

New year, new employment law

10 things to look out for in the coming year

December 2017

1 Brexit: are all EU workers accounted for and recruitment needs assessed? – Brexit negotiations with the EU will continue throughout 2018 but immigration issues are likely to be amongst the most pressing from an employment perspective. A new Immigration Bill will legislate upon the ability of EU workers to obtain settled status and remain in the UK or the ability of others to relocate.

Action: Check if an audit of the EEA makeup of the workforce has been undertaken, along with appropriate communications with employees who may need immigration status guidance/reassurance. For those not qualifying for settled status, what contingency plans does the organisation require/have in place?

2 Tax changes will affect termination payments – From April 2018, the difference in the tax treatment of contractual and non-contractual payments in lieu of notice will be removed. As a result, any unworked periods of notice will be taxable and the practice of applying the £30,000 tax exemption to non-contractual payments will end. (NIC changes will follow in 2019).

Action: Plan ahead to accommodate the new PILON tax calculation and additional tax costs. NB also the potential short term effect of managing employee tax expectations on termination and on negotiating position for settlement discussions.

3 Are Data Protection policies and procedures adequate? – A new Data Protection Act will implement significantly tighter controls over data protection and bring the UK in to line with more stringent EU requirements from May (the General Data Protection Regulations). Employers will need to ensure appropriate practices and procedures are in place and that these extend to payroll and benefits providers to whom they outsource data, if high financial penalties are to be avoided.

Action: Think carefully about what personal data is retained, why, how the organisation will ensure transparency of approach going forwards and who will oversee this (see our [HR "top 10" guide to GDPR](#)).

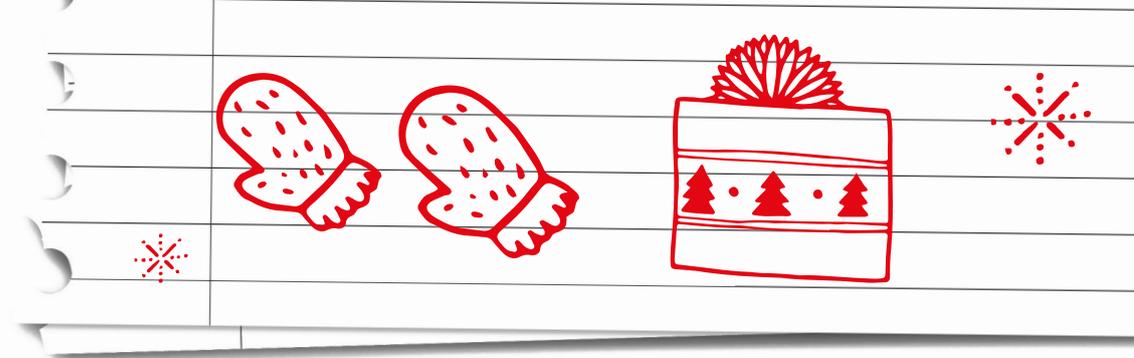
4 Watch out for further legal clarifications regarding worker status – Various court decisions have started to clarify areas of legal uncertainty over employment status and workers' rights, frequently extending access to the latter. More decisions will follow in 2018 and legislative change may also result from the Taylor recommendations (read our briefing on the [Taylor review](#)).

Action: Review engagement of 'self-employed' staff, whether as freelancers, contractors or gig workers etc., to assess potential financial, legal or reputational risks should legal changes or further clarifications arise, as well as possible impact on the costs of hire and on flexibility.

5 Mental health at work: should you do more? – Whilst the Government has pledged to strengthen mental health protection in the workplace, high profile campaigns by the NHS, charities and others are encouraging employers to offer greater support. There are also legal and practical reasons for employers to want to reduce the 1/3 of employee absence attributed to mental health issues, including anxiety stress and depression (read our [briefing](#)).

Action: Review absence levels and reasons to identify potential problem areas but also H&S and disability discrimination risks arising from mental health. Do policies and procedures need updating and are managers equipped to respond effectively when issues arise?





6 Are your organisation's diversity and inclusion principles applied in practice? – Following high profile news stories in 2017, increased confidence of workers to raise allegations of abuse of authority in the workplace looks set to continue to raise questions for HR and legal. This goes beyond sexual harassment, e.g. carrying out covert surveillance, reprisals against whistle-blowers, bullying behaviour and more.

Action: Review policies and management awareness of the issues and risks and consider additional training regarding the channels and mechanisms for addressing grievances or claims. Do employees know what kind of workplace behaviours could be considered harassment and how to report them? Is the organisation able to respond appropriately?

7 Think about how disability is identified and if you are doing enough – The UK courts have started to scrutinise how and when employers acquire knowledge of employee disability and how far they need to enquire if this is not disclosed or apparent. Employer responsibility in this area should be clarified in 2018.

Action: Watch out for further court clarification in early 2018 which may require re-appraisal of any standard practices and policies or advice to managers about raising reasonable enquiries of potential disability issues and how to respond.

8 Check for minimum wage compliance -especially non-standard pay arrangements – NMW will continue to rise and increase wage costs but the risks of default are higher than ever, with greater HMRC enforcement. Even employers paying above minimum wage levels can find their pay arrangements inadvertently fall foul of the Regulations, especially if they operate annualised hours contracts, 4 weekly pay arrangements or simply require staff to wear specific items of clothing.

Action: Audit pay systems to ensure they remain compliant with the NMW Regulations.

9 Have appropriate reviews of gender pay gaps taken place? – Employers with 250 or more employees must publish their relevant data by 4 April 2018, and media interest is likely to be high. But in this context also, note the increased risk that, for equal pay purposes, a court has found female workers can in future compare their pay with that of male workers based at a different location if the employer is the same.

Action: Ensure appropriate auditing of pay arrangements has been conducted to identify risk areas and, particularly as regards reporting obligations, that pay differentials and potential exposure to adverse publicity are understood before publication so that information can be meaningfully presented.

10 Diary note – Look out for future Eversheds Sutherland e-briefings on other employment developments during 2018, including the ongoing impact for employers of the abolition of tribunal fees, corporate governance changes and key court cases concerning employment status and gender equality over shared parental leave and pay.

For more details on these or other issues, speak to your usual Eversheds Sutherland adviser or email **Diane Gilhooley**, Partner and Global Head of Employment and Pensions. dianegilhooley@eversheds-sutherland.com

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