice cancellations. These rights will now be extended to agency workers.
- **Statutory Sick Pay** – will become a day one right for all workers, with the current waiting period (3 days) and the lower earnings limit removed. Individuals earning less than the lower earnings limit will see SSP calculated at 80% of their normal weekly earnings, instead of the previous flat weekly rate.
- **Fair Work Agency** – the government has proposed to give the Secretary of State, via the FWA, additional powers, which it is hoped will reduce some of the strain on the employment tribunal. The FWA will have the ability to issue unpaid minimum wage, SSP or holiday pay underpayment notices, and will also be able to bring tribunal claims on behalf of employees who do not pursue claims themselves.

THE IMPORTANCE OF CLEAR RULES WHEN DISCIPLINING

A recent unfair dismissal case shines a light on the importance of clear rules and training when looking to discipline an employee.

The employee was a school inspector with a clean disciplinary record. During an inspection in 2019, he brushed rainwater off a student's head, and "*lightly touched*" the student's shoulder. The school lodged a complaint, stating the physical contact was inappropriate and the employee was dismissed for gross misconduct for "*breaching professional standards*". However, his employer had not provided any training or policies prohibiting this type of contact.

The Employment Appeal Tribunal ruled the dismissal to be substantively and procedurally unfair based on employees being unaware that this type of conduct was prohibited – compounded by the fact the employer withheld key documents withheld from the employee during the disciplinary process. The case shows the risks of entering a process with a closed mind, or making assumptions as to behavioural expectations that have not been communicated.

Mr A Hewston v OFSTED: [2023] EAT 109

WORKER RIGHTS – DOES A SUBSTITUTION CLAUSE SAVE THE DAY?

In this recent case, Dr Ter-Berg had sold his dental practice to a limited company in 2013 and continued working under an Associate Agreement. When this agreement was terminated, Dr Ter-Berg brough claims for unfair dismissal, whistleblowing detriment, and holiday pay, arguing he was a worker.

To qualify as a worker, there must be an obligation of personal service. Dr Ter-Berg's contract contained a substitution clause allowing him to appoint a locum if, for example, he was ill. The EAT found that substitution in these limited scenarios was not sufficient to displace the personal service requirement. The Employment Appeal Tribunal also provided two other principles on worker status: firstly that lack of control over the individual's work and the absence of mutuality of obligation between the parties were not automatically inconsistent with worker status (given this is a lower bar than employee status). The individual then had worker status.

Employers should be mindful that the tests for worker status, as opposed to employee status, have a lower threshold, and that a substitution clause alone will not automatically rule out a personal service requirement especially where it only applies in limited scenarios or is not put into practice.

Dr. Ter-Berg v Malde and another [2025] EAT 23
