

Employer's check list 2021

Julie Keir, Practice Development Lawyer at Brodies LLP presents a look ahead to some of the key HR and employment issues for 2021. While the pandemic will undoubtedly continue to dominate the agenda, there are some other important issues on the horizon.



COVID-19

Preparing for the end of the Coronavirus Job Retention Scheme (CJRS)

If you have furloughed employees and are relying on CJRS grants, consider what to do when the scheme ends on 30 April 2021.

If cost-saving measures are still required after the scheme closes, options include changing terms and conditions; restructuring; and redundancies. We do not yet know what will happen to the postponed Job Support Scheme. Any support available from May will be announced at the UK Budget on 3 March 2021.

Managing homeworking / supporting mental health & wellbeing

Keep up-to-date with the current guidance on working from home and business closures.

Regularly consider what action you need to take to satisfy your health and safety and data security obligations in relation to staff working from home.

Retain documentary evidence of how you manage homeworking, including policies and staff communications; completed home workstation assessments; and the support provided for employees' mental health and wellbeing.

Getting employees back to the workplace

When the time comes to move homeworking employees back to the workplace, you will need to (among other things):

- Carry out a workplace risk assessment and take steps to eliminate/reduce risks in line with government guidance;
 - Inform and consult with employees, or their representatives, on health and safety measures;
 - Consider potential discrimination risks and reasons why some employees might be reluctant to return to work (e.g. age/disability/pregnancy; health and safety concerns; childcare reasons);
 - Engage with employees about who will return first, and decide how to deal with individual concerns and objections;
- If testing is to be undertaken, introduce a process that takes account of data protection considerations; and
- Support managers, and provide training, on the return to work plan.

Thinking ahead to the implications of a vaccine

Some of the HR issues in connection with the roll-out of the COVID-19 vaccine include:

- Whether to promote / facilitate / require the taking of the vaccine (bearing in mind the risks associated with making it mandatory);
- Options if employees refuse to take the vaccine (which might be because they have a protected characteristic such as disability, pregnancy, age, religion or belief);
- The GDPR and privacy consequences of workers potentially being required to prove that they have been vaccinated.

Dealing with flexible working requests

Employees who have been able to work remotely and/or with adjusted working hours may well seek to make these arrangements permanent.

You can only refuse a request for flexible working if one of the statutory prescribed business reasons applies. Requests will need to be considered in light of the arrangements that have been in place during lockdown. Be clear in advance as to how multiple and competing requests will be dealt with.

Managing annual leave balances

Workers are entitled to carry forward up to four weeks of their statutory holiday entitlement into the next two holiday years if it was "not reasonably practicable" for them to take holidays "as a result of the effects of coronavirus including on the worker, the employer or the wider economy or society".

Consider carrying out an annual leave audit to ascertain the potential financial impact of holidays carried forward.

Reviewing contracts and policies

Do any contractual terms or policies need updated to reflect new working practices?

Dealing with tribunal claims

Health and safety and furlough related cases may start to come to tribunal.

Employment tribunals are currently being conducted virtually, using Cloud Video Platform.

IMMIGRATION

New immigration system

EEA & Swiss nationals can enter the UK under the new points-based immigration system from 1 January 2021. If you intend to recruit medium or highly skilled migrants from the EU or elsewhere, you require a sponsor licence.

There is a deadline of 30 June 2021 for EU nationals and their family members who were in the UK before 31 December 2020, to apply through the EU settlement scheme.

Business travel

From 1 January 2021 British nationals will only be able to stay within the EU area for a maximum of 90 days in any 180-day rolling period without a visa.

When carrying out business activities in the EU, employees may require a work visa even if staying for less than 90 days.

IR35 & EMPLOYMENT STATUS

IR35 in the private sector

On 6 April 2021 the off-payroll working rules will be extended to the private sector. End user clients will need to assess all off-payroll workers to determine:

- if they are operating through a personal service company (PSC); and
- if they are, whether they would be taxed as an employee for tax purposes, were it not for the PSC.

If you determine that the worker would be an employee for tax purposes, the entity that pays the PSC (which may be the end user client or a UK employment business in the chain) needs to account for PAYE income tax and employee and employer NICs.

Employment status

The UK Government intends to improve the clarity of employment status tests (i.e. who is an employee, worker or self-employed); and to align them for employment rights and tax purposes.

PAY

Increase in rates

Annual increases in the National Minimum Wage and statutory rates (such as statutory maternity and sick pay) will take effect from April 2021.

National living wage

From April 2021, the national living wage rate will apply to workers aged 23 and over. It currently applies to workers aged 25 and over.

WORKING PATTERNS

Proposed changes

Workers without a fixed working pattern will be given a right to request a more predictable work pattern after 26 weeks' service (e.g. a fixed number of hours or fixed working days).

There has been a consultation on providing workers with a right to reasonable notice of work schedules; and compensation for shifts cancelled without reasonable notice. Currently, a gap of one week in employment can break continuous service: this is to be increased to four weeks.

The UK Government proposed these changes in 2019; we don't yet know when they will happen.

SEXUAL HARASSMENT

Sexual harassment

A new statutory code of practice on sexual harassment at work is going to be introduced. The timescale is not yet known.

FLEXIBLE WORKING

Making flexible working the default

The UK Government intends to make flexible working the default position, unless an employer has a good reason not to allow it. It also wants to make it a requirement that job adverts say whether the role is open to flexible working.

HOLIDAYS

Holiday pay

The Supreme Court is due to hear several holiday pay cases in 2021, including an appeal against the decision that holiday pay must include regular voluntary overtime.

FAMILIES

Review of family-friendly leave

A consultation on some high-level options for reform of the current rights to maternity, paternity, parental and shared parental leave and pay closed in November 2019. One option is a single model for family-related leave, with set periods of non-transferable and transferable leave.

Carers' leave

A consultation on introducing a new right to a week's leave for unpaid carers' closed in August 2020.

Extending redundancy protection

The priority given to a pregnant employee or a woman on maternity leave for any suitable alternative vacancy in a redundancy situation is to be extended until six months after a new mother has returned to work; and to those taking adoption or shared parental leave. The timescale for the changes is not yet known.

WORKBOX

More information on these issues is available on Workbox by Brodies, Brodies' online HR and employment law platform. bresourcefull.brodies.com



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The teams of lawyers who provide our helpline and assist the work of Confor are experienced in all legal issues that impact on forest owners or those involved in the forest industry, including employment law, health and safety law, planning law, tax and property law.

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