

European (& the GCC) Employment Law Update

Jurisdiction: United Kingdom
Date: April 2017

Impact date	Development	Impact
28 October 2016	<i>Aslam and others v Uber</i> – Employment status: are Uber drivers 'workers' or 'self-employed'?	<p>In the UK, there are three classes of employment status: 'self-employed', 'worker', and 'employee'. The distinction is very important, as workers are afforded more rights than self-employed individuals, and employees even more so.</p> <p>The Employment Tribunal decided 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 (e.g. rest breaks and paid holiday).</p> <p>The Employment Tribunal's judgment was handed down on 28 October 2016. The Tribunal decided that the drivers were workers. Uber has appealed to the EAT.</p>
10 February 2017	<i>Pimlico Plumbers v Smith</i> - Employment status: self-employed or worker?	<p>In an important decision, the Court of Appeal held that the claimant was a worker and also an employee for the purposes of the Equality Act 2010 (which uses an extended definition of employment covering workers). Pimlico Plumbers has indicated it may seek permission to appeal to the Supreme Court.</p>
28 February 2017	<i>Lock v British Gas</i> – should commission be included in holiday pay?	<p>On 7 October 2016, the Court of Appeal ruled that the Working Time Regulations (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</p>

		<p>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 pay to be "normal pay".</p> <p>On 28 February 2017, the Supreme Court refused permission for British Gas to appeal the Court of Appeal's decision. This means the case will return to the Employment Tribunal for them to assess how Mr Lock's holiday pay should have been calculated.</p>
1 March 2017	Trade union reforms	<p>Most of the Trade Union Act 2016 came into force on 1 March 2017. This Act reforms various aspects of the law on industrial action and trade union activities. The key reforms are as follows:</p> <ul style="list-style-type: none"> ▶ Ballots – requirement for 50% turnout. ▶ Ballots in important public services – further requirement for 40% support. ▶ Additional information requirements on voting papers and ballot result. ▶ Requirement for two weeks' notice of industrial action to the employer. ▶ More stringent union supervision of picketing.
1 April 2017	Whistleblowing: annual reports	<p>Regulators (also known as 'prescribed persons') who receive whistleblowing disclosures will be required to report annually (as well as to Parliament) on the disclosures they receive.</p> <p>This report should include the number of disclosures received, the number of disclosures where further action was taken, and a description of the action taken in those cases.</p>

1 April 2017	Increases to minimum wage	<p>The National Minimum Wage (NMW) will increase as follows:</p> <ul style="list-style-type: none"> • 25 years old plus – from £7.20 per hour to £7.50. • 21 to 24 year olds – from £6.95 per hour to £7.05. • 18 to 20 year olds – from £5.55 per hour to £5.60. • 16 to 17 year olds – from £4.00 per hour to £4.05. • Apprentices – from £3.40 per hour to £3.50.
2 April 2017	Statutory family and sick payments	<p>The following statutory payments will be up-rated as follows:</p> <ul style="list-style-type: none"> • Statutory maternity, paternity, adoption and shared parental pay and maternity allowance – from £139.58 to £140.98 per week. • Statutory sick pay – from £88.45 to £89.35 per week.
6 April 2017	Equality: gender pay gap reporting	<p>Employers with 250 or more employees will be required to publish gender pay information on an annual basis. Employers will be required to report:</p> <ul style="list-style-type: none"> ▶ The overall gender pay gap within their business calculated by reference to the specified pay period (on a mean and median basis). ▶ The overall bonus gap within their business calculated by reference to a 12-month period (on a mean and median basis). ▶ The proportion of men and women that received a bonus in a 12-month period. ▶ The numbers of men and women working across salary quartiles. <p>Employers will be required to take their pay snapshot by reference to the pay period within which 5 April 2017 falls and will need to publicly report the results on, or before, 4 April 2018.</p>
6 April 2017	Apprenticeship levy	<p>Certain companies will be required to put money into a public fund (the 'apprenticeship levy'), which will be used to fund 3 million apprenticeships in the UK.</p> <p>The levy will be payable by all employers in the UK at the rate of 0.5% of their total pay bill, with an annual allowance of 15% to offset against</p>

		the levy payment. The result is that the levy will be payable on pay bills of £3 million or more. In this context, "pay bill" means gross pay, excluding benefits in kind.
6 April 2017	Changes to salary sacrifice taxation	<p>In the UK, the value of certain benefits is provided before salary is paid to the individual. This means that these benefits are not subject to income taxation.</p> <p>However, from April 2017 and, depending on the type of benefit and when it was granted, most 'salary sacrifice' schemes will be subject to taxation as though they were cash income.</p> <p>Pensions, pension advice, childcare, cycle-to-work, and ultra-low emission car schemes will be exempt.</p>
Not before 25 April 2017	<i>USA v Nolan</i> - the Court of Appeal will decide when the duty to consult is triggered in collective redundancy situations.	There has been uncertainty in UK law as to when the duty to consult employees in collective redundancies is engaged. This uncertainty relates to the duty arising either: (1) when redundancies are <i>intended</i> , or (2) when they are formally <i>proposed</i> .
6 April 2018	Taxation of termination payments	<p>It was announced in the March 2016 budget that, from 6 April 2018, any termination payments that are subject to income tax and are over £30,000 will also be subject to employer national insurance contributions.</p> <p>The existing £30,000 tax-free part of termination payments will remain. No part of termination payments will be subject to employee's national insurance contributions.</p>