

European (& the GCC) Employment Law Update

Jurisdiction: United Kingdom

Date: April 2018

Impact date	Development	Impact
28 October 2016	<i>Aslam and others v Uber</i> – Employment status: are Uber drivers workers or self-employed?	<p>The Employment Appeal Tribunal decided that taxi drivers engaged by Uber were workers, rather than self-employed contractors. The consequence is that 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 (e.g. rest breaks and paid holiday).</p> <p>Uber has appealed to the Court of Appeal, with the hearing due to take place by 20 November 2018.</p>
10 February 2017	<i>Pimlico Plumbers v Smith</i> – Employment status: are plumbers engaged by Pimlico Plumbers self-employed, workers or employees?	<p>The Court of Appeal held that the claimant was a worker under the Employment Rights Act 1996 and an employee for the purposes of the Equality Act 2010 (which uses an extended definition of employment covering workers).</p> <p>An appeal of the decision was heard by the Supreme Court on 20 and 21 February 2018 and judgment is awaited.</p>
28 February 2017	<i>Lock v British Gas</i> – Holiday pay: should commission be included in holiday pay?	<p>The Court of Appeal ruled that the Working Time Regulations 1998 (implementing the EU Working Time Directive) can be interpreted to provide that holiday pay must include relevant commission payments. The Court decided that when faced with the question of whether a conforming interpretation can be adopted, the Courts should not confine themselves to the literal meaning of the legislation, but should consider whether such an interpretation is in line with the "grain" of the law.</p> <p>The Court decided that it could be presumed that the UK Government intended to fulfil entirely the obligations arising under the Working Time Directive, including those which were not apparent at the time the Directive was implemented such as the requirement for holiday</p>

		<p>pay to be "normal pay". British Gas was refused permission to appeal to the Supreme Court.</p> <p>The case is due to return to the Employment Tribunal to assess how Mr Lock's holiday pay should have been calculated, however, there has been speculation that the parties are close to settling.</p>
10 January 2018	<i>Independent Workers of Great Britain (IWGB) and University of London</i> – Employment status: are outsourced staff also workers of the end-user?	<p>The IWGB applied to the Central Arbitration Committee (CAC) for trade union recognition. AS part of that application, the CAC needed to decide whether outsourced staff (security guards, porters, receptionists, postroom staff and AV staff) employed by Cordant Security were also workers engaged by the University of London. If they were not workers of the University, then the application for trade union recognition would fail.</p> <p>On 10 January 2018, the CAC rejected the application on the grounds that the staff were not workers of the University due to the absence of a contract between the parties. On 12 February 2018, the IWGB applied for permission to have the CAC's decision judicially reviewed.</p>
1 April 2018	Increases to minimum wage	<p>The National Minimum Wage increased as follows:</p> <ul style="list-style-type: none"> • Workers aged 25 or over: from £7.50 to £7.83 per hour. • Workers aged 21 – 25: from £7.05 to £7.38 per hour. • Workers aged 18 – 20: from £5.60 to £5.90 per hour. • Workers aged 16 – 17: from £4.05 to £4.20 per hour. • Apprentices: from £3.50 to £3.70 per hour.
6 April 2018	Increases to Employment Tribunal compensation limits	<p>Various increased compensation limits for Employment Tribunals came into force:</p> <ul style="list-style-type: none"> • Maximum amount of a week's pay: from £489 to £508. • Maximum compensatory award for unfair dismissal: from £80,541 to £83,682.

6 April 2018 (date tbc for family leave pay increases)	Statutory family and sick payments	<p>The following statutory payments were up-rated as follows:</p> <ul style="list-style-type: none"> • Statutory maternity, paternity, adoption and shared parental pay increased from £140.98 to £145.18 per week. • Statutory sick pay increased from £89.35 to £92.05 per week.
6 April 2018	Pensions: increase to minimum auto-enrolment contributions	<p>The minimum contribution rates for defined contribution schemes increased to 2% for employers (previously 1%) and an overall total of 5% (previously 2%) of the jobholder's qualifying earnings.</p>
6 April 2018	Changes to the taxation of termination payments	<p>The following changes to the taxation of termination payments came into force:</p> <ul style="list-style-type: none"> • All payments in lieu of notice (whether contractual or not) are to be treated as earnings and subject to tax and class 1 National Insurance contributions. The existing £30,000 tax-free part of a termination payment will remain. • Foreign service relief on termination payments was abolished for employees who are UK tax resident in the year of termination. • Payments for injury to feelings connected with termination will be fully taxable. <p>From April 2019, any termination payments that are subject to income tax and are over £30,000 will become subject to employer National Insurance contributions.</p>
6 April 2018	Taxation of salary sacrifice schemes	<p>From April 2017 most salary sacrifice schemes became subject to tax in the same way as cash income. However, some salary sacrifice arrangements are protected for a certain period:</p> <ul style="list-style-type: none"> • All arrangements in place before 6 April 2017 are protected until 5 April 2018 (or before if the arrangement ends, changes, is modified or due for renewal at an earlier date).

		<ul style="list-style-type: none"> • Arrangements in place before 6 April 2017 for cars, accommodation and school fees are protected until 5 April 2021 (or before if the arrangement ends, changes, is modified or due for renewal at an earlier date). <p>Therefore, any salary sacrifice arrangements put in place before 6 April 2017 that do not concern cars, accommodation or school fees will become subject to tax by 6 April 2018 at the latest.</p>
11 April 2018	<i>Capita Customer Management v Ali & Working Families (Intervenor)</i> – Should men on shared parental leave be paid at the same rate as mothers on maternity leave?	<p>The Employment Appeal Tribunal overturned the decision of the Employment Tribunal and ruled that it is not direct sex discrimination for an employer to make different payments for maternity leave and for shared parental leave.</p> <p>This is because the two types of leave are not comparable – maternity leave is mainly provided for the health and safety of a mother, whereas shared parental leave is purely for childcare reasons.</p>
25 May 2018	Data protection: compliance with the General Data Protection Regulation (GDPR)	<p>The GDPR is a directly effective EU regulation which applies from 25 May 2018. It will introduce important changes to data privacy compliance.</p> <p>In the UK, the Data Protection Bill was published in September 2017. It will implement the GDPR and replace the Data Protection Act 1998.</p>
9 June 2018	Trade secrets	<p>A new European Directive introducing an EU-wide definition of "trade secret" and setting out rules on the unlawful acquisition, disclosure and use of trade secrets came into force in June 2016. The definition is potentially wider than what is regarded as a "trade secret" under English common law, but narrower than the types of "confidential information" that may qualify for protection in the domestic courts.</p> <p>The Directive prohibits the acquisition of a trade secret through unlawful access to materials or other conduct which is contrary to "honest commercial practices" (a term that is not defined in the Directive); the use or disclosure of a trade secret where this would breach any contractual or other duty, or where the trade secret was acquired unlawfully; and the exploitation of goods produced using the</p>

		<p>trade secret where the user (e, a subsequent employer) knew or ought to have known that the trade secret was acquired unlawfully.</p> <p>The Directive also includes enforcement measures, procedures and civil remedies, including interim injunctions and precautionary seizure of infringing goods. The proposal also covers the preservation of confidentiality during the litigation process.</p> <p>Member States have 2 years from this date to implement the Directive into national legislation, meaning the UK must comply by 9 June 2018.</p>
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