

# New Rights For Gig Economy And Zero-Hour Contract Workers

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## **New Rights For Gig Economy And Zero-Hour Contract Workers**

On 17 December 2018, the Government released its Good Work Plan, in which it set out what it states is the biggest package of workplace reforms for 20 years. In presenting its “vision for the future of the UK labour market”, the Government aims to bring employment law into line with changes in technology and the way people now work.

The plan is the result of an independent review of modern employment practices, led by Matthew Taylor, the Chief Executive of the Royal Society of the Arts.

Much of the detail is yet to be clarified, but we’ve set out below what the new rules are likely to mean for employers.

**A written statement to be provided to employees and workers**

## **from day one of their employment**

Under the Employment Rights Act 1996, employers must provide employees (but not “workers”) a written statement of the particulars of employment not later than two months after the employee starts work.

However, the Good Work Plan states that the changing nature of employment relationships and the increase in flexible working arrangements has left many lacking the information needed to ensure they fully understand their employment terms and conditions. To rectify the lack of clarity, the new legislation will state an employer must provide a written statement of particulars from day one to both employees and workers. Leave entitlements, such as time off for sickness and maternity leave, must be included.

## **Right to request a stable contract**

Under the changes, employees and workers will be given the legislative right to request a predictable and stable contract after 26 weeks of employment. The aim of this is to allow people to benefit from flexible working arrangements but be able to plan for their future and benefit from certainty, for example, to help them apply for a mortgage.

In practice, if a staff member has worked for an employer for 26 weeks or more on a zero hours contract but averaging 25 hours a week, they will have the right to ask their employer for a contract guaranteeing those 25 hours.

Employer will need to put procedures in place for dealing with these requests in line with the statutory framework.

## **Continuous Service break extended**

Because employment rights are earned over time, Matthew Taylor identified that many people struggled to build up continuous service due to intermittent working patterns or working for

multiple employers. Under current law, a gap of one week can break the chain of continuous service. New laws will extend the length of the gap to four weeks.

### **Agency workers**

Currently, agency workers can exchange their right to be paid, in the same manner as their permanent counterparts ('opt-out' from this part of the Agency Worker Regulations), in return for a contract with the employment agency guaranteeing pay between assignments. This is known as the "Swedish derogation". However, evidence shows that some agencies use tactics to circumnavigate the need to pay between assignments, for example by contractually stipulating the employee must always be available to work, regardless of the number of hours offered or the location of the job. In addition, in the current climate of full employment, it was identified that agency workers seldom experienced gaps between assignments; however, some agencies continue to use the opt-out as a way of reducing the wage bill.

New legislation will end Swedish derogation and end the ability of agency employers to deny an employee equal pay under the Agency Workers Regulations 2010.

For employers taking on temporary agency workers, this means the agency will need to pay the worker the same rate of pay as the employer would permanent staff. This may lead to an increase in costs, especially for employers who need to take on a number of extra workers over busy periods.

### **Staff tips**

The Plan recognises that gratuities and service charges can be a significant part of staff income. Most employers pass these onto employees; however, it is recognised a small number resist this. Therefore, legislation will be brought in to ban employers from making deductions from staff tips.

## **Information and consultation arrangements**

The Information and Consultation of Employees Regulations, provides the right for employees, in certain circumstances, to request their employer make arrangements to inform or consult them regarding organisational issues.

New legislation will be introduced to lower the threshold required for a request to set up information and consultation arrangements from 10% to 2% of employees. The 15 employee minimum threshold for initiation of proceedings will remain in place. This change aims to make employees feel more involved in the workplace, thereby improving job satisfaction.

This change will mean employers will need to be prepared to consult more freely and more often.

## **Increase in Employment Tribunal fines**

New laws will increase the maximum fine for employers who deliberately breach employment law or have shown malice, spite, or gross oversight, from £5,000 to £20,000. In addition, employers who repeatedly flout employment law may be subjected to sanctions.

It was noted that the Employment Tribunal do not use their power to fine for aggravated breach as widely as they could; therefore, new guidance will be provided to judges on how current powers can be used. Once the sanctions are in force, obligations will be placed on the Tribunal to consider their use in appropriate circumstances.

Employers should take note of this new 'hard line' against aggravated or repeated breach of employment law and ensure they seek legal advice when undertaking dismissals and other actions which could lead to a claim.

## **Holiday pay**

The report identified that some seasonal and atypical workers

(including those participating in the gig economy) faced challenges in benefiting from their full holiday pay entitlement. To ensure the average hours for an entire year are reflected in holiday pay calculations, legislation will be introduced to extend the holiday pay reference period from 12 to 52 weeks.

Employers will need to plan ahead and adjust their payroll practices accordingly.

### **Umbrella companies**

Umbrella companies, which act as an intermediary between employers and workers are seen to work well in highly-skilled, highly-paid sectors. However, the Taylor Review recognised that although they reduce the cost and administrative burden of managing payrolls, they can fail workers in low-skilled, low-paid roles. One reason for this is the lack of certainty regarding which entity is technically the employer is in situations where an umbrella company is engaged. As such, workers can be unsure who to approach regarding their rights.

To counter this, legislation will be introduced to allow the Employment Agency Standards Inspectorate to cover umbrella companies. They will have the power to investigate complaints and take enforcement action if required. A particular focus will be on situations in which fair pay is not being granted. This will reduce the instances of unfair competition based on unlawful wage reduction.

**If you have any questions regarding how these new changes may affect your business, please do not hesitate to call us on 020 3828 0350.**

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