

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 - EMPLOYMENT LAW CHANGES

The Small Business, Enterprise and Employment Act 2015 was passed last week, in the dying days of this Parliament. The Act contains a number of important employment law changes:

- ◆ **Equal pay reporting:** The Government's scheme for voluntary gender pay gap reporting received little support from employers, but a last-minute amendment to the Act to introduce mandatory reporting won significant cross-party political support. The Act now provides that the Government will introduce regulations as soon as possible and within a maximum of one year "for the purpose of requiring the publication of information showing whether there are differences in the pay of males and females". This is expected to apply to all businesses with more than 250 employees. No draft regulations have yet been published and key questions still remain unanswered: what data will employers be required to disclose? When must it be disclosed and how often? When will the new law come into force? At present, private sector employers are only required to publish gender pay data if they lose an equal pay claim in the Employment Tribunal. The substantial widening of the obligation to publish pay data will be a significant change for employers for whom this degree of openness on pay has never previously been required.
- ◆ **Zero-hours contracts:** Zero-hours contracts remain very contentious. In an [earlier eBulletin](#), we discussed some of the pros and cons of using these flexible arrangements, and identified exclusivity provisions as one of the main reasons zero-hours contracts had been criticised. Although zero-hours contracts do not oblige an employer to offer work, exclusivity provisions oblige a worker to remain available at all times, limiting their ability to take on other work. The Act makes this sort of provision unenforceable. Anti-avoidance regulations to prevent an employer, for example, from guaranteeing one hour per week to get round the restrictions are also being prepared.
- ◆ **Fines for non-payment of Tribunal awards:** Research suggests that around 10 per cent of Tribunal awards are not paid. To deal with this problem, the Act introduces the power to impose a fine of £100-£5,000 (payable to the Treasury rather than the claimant) where an award remains unpaid after a warning notice. The same approach will apply to unpaid settlements brokered by Acas and settled using a COT3 form.

- ◆ **Whistleblowing data:** Readers will be familiar with the legislation protecting whistleblowers from dismissal or detriment. Whistleblowing disclosures are usually made by employees to their employers, but the legislation also permits disclosure in some circumstances to 'prescribed persons' - bodies such as HMRC, the Financial Conduct Authority, the Environment Agency, the Health & Safety Executive, and so on. The Employment Tribunal can also notify these bodies when whistleblowing claims are made. The Act permits regulations to require annual reporting by these prescribed persons, covering (amongst other things) the number of complaints received and the action taken.
- ◆ **Public sector termination payments:** Recognising that making large severance payments to employees who then quickly find alternative posts in the public sector represents a poor use of Government funds, the Act permits the introduction of regulations to clawback settlement sums and termination payments from senior public sector employees who return to work in the same part of the public sector. The regime would cover most forms of termination payment, and affect employees with salaries above £100,000.

Each of these provisions will need to be separately brought into force, so will depend on the policies of the Government after the election.

To read about the other corporate law changes introduced by the Act, please click [here](#).

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This note is intended to provide general information about some recent and anticipated developments which may be of interest.

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