

Ticking all the boxes

The UK employment forecast 2020

January 2020



1 Brexit: immigration impact on workers

Following the general election, the government has confirmed its commitment to “get Brexit done” and depart from the EU on 31 January 2020. Brexit is therefore likely to be the first item on the agenda for 2020, including for immigration, where a new Australian-style points-based immigration system is expected to be introduced, with bespoke visa schemes for other non-sponsored migrants. The detail is awaited, but the points-based system is expected to include three separate categories: ‘exceptional talent’, ‘skilled workers’ and a sector-specific rules-based category. A digital immigration status is also likely, to ensure that all migrants have a full digital status to make it easier to prove their right to live, work and remain in the UK as well as allowing for improved enforcement. Finally, there will be new visas including a “fast-track” visa scheme for NHS roles.

Action — Whilst there remain a number of unknowns, upfront planning and reviewing contingency and recruitment arrangements will help to minimise disruption. In particular, ensure your current EEA workforce has applied under the settled status scheme and for future workforce requirements review whether your current sponsor licences are suitable for your needs as EEA nationals will need to be added to your current Tier 2 processes. Further, plan for additional training for HR staff in order to understand how to comply with the new immigration system.

2 Watch out for further developments on IR35

Responsibility for determining the tax status of workers who supply their personal services via an intermediary, such as a personal service company, is expected to transfer to the end user for medium and large private sector organisations from 6 April 2020 (under the extension of tax rule IR35). Legislation to implement the changes is currently awaited, pending the outcome of a Treasury review aimed at ensuring the “smooth implementation of the reforms”.

Action — If using contract and freelance labour through intermediaries, you should monitor the progression of changes ([see our update](#)) and continue planning for IR35 reform until the Government’s intentions become clear. In particular, reviewing employment models and contractual terms. With end-users potentially liable for any underpaid tax, for example, when failing to take reasonable care over status determinations, training to ensure staff are equipped to carry out the necessary status checks will also be key.

3 Are you ready for National Living Wage changes?

The National Living Wage (‘NLW’) is set to increase by 6.2% in 2020 and the Conservative Party has pledged to increase it to two thirds of average earnings, currently forecast to be £10.50 per hour, and to extend it to all workers over the age of 21 by 2024. Further details on how this will be delivered are promised by Spring 2020.

Action - You should ensure workforce planning incorporates the expected changes to the NLW. With many employers failing to appreciate the complex rules around the statutory minimum wage and HMRC’s enforcement action continuing to rise, staff should also be trained about the rules to avoid inadvertent, technical breaches and associated fines, costs and reputational damage. The single enforcement body which will feature in the new Employment Bill will no doubt play a significant role in future.

4 Start preparations for changes to written statement of terms requirements

From April 2020, the requirement to provide minimum written terms will be extended to all workers and employees engaged on or after 6 April 2020 in England and Wales. Additional terms must also be incorporated, including working pattern, entitlement to paid leave, any probationary period and its length and any mandatory training provided

by the employer. Current employees and workers will also be entitled to request updated minimum written terms including the new, additional information, which must be provided within one month.

Action — You should review and update current written terms in readiness for these being provided to new employees from April 2020. You should also be prepared for the possibility that current employees will exercise their right to request updated written terms which include the new additional information.

5 Update your payroll systems for workers without fixed working patterns

An amendment to The Working Time Regulations 1998 will change the way holiday pay is calculated for seasonal and atypical workers with effect from 6 April 2020. In short, the reference period for determining an average week's pay will increase from 12 to 52 weeks (or the number of complete weeks for which the worker has been engaged if they haven't yet worked for 52 weeks). BEIS is working with Acas to update online holiday pay guidance before the change comes into force. On a related note, the new Employment Bill is to introduce a right for all workers to request a more predictable contract.

Action — Employers should ensure they keep records of employee pay for the 52 weeks prior to 6 April 2020, and continue to do so thereafter. Keep an eye out for the new online guidance and expect further clarification on holiday pay from the courts. [Read our briefing.](#)

6 Have the employment businesses you work with prepared for April 2020 changes?

From 6 April 2020 the "Swedish derogation" will be scrapped, meaning no exceptions will be permitted to the obligation in the Agency Worker Regulations (AWR) to provide agency workers with pay parity after 12 weeks. From this date employment businesses will also need to supply agency workers with clear, specified information in a Key Information Document before they enter into new contracts.

Action — The end of the Swedish derogation will be a significant change for some sectors. If affected, you should review your existing arrangements with employment businesses as they may seek to pass on additional costs. You should also consider non-compliance risks, bearing in mind that employment businesses and hirers can both be held liable for claims arising from a breach of AWR.

7 Are you ready to make changes to your compassionate and parental leave policies?

Regulations are currently awaited to implement, from April 2020, legislation providing a day 1 right for parents or carers to take two weeks' leave following the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy. Eligibility for statutory bereavement pay is expected to require six months' qualifying service and

will be paid at a rate equivalent to statutory maternity pay. In addition, the new Employment Bill will provide for parents to take extended leave for neonatal care; introduce a right to one week's leave for unpaid carers and extend redundancy protections to prevent pregnancy and maternity discrimination.

Action — Decide how you will reflect the new bereavement-associated rights in your compassionate leave policy and whether you will enhance them beyond the statutory minimum. Identify other support mechanisms for bereaved parents, for example, availability of counselling via your Employee Assistance Programme. Keep a watching brief for further detail on the Employment Bill proposals.

8 How proactive is your organisation in preventing workplace harassment?

We are expecting a new statutory Code of Practice on harassment to be published in 2020, reflecting the Government's collation of evidence on the most effective employer interventions to prevent workplace harassment. As a preliminary step, the EHRC has recently published technical guidance on sexual harassment and harassment at work. The EHRC had already issued guidance reflecting current law and best practice concerning the use of confidentiality clauses or non-disclosure agreements (NDAs), in discrimination cases. ACAS guidance on NDAs is also awaited.

Action — Given the continued focus on harassment claims and NDAs, we recommend that you review the effectiveness of your harassment policies, training and associated grievance/complaints procedures. Review your contracts and settlement agreements to ensure the use of NDAs is managed on a case-by-case basis and is explained clearly.

9 Will 2020 see an increase in requests for greater employee "voice"?

The Information and Consultation of Employees Regulations 2004 are amended, with effect from 6 April 2020, to lower the percentage – from 10% to 2% - of employees required to trigger a valid request to start negotiating an agreement on informing and consulting employees. The requirement that a minimum of 15 employees must make the request will remain in place. Changes made to corporate governance legislation will also mean that, during 2020, UK-incorporated companies with at least 250 UK employees will need to provide greater detail regarding employee engagement in their annual directors' reports.

Action — Employers are advised to review their employee relations strategies, assessing the effectiveness of all existing staff engagement arrangements. You should also anticipate how these changes may impact on the tactics deployed by any trade union seeking recognition.

For more details on these or any other issues, speak to your usual Eversheds Sutherland adviser or email:

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