



Employment Law Guide for Employers

The Good Work Plan 2020

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The Good Work Plan 2020



This guide outlines the forthcoming employment law changes and offers guidance on how to avoid being caught off-guard by non-compliance.

So, where did this all begin? During Theresa May's premiership, there were a number of proposals and consultations on key issues in employment law, particularly in regard to the 'Gig Economy'. Following recommendations set out by the 2018 Taylor Review of Modern Working Practices, these proposals became the Government's Good Work Plan. Some elements of the plan have already come into force. But more are due in April 2020, and the changes will place new administrative burdens on employers and present new challenges. So what's changing and how should you respond? Let's break down each of the upcoming changes...

Lowering information and consultation thresholds

The Taylor Review highlighted the need for workers to have a voice. It noted that high levels of employee engagement improve organisational performance and boost productivity. Following the publication of the Good Work Plan, the Government introduced regulations lowering the threshold required to set up information and consultation arrangements from 10% to 2% of employees. This will come into effect from the **6th April 2020**.

Holiday pay reference periods

The Taylor Review recommended changes to holiday pay. In particular, it highlighted the need to accommodate seasonal variation. As a result, the Good Work Plan will change the reference period you use to calculate holiday pay entitlement. This means:

- Where a worker has been employed by their employer for at least 52 weeks, the reference period is increased from 12 weeks to 52 weeks
- Where a worker has been employed by their employer for fewer than 52 weeks, the reference period is the number of weeks for which the worker has been employed.

This change will come into effect from **April 2020**.

'Day one' right to SMTs

Currently, employers are required to issue new employees with a Written Statement of the Main Terms and Conditions of Employment (SMT) within two months of starting work. The Good Work Plan states that all employees and workers are entitled to an SMT from day one of employment.

This statement should set out enhanced information such as:

- How long the job is expected to last (or end date of a fixed-term contract)
- How much notice is required (from the employer & the employee)
- Details of eligibility for sick leave and pay
- Details of other types of paid leave
- Duration and conditions of any probationary period
- Remuneration
- Which specific days and times workers are required to work

This change will come into force on the **6th April 2020**.

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Scrapping of 'Swedish Derogation' contracts

These type of contracts, also known as 'Pay Between Assignment' contracts, entitle agency workers to receive pay when they are not assigned to an end-user but exempt the agency worker from equal treatment to pay when they reach 12 weeks' service within an assignment. Agency workers will no longer be excluded from the equality provisions of the Agency Workers Regulations 2010.

This guarantees equal wages with comparable permanent workers for all agency workers once they reach 12 weeks' service in one assignment. If you employ agency workers, you must inform them that they have the right to equality of treatment. This statement must be given by the **30th April 2020**.

Providing 'key facts' sheet to agency workers

The Good Work Plan requires employment businesses to issue agency workers with a 'key information document'. This document must include information on:

- The type of contract
- The minimum expected rate of pay
- How the individual will be paid (and by whom)
- Any deductions or fees that will be taken
- Any monetary benefit entitlements
- Entitlement to annual leave and payment
- An illustrative example of what the above means for their take-home pay

This change will come into force from **April 2020**.

Oversight of NDA use

Following highly-publicised abuse of non-disclosure agreements (NDAs) the government published an official response to their proper use. The response recognises that there are legitimate reasons for including NDAs in employment contracts and settlement agreements. However, they should not be used to silence victims of discrimination and harassment. In particular, the Government intends to legislate to:

- Ensure that confidentiality clauses cannot prevent someone from making a disclosure to the police, or to regulated health and legal professionals who owe the individual a duty of confidentiality
- Require confidentiality clauses to set out their limits clearly, so individuals understand when they can still make disclosures to other people
- Make it compulsory for individuals to receive legal advice on the nature and limitations of any confidentiality provisions before they can enter into a binding settlement agreement
- Introduce enforcement provisions for confidentiality agreements that do not meet the new requirements.

The required legislation will be brought forward 'when Parliamentary time allows'.

Enhanced redundancy protection

In July 2019, the Government announced its response to an earlier consultation on extending redundancy protection for pregnant women and new parents. This proposes:

- To extend the redundancy protection period for six months once a new mother has returned to work
- To afford the same protection to those taking adoption leave
- To extend redundancy protection for those returning from shared parental leave. However, the Government is to consult further with stakeholders on the design of this protection over coming months.

A pregnant woman will be protected from the time that she notifies her employer of her pregnancy. If these proposals do come into law, it will mean a substantial increased length of time for which women will have enhanced rights during a redundancy situation.

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It could have considerable impact in female dominated workforces as a larger pool of women would be entitled to a suitable alternative position. Again, the Government announced that it will be implementing these changes 'when Parliamentary time allows'.

Tackling one-sided flexibility

The Good Work Plan states that legislation will be introduced to allow all employees and workers with varying hours and shift patterns (including agency and zero hours workers) to formally request a more fixed working pattern after 26 weeks of work for the same employer. There would also be a right to compensation for shifts cancelled without reasonable notice. It is anticipated that the new legislation will mirror the flexible working regulations, which will be extended to workers.

In addition, the government is currently consulting on the issue of 'one-sided flexibility'. This exists within some parts of the labour market, where employers misuse flexible working arrangements, creating an unpredictability in working hours, income insecurity and a reluctance among workers to assert basic employment rights. The consultation has ended.

Sexual harassment in the workplace

The Government Equalities Office (GEO) has launched a consultation on sexual harassment in the workplace and is looking at whether the current laws on this issue provide the protections they are supposed to. The consultation will consider whether there are any gaps in the laws and look at what more can be done at a practical level to ensure employees are properly protected at work, so that everyone feels safe and can thrive.

This consultation has ended.

Future consultations

The Government still has to take action on other important parts of the Good Work Plan.

They include:

- Alignment of employment status frameworks for the purposes of employment rights and tax
- Legislation to improve the clarity of employment status tests
- Extension of the time (up to four weeks) required to break a period of continuous service to make it easier for employees to access their rights.

Let's talk

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