

10 THINGS FOR EMPLOYERS TO KNOW ABOUT IN 2021

Amanda Steadman, Knowledge Lawyer
Tom McLaughlin, Managing Associate



Amanda Steadman
Knowledge Lawyer



Tom McLaughlin
Managing Associate

10 THINGS FOR EMPLOYERS TO KNOW ABOUT IN 2021

Lunchtime webinar • Monday 25th January 2021



2021 promises to be yet another busy year for employers, with a raft of reforms in the pipeline. Our lunchtime webinar will bring you up to speed on the top 10 changes for employers to look out for this year. We will cover the following areas:

1. Recruitment of EEA nationals post-Brexit.
2. IR35 reforms and the impact on engaging contractors.
3. Changes to employment contracts in 2021.
4. Major changes ahead for family-friendly rights.
5. The final phase of the furlough scheme and managing its closure.
6. Changes to flexible working rights and dealing with a surge in requests.
7. Why pay inequality issues are back on the agenda in 2021.
8. The latest on holiday pay and what it means for employers.
9. Preparing for big changes to whistleblowing laws.
10. Changes in the pipeline affecting settlement agreements.

Date: Monday 25th January 2021

Time: 12.00pm – 1.00pm

RSVP: By email to
amandasteadman@bdbf.co.uk
by 21st January 2021

Instructions for joining the
Zoom webinar will be sent out
on Friday 22nd January 2021

BDBF
EMPLOYMENT LAW

+44 (0)20 3828 0350
info@bdbf.co.uk
www.bdbf.co.uk

Kings House
36 King Street
London EC2V 8BB

(1) Recruitment of EEA / Swiss nationals post-Brexit

Resident in the UK before 1 January 2021

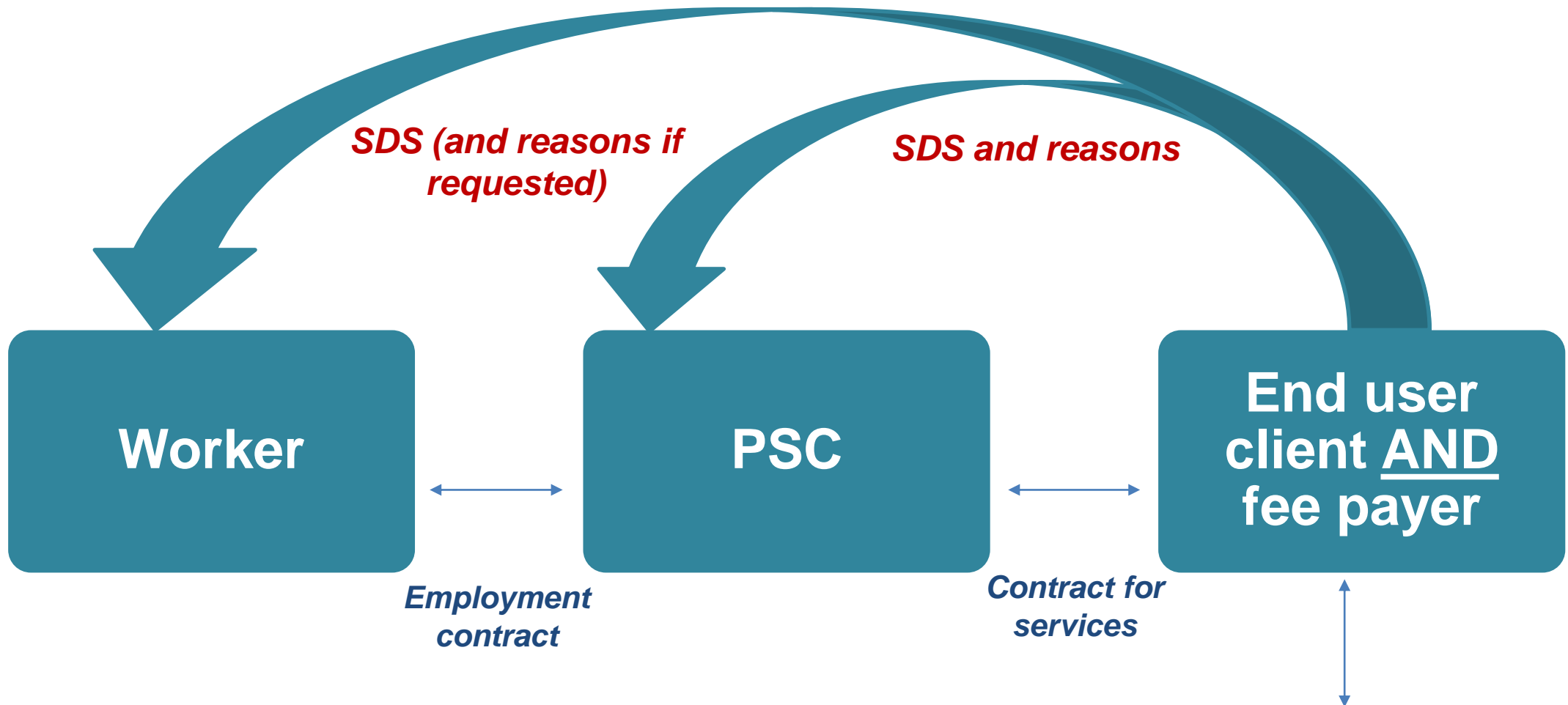
STATUS	RIGHT TO WORK
British Citizenship	<ul style="list-style-type: none">▪ Permanent right to work in the UK
Settled Status <i>(in UK for 5 years+ continuously)</i>	<ul style="list-style-type: none">▪ Permanent right to work in the UK▪ May apply for British Citizenship after 1 year
Pre-Settled Status <i>(in the UK for fewer than 5 years continuously)</i>	<ul style="list-style-type: none">▪ Right to work in the UK for 5 years from date of grant of status▪ May apply for Settled Status once in the UK for 5 years
None <i>(relying on free movement rights)</i>	<ul style="list-style-type: none">▪ Right to work in the UK until 30 June 2021▪ Must apply for Settled Status / Pre-Settled Status by 30 June 2021

Resident in the UK on or after 1 January 2021

STATUS	RIGHT TO WORK
<ul style="list-style-type: none">▪ Must qualify under the UK's new Points-Based immigration system (unless another route is available)▪ The “Skilled Worker” visa:<ul style="list-style-type: none">i. Employer needs sponsor licenceii. Employer issues candidate with certificate of sponsorshipiii. Candidate applies for visa (must meet skills and salary thresholds)iv. Visa granted	<ul style="list-style-type: none">▪ Right to work in the UK for length of the visa▪ Visa may be extended or updated if change job / employer

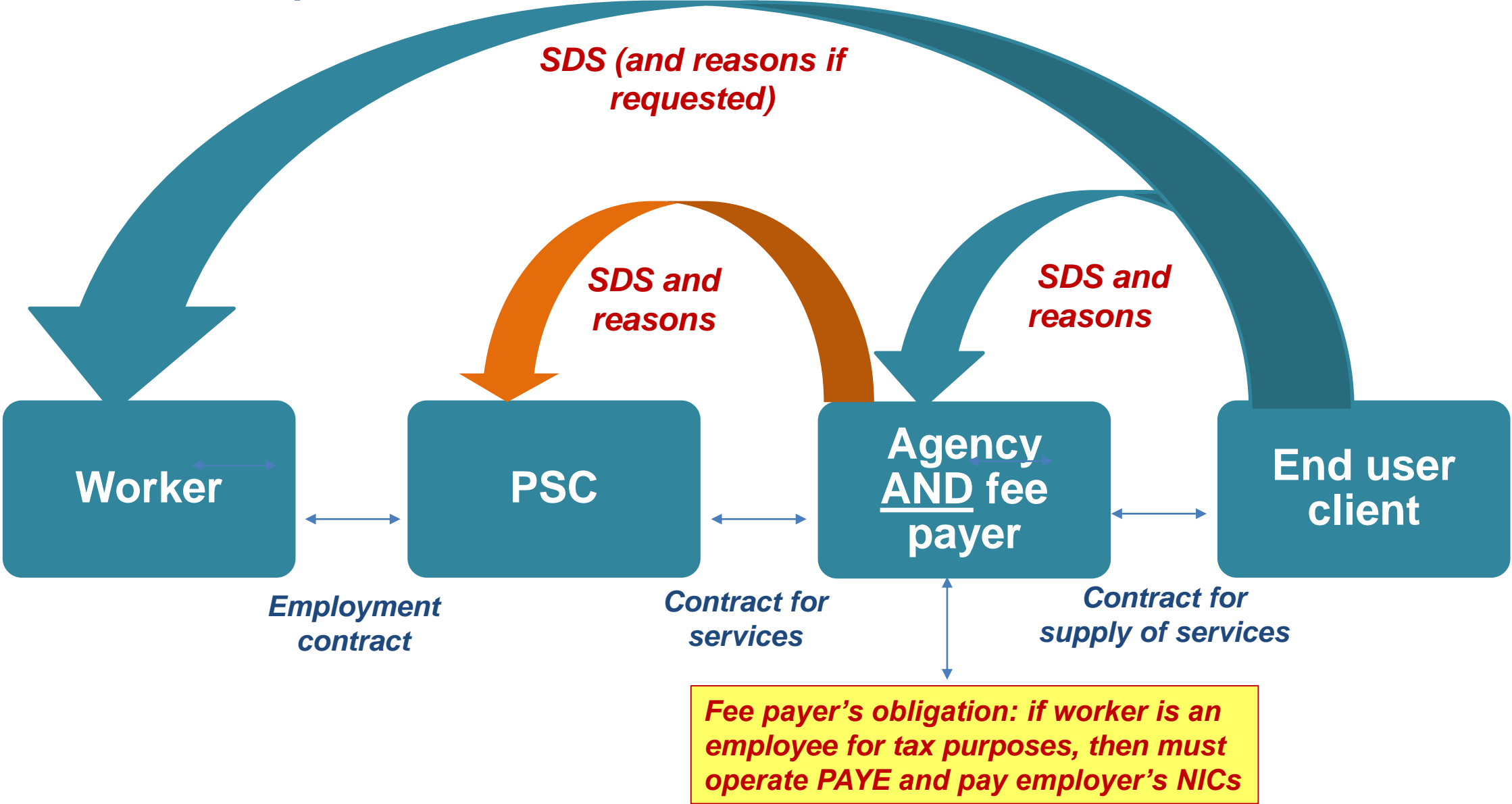
(2) IR35 reforms and engaging contractors

A simple chain



Fee payer's obligation: if worker is an employee for tax purposes, then must operate PAYE/NICs and pay employer's NICs

A more complex chain



Steps to consider before 6 April 2021

AVOIDING IR35 ALTOGETHER

- Direct employment or direct consultancy (but still need to assess tax status)
- Outsource the function
- Use an agency and request no workers via PSCs

REDUCING THE RISK OF THE WORKER BEING AN EMPLOYEE FOR TAX PURPOSES

- Review and change the contract for services with the PSC (NB. must reflect reality and so the relationship on the ground may have to change)
- Review contract of employment between worker and PSC

PREPARING FOR COMPLIANCE

- Audit arrangements and open dialogue
- Devise processes for making status determinations and resolving disputes
- Amend contracts to impose obligations re SDS process and obtain indemnities

(3) Changes to employment contracts in 2021

AREA	WHAT'S THE PROPOSAL?	NEXT STEPS?
Non-compete restrictions	<ul style="list-style-type: none"> ▪ Mandatory compensation for length of non-compete and new statutory limits on the length of non-compete <li style="text-align: center;">OR ▪ Complete ban on use of non-competes 	<ul style="list-style-type: none"> ▪ Consultation closes on 26 February 2021
Exclusivity clauses	<ul style="list-style-type: none"> ▪ Ban on clauses restricting employees from working for another employer (for low-paid employees only) 	<ul style="list-style-type: none"> ▪ Consultation closes on 26 February 2021
Non-disclosure agreements	<ul style="list-style-type: none"> ▪ New legislation restricting use of NDAs in employment contracts ▪ SRA Warning Notice on use of NDAs 	<ul style="list-style-type: none"> ▪ Awaiting legislation ▪ SRA Warning Notice already in force

(4) Major changes ahead for family-friendly rights

New redundancy protection pregnant workers and new mothers

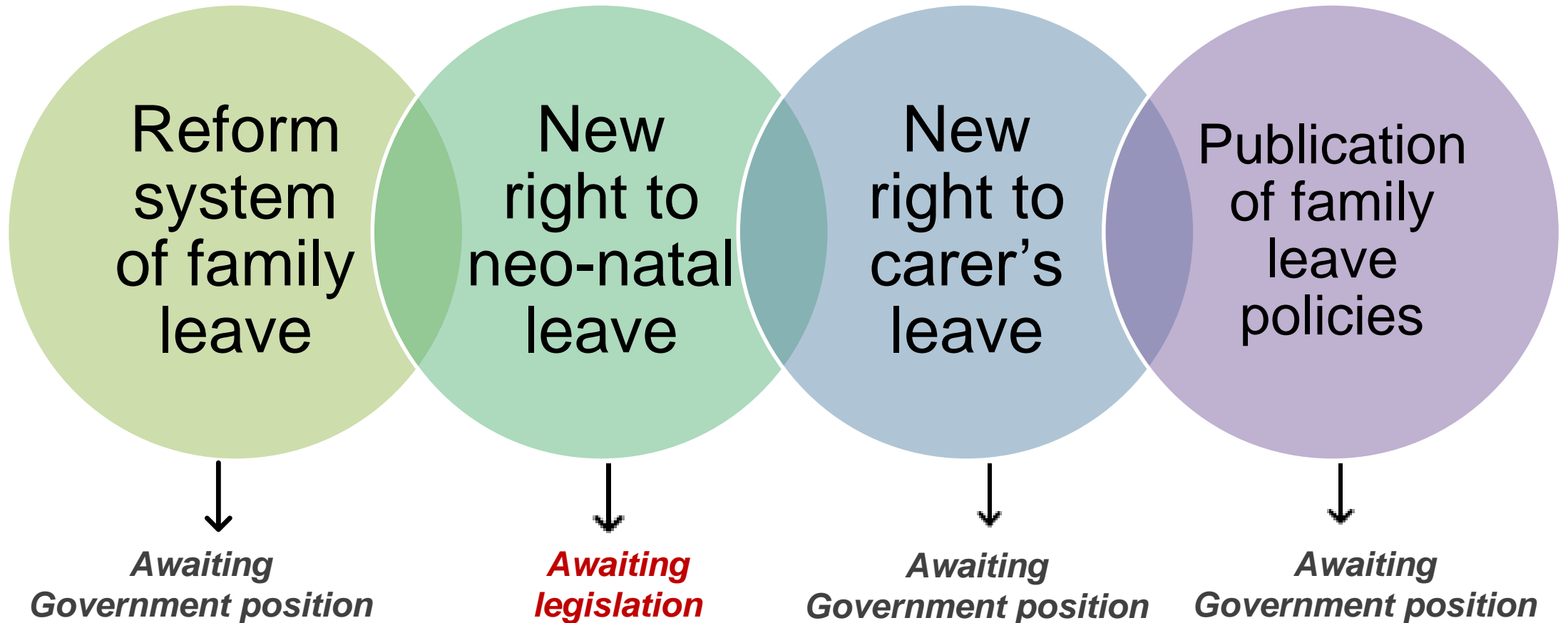
(1) EXTENDING PREFERENTIAL TREATMENT FOR SUITABLE ALTERNATIVE VACANCIES

- To: (i) pregnant workers; and (ii) maternity / adoption / shared parental leave returners for 6 months after return
- **Next steps? Awaiting legislation**

(2) RINGFENCING AFFECTED WOMEN FROM REDUNDANCY

- Ban on making workers redundant whilst pregnant, on maternity leave and for 6 months after return, save in limited circumstances
- **Next steps? Pregnancy and Maternity (Redundancy) Protection Bill - next stage on 26 March 2021**

Family leave reforms



(5) The final phase of the furlough scheme and managing its closure

Key features of the final phase

Scheme re-opened to new entrants

Able to furlough full-time or part-time

Employees receive 80% of pay up to £2,500 per month

Government grant covers 80% of pay – no employer contribution

Employers must pay NICs and pension contributions

Publication of names of employers who make claims

Managing closure of the scheme

17 March 2021

Last possible day to begin 45-day collective consultation (if you wish to terminate on 30 April 2021)

30 April 2021

Closure of the furlough scheme (subject to any further extension)

Conduct election process if necessary

1 April 2021

Last possible day to begin 30-day collective consultation (if you wish to terminate on 30 April 2021)

14 May 2021

Last date for submitting furlough claims to HMRC

(6) Dealing with a surge in flexible requests and future changes

DEALING WITH REQUESTS FROM EXISTING EMPLOYEES

- Start assessing now how homeworking has affected your business
- Give thought to your general approach. What can you live with? What reasons will you rely on to reject a request if necessary?

FUTURE REFORMS

- Flexible working the default for every job unless a good reason why not
 - **Next steps? Awaiting publication of consultation**
- Publication of flexible working policies
 - **Next steps? Awaiting response to consultation**

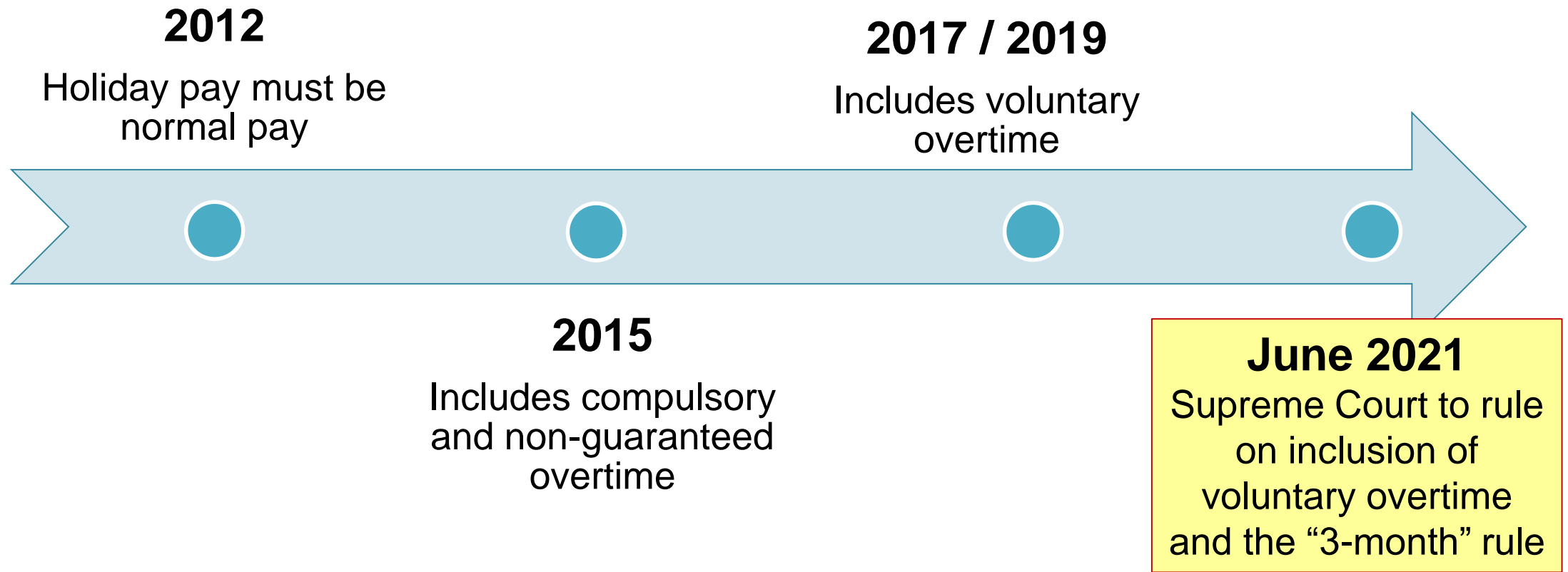
**(7) Pay inequality issues back on
the agenda in 2021**

WHAT?	WHO?	NEXT STEPS?
Gender pay gap reports for 2020	Employers with 250+ employees	<ul style="list-style-type: none"> ▪ Reporting deadline - 4 April 2021
Gender pay gap reporting extension	Employers with 100+ employees	<ul style="list-style-type: none"> ▪ Equal Pay (Information and Claims) Bill 2019-21 - Awaiting second reading of Bill
Ethnicity pay reporting	Employers with 100+ employees	
Right to know what colleagues are paid	All employers	

(8) The latest on holiday pay and what it means for employers

Holiday pay

Series of deductions = not more than a 3-month gap between the underpayments



(9) Preparing for big changes to whistleblowing law

WHAT?	CHANGE?	NEXT STEPS?
EU Whistleblowing Directive	<ul style="list-style-type: none"> ▪ Employers with 50+ employees must have procedures in place ▪ Obligated to provide feedback ▪ Measures to stop victimisation 	<ul style="list-style-type: none"> ▪ EU Member States to implement by 17 December 2021
Public Interest Disclosure (Protection) Bill 2019-21	<ul style="list-style-type: none"> ▪ Criminal offence to mistreat whistleblowers / mishandle cases ▪ New Whistleblowing Commission 	<ul style="list-style-type: none"> ▪ Awaiting second reading of Bill
Office of the Whistleblower Bill 2019-21	<ul style="list-style-type: none"> ▪ New Office of the Whistleblower with various powers - including providing compensation to whistleblowers 	<ul style="list-style-type: none"> ▪ Awaiting second reading of Bill

(10) Changes in the pipeline affecting settlement agreements

New legislation

NDA's must carve out some disclosures

Limitations of NDA must be made clear

Enforcement measures for non-compliant clauses



SRA's Warning Notice

NDA's must include extensive carve outs

Disciplinary offence to breach the Warning Notice

Applies to (i) all lawyers; and (ii) employees of law firms

Our contact details

Amanda Steadman, Knowledge Lawyer

amandasteadman@bdbf.co.uk

020 3828 0363



Tom McLaughlin, Managing Associate

tommclaughlin@bdbf.co.uk

020 3828 0366

