Employment rights: what to expect

The Employment Rights Bill is now being debated in the House of Lords. The Bill, which was revised this month after consulting with businesses, is one of the most significant reforms of UK employment law in decades. Pulina Whitaker and Charlotte Moorhouse of law firm Jones Day outline some of the most pertinent changes that will affect private companies in the UK.

Day-one unfair dismissal rights

One of the most significant changes is the right for employees not to be unfairly dismissed from day one of their job. Currently, employees generally need two years' service to qualify for this protection. The government, acknowledging that employers do need to assess the capability of new hires, has said it will introduce a statutory initial period of employment (akin to a contractual probationary period), expected to be around nine months. This will give employers more flexibility to terminate employees within that period. However, they will still need a fair reason for the dismissal, which may include poor performance or conduct.

Once the legislation comes into force, businesses will need to follow a full and fair process each time they are faced with a potential dismissal situation after the new statutory probation period. It will also be more important than ever for managers to identify, manage and address issues early, during the probation period.

Redundancy consultations

Employers must currently consult with employee representatives when planning 20 or more redundancies at a single establishment (one location) in a 90-day period. However, it is anticipated that a new company-wide threshold test (details of which are awaited) will dovetail with the establishment test, so collective redundancy consultations could be triggered more readily. The maximum penalty for non-compliance will also double to 180 days' uncapped pay per affected employee. For many employers, this means more consultations, with greater risks for non-compliance.

Limits on zero hours contracts

The Bill does not ban zero hours contracts outright. Instead, employers must offer guaranteed hours to zero or low hour contract workers or agency workers who regularly exceed minimum contracted hours. Naturally, this will impact organisations which rely on contingent labour the most, such as the hospitality and retail industries. But all businesses will need additional record keeping and internal processes to ensure compliance with this new regime.

Other notable changes

The fire and rehire ban: a dismissal will automatically be considered unfair if employees are dismissed as a result of not agreeing to proposed changes in their employment contracts. The only exceptions are where the employer can evidence financial difficulties and the need to make the change was unavoidable.

Flexible working: employers will have to show any refusal of a flexible work request is reasonable, although the eight statutory reasons to decline a request remain unchanged.

Employers' liability for harassment: the Bill includes three new provisions to enhance protection against harassment in the workplace. First, employers must take **all** reasonable steps to prevent sexual harassment (the current obligation is to take reasonable steps). Second, employers are liable for third-party harassment – that is, from someone outside the company. Third, the amended whistleblowing legislation recognises a disclosure relating to sexual harassment as 'qualifying', with consequential whistleblowing protections for the reporter (possibly not the person who suffered the harassment).

Contact us

Lnferera@jonesday.com