

Changing direction?

Employment law highlights for General Counsel



Recent and forthcoming European employment law highlights for GCs

Key developments summarised	Impact on employers
United Kingdom	
Amidst much media interest, April 2018 saw the first deadline for larger employers in Britain to publish their gender pay gap data . It was a bruising time for some businesses who were named and shamed for unfavourable pay gaps. Media focus has already shifted from the pay gaps themselves to how employers are explaining and tackling them	Employers should prepare for pay/bonus questions from female workers and, possibly, equal pay complaints. Pay gaps are often about under-representation at senior levels, so HR need to consider how they attract, develop and retain diverse talent. This is not just a British issue: other countries, such as France, Germany, Spain and Ireland are moving to strengthen or introduce gender pay measures, or have recently acted to do so
As part of corporate governance reforms, the Government is moving ahead with legislation to extend pay gap reporting so that listed companies will be required to publish and justify pay ratios between Chief Executives and their average workers from 2019	The scale of reporting and work involved in calculation and explanation will inevitably prove time-consuming, need careful resourcing and have associated reputational and employee relations risks. Read our briefing
The Supreme Court has upheld an Employment Tribunal's decision that a plumber was entitled to holiday	Given the growing number of tribunal claims in this area, the accompanying publicity and the

<p>pay and protection from discrimination from the company for which he worked, notwithstanding that he was self-employed for tax purposes</p>	<p>financial risks involved where large numbers of workers are misclassified as independent contractors, employers should review the employment status of their freelance and contracting workforce. Read our briefing</p>
<p>The countdown to Brexit continues with a transition agreement agreed in principle whereby the UK remains closely tied to the EU until end December 2020. However, this is contingent on many details being clarified and agreed upon, many of which currently unknown</p>	<p>Visit our Brexit hub for our latest news and guidance for employers</p>
<p>European Union</p>	
<p>Legal protection for individuals who “blow the whistle” varies enormously within the EU. To address inconsistency, the EU Commission has published a draft Directive aimed at setting minimum standards of employment protection across member states for the first time</p> <p>The EU Parliament has approved a revision of the Posted Workers Directive (PWD) which may affect some multinational employers who move their workers around Europe to perform temporary assignments and have hitherto remained largely unaffected by the PWD’s employment protections</p>	<p>It is likely to be some months before the Directive is approved and its provisions may change in order to secure legislative agreement. However, if agreement is reached, it is expected to introduce significant change across the EU. Read our briefing</p> <p>The PWD focuses on guaranteeing statutory minimum rates of pay and working conditions for posted workers. The revision introduces a new equal treatment rule which extends this guarantee to include potentially higher pay rates contained in certain collective agreements Read our briefing</p>
<p>The EU Commission’s proposed legislation regarding the extension of minimum rights to new kinds of employment relationships remains under discussion, with no clear date for introduction. It aims to ensure that every worker has a core set of enforceable rights, regardless of the type of employment relationship</p>	<p>The European employer representative, Business Europe, is concerned that the draft legislation risks interfering with national law, extends new rights to self-employed workers and suggests it should instead focus on employees only</p>
<p>Similarly, the Commission’s proposal for new work-life balance legislation remains under consideration within the EU, although the aim is to reach final agreement this year</p>	<p>If the work-life proposal is agreed, it will extend parental leave rights and introduce EU wide rights to carer’s leave, paternity leave and for parents to request flexible work arrangements</p>
<p>Denmark</p>	

<p>Following the EU decision that holiday provision in Denmark did not comply with EU law, a new Holiday Act has been implemented which transforms the accrual, and taking, of annual leave for Danish workers</p>	<p>Given this significant workplace change and the potentially increased holiday costs for employers during changeover, a transitional period applies during which employers are not required to provide more than 5 weeks' paid holiday to any employee. Read our briefing</p>
<p>Germany</p>	
<p>A recent case regarding Restrictive covenants in Germany may prove helpful to employers but such covenants come at a price: requiring a payment of at least 50% of the individual's final remuneration (including bonuses etc) on a pro-rated basis for the duration of the post termination restriction. Waivers are possible but also costly.</p>	<p>While the employer was successful in this case due to the ex-employee's inconsistent behaviour, it is a reminder for employers to check whether restrictive covenants are necessary, given the potential costs involved even where a waiver is sought. Read our briefing</p>
<p>Italy</p>	
<p>In the first court ruling in Italy on the employment status of individuals working in the "gig economy", couriers were found to be contractors, not employees</p>	<p>While the court decision reiterates existing legal principles, it provides a useful precedent for companies wishing to engage self-employed workers in similar "gig" business models. Read our briefing</p>
<p>Russia</p>	
<p>The Russian Federation inspects workplaces to monitor compliance with labour legislation. Employers should be aware that their approach has changed, including the use by state labour inspectors of published checklists when auditing employers</p>	<p>While the use of checklists will help employers to prepare for inspections, it should be noted that unplanned audits can also be conducted without reference to the checklists (e.g. where an employee has complained to the State). Read our briefing</p>
<p>Spain</p>	
<p>A draft law to combat gender pay discrimination will, if adopted, require companies to publish their average salaries, share this information with employee representatives, improve the transparency of payslip information to allow comparisons and create special labour inspectors for gender equality</p>	<p>These proposals raise significant reputational, employee relations and other risks. However, they are currently under review and are not finalised or certain. There is no date for implementation as yet. Read our briefing</p>
<p>Switzerland</p>	

Two landmark tribunal decisions have clarified the validity of **arbitration** clauses and clauses providing for **contractual penalties** or liquidated damages in employment contracts

Employers should review their use of such clauses, particularly given that they may not be fully effective in some circumstances or may even void, given this new case law. [Read our briefing](#)

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