

European (& the GCC) Employment Law Update

Jurisdiction: United Kingdom

Date: May 2019

Impact date	Development	Impact
19 December 2018	Worker status: Uber taxi driver are workers Uber B.V. v Aslam [2018] EWCA	<p>The Court of Appeal upheld the decision of the Employment Appeal Tribunal that taxi drivers engaged by Uber were workers, rather than self-employed contractors. The consequence is that the drivers will be entitled to certain employment rights such as to be paid in accordance with the National Minimum / Living Wage and protections under the Working Time Regulations 1998 (e.g. rest breaks and paid holiday).</p> <p>Uber has indicated it will seek permission to appeal to the Supreme Court.</p>
1 April 2019	National minimum wage: rates increase National Minimum Wage (Amendment) Regulations 2019 SI 2019/603	<p>The national minimum wage hourly rates were increased as follows:</p> <ul style="list-style-type: none"> • National Living Wage rate (for workers aged 25+): increase from £7.83 to £8.21. • Workers aged 21 – 25: increase from £7.38 to £7.70. • Workers aged 18 – 20: increase from £5.90 to £6.15. • Workers aged 16 – 17: increase from £4.20 to £4.35. • Apprentice rate: increase from £3.70 to £3.90. <p>In addition, the accommodation offset increased from £7.00 to £7.55.</p>
6 April 2019	Pensions: auto-enrolment Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2019 SI 2019/374	<p>From 6 April 2019 the minimum contribution rates for defined contribution schemes increased to 3% for employers (previously 2% as of 6 April 2018) and an overall total of 8% (previously 5% as of 6 April 2018) of the jobholder's qualifying earnings.</p> <p>The earnings trigger remain at £10,000. The qualifying earnings lower limit is</p>

		£6,136 and the upper limit is £50,000.
6 April 2019	<p>Itemised pay statements</p> <p>The Employment Rights Act 1996 (Itemised Pay Statement) Order 2018 SI 2018/147.</p> <p>The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No.2) Order 2018 SI 2018/529.</p> <p>These regulations amended the Employment Rights Act 1996 (ERA) (section 8).</p>	<p>New regulations require itemised pay statements to:</p> <ul style="list-style-type: none"> • be given to all workers (not just employees); and • contain information regarding the number of hours worked by the worker for which they are being paid. However, this will only apply where the worker's pay varies according to the number of hours worked.
6 April 2019	Increase to Tribunal compensation limits	<p>New compensation limits came into force from 6 April 2019 as follows:</p> <ul style="list-style-type: none"> • Maximum week's pay increased from £508 to £525 per week. • Maximum unfair dismissal basic award increased from £15,240 to £15,750. • Maximum unfair dismissal compensatory award increased from £83,682 to £86,444.
6 April 2019	Financial penalties for aggravated breach of a worker's employment rights	The maximum financial penalty available for an aggravated breach of a worker's employment rights increased from £5,000 to £20,000 (only applies to breaches occurring on or after 6 April 2019).

April 2019	<p>Increase to rates of statutory payments for sick leave and family leave</p> <p>Employment Rights (Increase of Limits) Order 2019 SI 2019/234.</p>	<p>The weekly rates for various statutory payments were increased as follows:</p> <ul style="list-style-type: none"> Statutory sick pay (SSP): increase from £92.05 to £94.25. Statutory maternity pay (SMP), statutory paternity pay (SPP), statutory adoption pay (SAP) and shared parental pay statutory shared parental pay (SSPP): increase from £145.18 to £148.68. Statutory maternity allowance (SMA): increase from £145.18 to £148.68.
14 May 2019	<p>Employers must record daily working hours for all workers</p> <p>Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE (ECJ C-55/18)</p>	<p>The ECJ has ruled that Member States must require employers to have a system in place to measure the daily working time of all workers. Importantly, this system must go beyond merely recording overtime hours or drawing upon other sources of information which could be pieced together to identify daily working hours. The system of recording daily hours must be objective, reliable and accessible.</p>
31 October 2019	<p>Britain's withdrawal from the European Union</p> <p>The Equality (Amendment and Revocation) (EU Exit) Regulations 2019 SI 2019/305.</p> <p>The Employment Rights (Amendment) (EU Exit) Regulations 2019 SI 2019/535.</p> <p>The Employment Rights (Amendment) (EU Exit) (No.2) Regulations 2019 SI 2019/536.</p>	<p>The European Union (Withdrawal) Act 2018 sets out the approach for converting existing EU legislation into UK law when Brexit takes place on 31 October 2019.</p> <p>Currently, 17 sets of regulations have been prepared to amend employment-related legislation on exit day under the powers in the Act (three of the key sets of regulations are set out in the column to the left).</p> <p>The regulations specify the technical changes to be made to employment laws post-Brexit. Broadly, the changes are technical in nature only, for example, removing EU-related references that will no longer be valid. The aim of the amendments is to ensure that the existing statutory framework continues to operate effectively in its current form after Brexit.</p> <p>However, as far as European Works Councils (EWCs) are concerned, the Government acknowledges that a reciprocal agreement from the EU would be</p>

		<p>required for the statutory framework to continue as it presently does.</p> <p>The Government has also published a technical notice on the impact of a "no deal" Brexit on workplace rights. The note states that the only potential impacts are in relation to EWCs (i.e. no new requests could be made to set up an EWC or information and consultation procedure) and employer insolvencies (i.e. employees working for a UK employer in the EU may not be protected by the national guarantee fund operating in that country).</p>
6 April 2020	<p>Written statements of employment particulars</p> <p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 SI 2018/1378.</p> <p>These regulations will amend the Employment Rights Act 1996.</p>	<p>From 6 April 2020, written statements of employment particulars will:</p> <ul style="list-style-type: none"> • be extended to all categories of worker (currently applies only to employees); • become a "Day 1" employment right; and • require the following additional information to be included: (i) the days of the week required to be worked; (ii) details of any terms and conditions relating to paid leave; and (iii) particulars of any other benefits, any probationary period and training.
6 April 2020	<p>Information and consultation of employees</p> <p>The Employment Rights (Miscellaneous Amendments) Regulations 2019 (draft).</p> <p>These regulations will amend the Information and Consultation of Employees Regulations 2004 (part 4).</p>	<p>The percentage of employees required for a valid request to start negotiating an agreement on informing an consulting employees will be lowered from 10% to 2%.</p>
6 April 2020	<p>Holiday pay: reference periods used for calculating holiday pay for workers with variable pay</p> <p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment)</p>	<p>Where a worker has variable pay either because:</p> <ul style="list-style-type: none"> • they have no normal working hours; or • they have normal working hours but their pay varies with the amount of work done or the time the work is done,

	<p>Regulations 2018 SI 2018/1378.</p> <p>These regulations will amend the Working Time Regulations 1998.</p>	<p>then the reference period to be used for calculating holiday pay will be changed. Where the worker has been employed for at least 52 weeks, the reference period is increased from 12 weeks to 52 weeks.</p> <p>Where the worker has been employed for fewer than 52 weeks then the reference period is the number of weeks the worker has been employed.</p> <p>This reform does <u>not</u> apply to workers who have normal working hours and non-variable pay.</p>
6 April 2020	<p>Agency workers: repeal of the "Swedish derogation" and related rights</p> <p>The Agency Workers (Amendment) Regulations 2019 SI 2019/724. These regulations will amend the Agency Workers Regulations 2019.</p> <p>The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 SI 2019/725.</p>	<p>These regulations will improve rights for agency workers by:</p> <ul style="list-style-type: none"> • removing the equal pay exemption from the Agency Workers Regulations 2010 (known as the Swedish derogation); • requiring the agency to notify the agency worker about their right to be the same conditions as those employed directly by the hirer as of 6 April 2020 (i.e. that the Swedish derogation no longer applies); • introducing a right for the agency worker not to be unfairly dismissed or subjected to a detriment for a reason relating to the Agency Workers (Amendment) Regulations 2019; and • require employment businesses to give a "key information" document to an individual seeking agency work (and this must be given before the business reaches an agreement on terms with that individual).
6 April 2020	<p>Employment and tax status reforms (reforms to the operation of the IR35 regime in the private sector)</p> <p>Legislation to be drafted</p>	<p>In the 2018 Budget the Government announced plans to extend the changes it made to the operation of the off payroll working rules (IR35) in the public sector, to certain medium and large sized private sector businesses.</p> <p>Under the proposed reform it is likely that the responsibility for assessing whether the IR35 regime applies will move to the party that is closest to the personal service company in the relevant contractual chain.</p> <p>In a simple chain involving the individual, the PSC and the end-user, this would mean the end-user would have to make that assessment.</p>

		<p>If the IR35 regime does apply then, in this scenario, the end-user would become responsible for deducting income tax and employee NICs and would also be responsible for paying employer NICs. HMRC has launched a public consultation which closes on 28 May 2019.</p>
6 April 2020	<p>Termination payments: changes to the national insurance treatment of termination payments</p> <p>National Insurance Contributions Bill.</p>	<p>Employer NICs will become payable on all termination payments above £30,000 (which are currently only subject to income tax).</p> <p>The first £30,000 of any termination payment will remain exempt from income tax and the entirety of the payment will remain exempt from employee NICs.</p> <p>This reform was initially due to come into force in 2018. It was delayed until 6 April 2019 and has been further delayed to 6 April 2020.</p>
April 2020	<p>New right to statutory parental bereavement leave and pay</p> <p>Parental Bereavement (Leave and Pay) Act 2018.</p> <p>Supporting regulations to be published.</p>	<p>From 2020, employed parents who lose a child below the age of 18 (including a still birth after 24 weeks) will be entitled to take 2 weeks' statutory leave within 56 days of the child's death.</p> <p>Employees who have at least 26 weeks' service at the time will also be entitled to receive 2 weeks' statutory pay at the lower of either the prescribed rate or 90% of their average earnings. Employers will be able to recover some or all of this payment from the Government.</p>
Consultation closed 11 January 2019.	Ethnicity pay gap reporting	<p>The government has consulted on ethnicity pay gap reporting, which is intended to mirror the gender pay gap reporting regime.</p> <p>The consultation applies to England, Wales and Scotland, but not Northern Ireland, and closed on 11 January 2019. The Government's response is awaited.</p>

Consultation closes 28 May 2019.	Non-disclosure agreement reforms	<p>The government has consulted to improve the regulations around non-disclosure agreements in employment disputes, after it emerged that some employers have used these agreements to settle allegations of bullying, sexual harassment and racial abuse of staff.</p> <p>The consultation closed on 28 May 2019 and the Government's response is awaited.</p>
----------------------------------	----------------------------------	---