



Employment Law Bulletin

In our previous Employment Law Bulletin, we set out a number of changes which will be coming into effect from 6th April 2020 in light of the Government's Good Work Plan. The Government has since announced further changes coming into effect from 6th April 2020, namely the annual revisions to statutory rates and limits. There have also been a number of key employment cases in the last couple of months, as well as the employment implications from the Budget.

Coronavirus – COVID-19

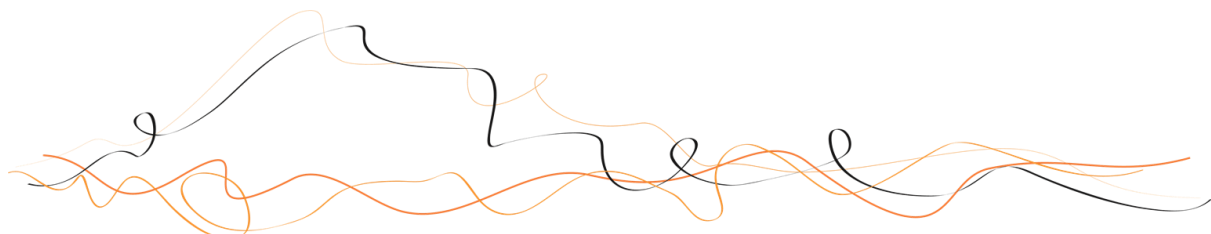
There is growing concern from employers about the implications of coronavirus. The situation is rapidly changing and therefore we have prepared a Bulletin on our firm's website to advise employers on how to deal with this unprecedented situation. [The Bulletin can be found online by clicking here which we are updating regularly.](#)

Please contact us if you require any advice. The team is on hand to advise and assist. In addition we can assist you in drafting a bespoke Homeworking and/or Coronavirus COVID-19 policy for your business and procedure for your workplace. Please contact Sally Morris on 01905 610410 or at sally.morris@mfgsolicitors.com to discuss this offer further and any frequently asked questions.

Statutory Rates and Limits

From 6th April 2020, the current statutory rates and limits will be revised in line with recent inflation figures. This will affect employees whose effective date of dismissal falls on or after 6th April 2020.

- Cap for a week's pay for statutory redundancy calculations increases to £538;
- Maximum compensatory award for unfair dismissal claims increases to £88,519.
- Statutory pay for maternity, paternity, adoption and shared parental leave increases to £151.20.
- Statutory sick pay increases from £94.25 to £95.85 – [see separate Bulletin for details and any changes to statutory sick pay arrangements as a result of the coronavirus;](#)





- National Living Wage for workers aged 25 and over increases to £8.72;
- National Minimal Wage for workers aged 21-24 increases to £8.20, aged 18-20 increases to £6.45, aged 16-17 increases to £4.55; and the
- Apprentice Rate increases from £3.90 to £4.15.

Employers should note the Department for Business, Energy and Industrial Strategy (BEIS) recently estimated over 400,000 workers were paid below the minimum wage in 2019. BEIS also announced enforcement action was successfully pursued on behalf of over 200,000 workers, amounting to approximately £25 million in unpaid wages and £17 million in fines. The Government will shortly re-start its naming and shaming scheme.

The Budget

The Chancellor delivered the Budget on 11th March 2020, which in addition to announcing the above and the temporary to changes to employment law to tackle the coronavirus (see separate Bulletin), a new statutory entitlement to neonatal leave and pay for 12 weeks' will be introduced in the future, at a date to be decided. In addition, a consultation has been launched about the introduction of some form of statutory leave for employees with unpaid caring responsibilities.

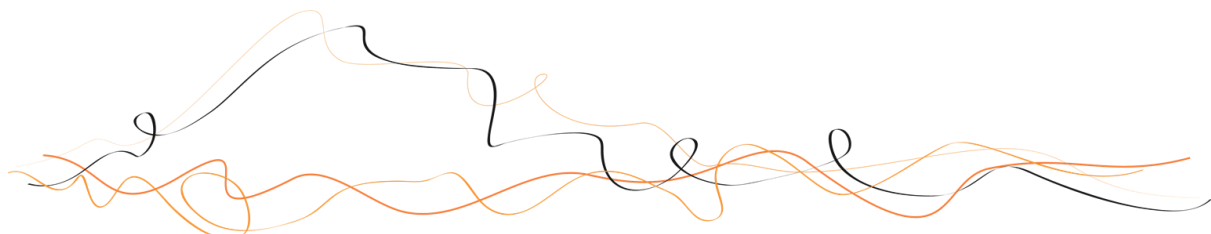
Overall, the Budget contained few employment measures, most of which employers are already aware of, although this is not a surprise in light of the coronavirus.

IR35

In light of COVID-19, the Government have announced the anticipated changes to IR35 in the private sector will be delayed by one year until April 2021. For further details about the anticipated changes to IR35, [please see our press release for further details.](#)

Shared Parental Pay

You may recall a case in 2019 about two male employees who brought discrimination claims about shared parental pay. The individuals claimed they were not paid full pay when they took shared parental leave, whereas those on maternity leave were provided with full pay. The employers were the successful parties, with the Court of Appeal stated that having enhanced pay arrangements for maternity leave was not discriminatory. The employees





have been refused permission to appeal to the Supreme Court. Therefore offering enhanced pay to women on maternity leave will not amount to indirect discrimination.

Employer liability in Restrictive Covenant claims

Businesses are struggling to retain their skilled workers, with many choosing to join a competitor. If restrictive covenants are in place, not only is the ex-employee liable for breach of contract, but potentially the new employer if they knowingly and intentionally breached the contract without reasonable justification. The recent case of *David Allen Chartered Accountants v Dodd & Co* [2020] EWCA Civ 258 looked at this specific issue.

An employee at David Allen Chartered Accountants had been employed since 2007 and signed a new contract with David Allen in 2015, which contained numerous restrictive covenants, which were designed to prevent a move to a direct competitor. The Employee resigned in 2018 to join a direct competitor, Dodd & Co.

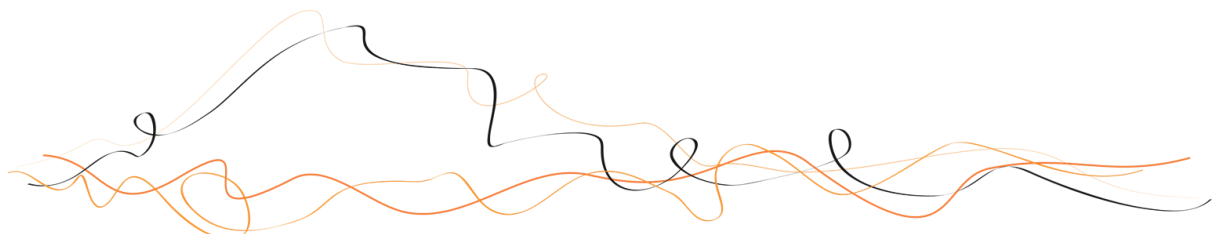
When Dodd & Co were looking to recruit the employee, they sought independent legal advice on the employee's post-termination restrictions. Dodd & Co were advised the restrictive covenants were unenforceable due to the lack of any consideration, i.e. financial payment to the employee when they accepted the new contract in 2015. However, Dodd & Co were unaware the employee did in fact receive a back-dated salary increase at the time, thereby potentially making the restrictive covenants enforceable.

The Court of Appeal awarded in favour of Dodd & Co and escaped liability. Although Dodd & Co were aware of the employee's restrictive covenants, they were advised that they were probably unenforceable. Nevertheless they knew there was a risk; although not enough to amount to breach due to the definitive and unequivocal advice they had received.

Although employers could look at this case and think it is easy to hide behind legal advice, it is not. The Court of Appeal was clear that they would be looking at an employer's mindset, i.e. was the legal advice responsibly-sought and honestly relied upon. As such employers cannot simply obtain legal advice to suit their situation and must exercise caution when they are faced with post-termination restrictions, as clear and unequivocal knowledge that they would be enforceable could make them liable if they are breached.

Disability Discrimination

A person could bring a disability discrimination claim if they are someone who has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to





carry out normal day-to-day activities. It is generally accepted that for an individual to have a long-term impairment, it has or is likely to last more than 12 months. This interpretation was recently challenged in the case of *Tesco Stored Ltd v Tennant* UKEAT/0167/19/00, in which an individual was off work from September 2016 due to depression. The individual alleged discriminatory acts took place between September 2016 and September 2017.

At the hearing, Tesco took issue with whether or not the individual's depression was long-term. At the time of the hearing, the individual was still suffering from depression and therefore the tribunal found that it was long-term. However Tesco successfully appealed. The Employment Appeal Tribunal said the definition of disability had to be satisfied at the time of the discriminatory acts, not at the hearing. Therefore the question to be asked was whether at the time of the discriminatory acts, the individual's depression had or was likely to last more than 12 months. The Claimant was unable to prove this point.

This case is a small albeit important point in disability discrimination claims. Although it may be the case that an individual can show that their disability has lasted more than 12 months, attention should be focused on whether this can be proved or predicted at the time of the discriminatory treatment. This may be of comfort to employers, especially when faced with employees displaying early signs of stress, anxiety and depression, as there may be situations following evidence from Occupational Health and a GP that there is little to no evidence that could point to the fact the symptoms could result in a disability.

Employment Workshops

Sadly due to the current health climate, after much careful consideration, we feel we must postpone our remaining Employment Workshops. We will course be back in touch when new dates have been confirmed. If you have any questions please do not hesitate to get in contact with our Marketing Manager at elizabeth.armstrong@mfgsolicitors.com.

Contact mfg Solicitors

The Employment team at mfg Solicitors are specialists with a significant amount of experience assisting clients with their employment and HR issues, ensuring that the advice to businesses is commercial, practical and relevant to their individual requirements. If you have any employment or HR issue, please do not hesitate to contact Sally Morris on 01905 610410 or at sally.morris@mfgsolicitors.com.

