

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

What a weekend – we saw the sun, the proper sun, for a longer period than just half an hour! Devine! Of course, we spent most of it “horsing around” and my youngest certainly found her zoomies on the cross-country course yesterday! As I saw her careering around at full pelt on her pony, it certainly gave my cardio system a workout too!

For many of us, it's the last week before half term, and even if you don't “celebrate” school holidays, there is another bank holiday – woohoo, it's been a while! In even bigger news, the burning ball of fire in the sky is set to stay out – I will promise not to sing in the shower. Honestly, fun fact about me – world's worst singing voice! Our family will be decamping to the Welsh/Shropshire border for a week of pony riding and walking. Yes, that is right – we can't even leave our horses out of our holidays now....poor Rob! Lots to get on with before we break up.....so, back to work we go ... and (for me at least) it's a great start ...

Oh.my.word.....for those of you who know me AT all, you will know that my top 3 employment law topics (Yes I really am that sad to have a firm and unchanging top 3) are (in no particular order, as I simply can't decide) – TUPE, employment status and holiday pay.... Well, 18 May was like Christmas and Birthdays rolled into one for me – why, I hear you ask! Well, the Government published a consultation on reforms to the Working Time Regulations 1998, holiday pay and TUPE – the stuff of dreams, right? Maybe just my dreams then!

This consultation was first proposed in the smarter regulation to grow the economy policy paper, which we have already picked the best bits from and told you about – the fact that all EU law will now no longer be automatically scrapped at the end of this year and proposals to put a cap on non-compete restrictions post-employment (thanks Rob for your blog last week!) What he didn't tell you about were these juicy extras!!!

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

What's this consultation all about?

So, we aren't going to see that bonfire of EU laws on New Years Eve this year.

Instead, the Government have said that they are taking the opportunity to "improve regulation following our departure from the EU" as well as reviewing and reforming domestic regulations which are not connected with EU law but which are thought to be a bit OTT and overly burdensome on employers – good news right?

Yes, but we all do know how the Government like to talk a good game (and I say that from a politically neutral standpoint!).

Apart from the reduction of non-compete clauses down to 3 months, what else can we look forward to...I know you all can't wait to hear about holiday pay, TUPE and the Working Time Regs...no, just me then!?! As usual, here at Precept we read through the endless text of the Government papers and can bring you the info, in bullet points (my favourite method of communication!) The proposals are:

1. Removing the requirement on businesses to keep working time records for their staff.

Under the current rules employers must record actual daily working time for individual workers. The Government believes these record-keeping obligations are disproportionate and so is proposing to scrap this requirement....want your say? You can do on the consultation as they are seeking views on this, and their other proposals, from employees and employers.

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

2. Allow rolled-up holiday pay.

Oh, holiday pay, my old friend...we meet again! We have heard about holiday pay until we are blue in the face – what with the numerous cases on what holiday pay we should and shouldn't be paying (thanks Bear Scotland, amongst others!) and that actually employers shouldn't be paying rolled up holiday pay (my old friend the Harper Trust case).

Many businesses have used, and some continue to use rolled up holiday pay – this is when instead of allowing a member of staff to take holiday, they are instead paid their holiday pay rolled into their pay – the infamous 12.07% rule that Acas told us was ok and then the Harper Trust case told us wasn't (confusing, I know! If you're still unsure on that one then remember our handy article from many moons ago – that should help clear it up a bit for you: <https://precepthr.com/holiday-entitlement/>).

This consultation is the first time that the Government has acknowledged that, in practice, rolled-up holiday pay is heavily used in the recruitment sector and the gig economy, as a simple way to calculate holiday pay for staff on irregular hours contracts. It always seemed to be one of the fairest ways to calculate holiday pay and seemingly the Government are finally getting onboard!

Under the consultation, the Government are proposing to allow rolled-up holiday pay to be paid at the rate of ... wait for it.... Of course, its 12.07%! They say that introducing this would ensure irregular hours workers receive their holiday pay regularly and upfront. If this goes through the only check and balance is that employers would need to inform their staff and clearly set it out as rolled-up holiday pay on their payslips. It won't be compulsory, but optional, giving employers the choice.

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

3. Merging annual leave from the European 4 weeks and the England and Wales 1.6 weeks (aka bank holidays) into one entitlement of 5.6 weeks

This is pure logic if you ask me. Having these 2 leave entitlements as separate can cause unnecessary confusion, especially as it would seem that we now have different rules for holiday pay to be paid for the 4 weeks European entitlement vs the 1.6 weeks additional we offer. The Government describe it as "an unhelpful divide between the 2 separate pots of annual leave." I couldn't agree more.

Due to the existing differences, this proposal is bigger than it would seem. It has the following component parts:

- a. Creating a single annual leave entitlement of 5.6 weeks
- b. Clarifying the minimum rate of holiday pay and what comes under "normal remuneration" i.e. legislating on the plethora of holiday pay cases that came through regarding overtime, commission etc etc.
- c. Changing the method of calculating leave in a worker's first year of employment – this one is particularly useful as at the moment it is unclear which annual leave entitlement accrues first and this would be ironed out and removed with one single entitlement.
- d. Removing the exemption which allowed carry over of leave due to COVID-19

I will leave this one there as otherwise I could spend all day discussing the ins and outs – give me a shout if you want to have that conversation as I would be all too glad to! Or have your say during the consultation.

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

4. Removing the requirement for electing employee representatives for informing and consulting on a TUPE transfer (in some instances)

Hooray I hear you all cry – long overdue! There is of course a caveat.

Currently it is only micro businesses (with less than 10 employees) who don't have to elect representatives to inform and consult upon a TUPE transfer – everyone else must elect if you don't have representatives already in place. It is those elected reps that we have to inform and consult with for the purposes of TUPE, or risk being in breach. In practice this can be a bit of a pain!

Under the proposed reforms the Government would remove the rigmarole of electing reps for TUPE consultation if:

- a. The business has fewer than 50 employees; or
- b. The business can be of any size but the proposed transfer affects fewer than 10 employees.

Instead, those businesses could consult directly with affected staff. The rationale behind this is to remove some of the burdensome requirements on businesses – makes sense, right?

22 May 2023

Weekly Blog

By: Emma Tice



The Stuff of Dreams: Our Force of Nature Unpacks the Government's Latest Employment Law Clarifications

5. So, is anything going on NYE 2023?

In short, not a great deal. We will retain all family related rights, TUPE and Working Time Regs (subject to the proposed changes above) and other protections including for part time, fixed term and agency workers. The Government are reserving the right to add to the list of proposed changes and so we might get some further updates as the year goes on but the only ones we know we will wave goodbye to for good are those relating to "posted workers" and since us leaving the EU this is not applicable anyway... so no bonfire – not even enough to light a sparkler!

What happens next?

Well, let me manage your expectations – Government consultations take some time to go through. The consultation is open now and you can have your say here – https://ditresearch.eu.qualtrics.com/jfe/form/SV_06Sa8wldAZYeGTs or email reulemploymentlaw@beis.gov.uk

It will close on 07 July 2023 and some point after that the Government will publish its response to the consultation along with any firmed up proposals....so watch this space OR sign up to our newsletter and we will happily watch this space for you – [SIGN UP](#).

Personally, I think (and certainly hope) that we should start to get some clarity on certain aspects of employment law via this consultation. I am hopeful that whilst reviewing holidays, the Government will take the opportunity to review and clarify holiday pay in the round....or will this be another one left for "when parliamentary time allows"?

Have your say, let us keep you updated and know that we are here in the meantime if you have any issues.