

Six months to go: is your business ready for the employment law reforms coming into force in April 2020?

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Employment Law News

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Six months to go: is your business ready for the employment law reforms coming into force in April 2020?

Change in the employment law sphere rarely slows down – even in the face of Brexit. We are now only six months away from a host of employment law reforms, most of which are scheduled to come into force on 6 April 2020. Below we outline the reforms and the preparatory steps for employers.

1. Reform of the IR35 regime in the private sector

From 6 April 2020, large and medium-sized businesses in the private sector that engage independent contractors via a personal service company (PSC) will become responsible for assessing whether the off payroll working rules (known as IR35) apply. The Government's Check Employment Status Tool is designed to help with this assessment. Once the end-user business has made its assessment it must notify the contractor and the PSC of its decision (and reasons) and provide them with the opportunity to challenge the assessment. Assuming the end-user business is closest to the PSC in the contractual chain, it will also become responsible for deducting income tax and NICs at source through PAYE and paying employer NICs.

Next steps? Identify whether you engage any contractors via a PSC and determine whether the IR35 rules will apply to any such contracts. Check whether your contract with the PSC permits the deduction of income tax and NICs and, if not, enter into revised contracts. Ensure the necessary payroll arrangements are in place for 6 April 2020.

2. Employment contracts

The right to a written statement of particulars of employment will be extended to all workers and must be given on the first day of work. Significantly, the content of the statement will be enhanced. In future, the statement must contain the existing "*principal statement*" particulars plus some of the existing "*supplementary statement*" particulars. Further, new particulars relating to working time, paid leave, benefits and probationary periods must also be incorporated into the

statement. Only a very limited amount of information may be given separately within two months of starting work, including a brand new requirement to provide particulars of training entitlements.

Next steps? Identify any workers who will need a statement and begin updating template contracts to capture the new requirements in readiness for 6 April 2020.

3. Calculating holiday pay

There will be a change to the reference period used to calculate holiday pay for certain types of workers. Where a worker has variable pay because they have either: (i) no normal working hours; or (ii) normal working hours but pay that varies with the amount of work done or the time the work is done, then the reference period will increase from 12 weeks to 52 weeks. The exception to this is where the worker has been engaged for fewer than 52 weeks. In such cases, the reference period will be the number of weeks that the worker has been engaged. This reform does not apply to workers who have normal working hours and non-variable pay (i.e. most salaried workers).

Next steps? Ensure that internal policies are updated to reflect this change where necessary and the new calculation model is adopted from 6 April 2020.

4. Taxation of termination payments

Employer class 1A NICs will become payable on termination payments above £30,000 (which are currently only subject to income tax). Termination payments will remain completely exempt from employee NICs. This reform was initially due to come into force in 2018, but was delayed first to 6 April 2019 and then again to 6 April 2020.

Next steps? Although there are no immediate steps to take, remember to factor in this extra cost when negotiating

settlements with departing employees.

5. Better rights for agency workers

The provision which exempts agency workers from the right to pay parity with permanent employees until they have 12 weeks' service (known as the "Swedish derogation") will be repealed on 6 April 2020. Agencies must notify agency workers of their right to have the same conditions as those employed directly by the hirer and confirm that the Swedish derogation no longer applies. Agency workers will also become entitled to receive a "*Key Facts*" statement before starting a placement, which sets out core information relating to the proposed placement.

Next steps? Assess whether you engage any agency workers on Swedish derogation contracts and calculate the additional cost to the business of paying them in line with comparable permanent staff. Be prepared to enter into new terms with the agency supplying the affected agency workers.

6. Information and consultation of employees

The percentage of employees required to make a valid request to start negotiating an agreement on informing and consulting employees (under the Information and Consultation of Employees Regulations 2004 (ICE Regs)) will be lowered from 10% to 2% (subject to a minimum of 15 employees).

Next steps? Familiarise yourself with the negotiation procedure in the ICE Regs given the higher chance of receiving a request to negotiate.

7. New right to parental bereavement leave

From April 2020 (implementation date to be confirmed), employees who suffer the loss of a child below the age of 18 will become entitled to 2 weeks' statutory leave to be taken within 56 days of the date of death. The right to parental bereavement leave will be a stand-alone right and will not affect rights to take other relevant forms of leave such as

dependant emergency leave. Employees with 26 weeks' service will also be entitled to receive 2 weeks' statutory pay.

Next steps? Consider whether you will enhance the statutory right – both in terms of leave and pay. Put in place an appropriate bereavement policy, outlining the right and any other forms of support available to bereaved employees.

BDBF can help your business navigate these changes. If you would like to discuss any of the issues raised in this article, please contact [Amanda Steadman](#) on 020 3828 0363 or email amandasteadman@bdbf.co.uk.

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