

European (& the GCC) Employment Law Update

Jurisdiction: United Kingdom
Date: November 2017

Impact date	Development	Impact
1 October 2017	(i) The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Amendment Order 2017 SI 2017/877 (ii) The Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order 2017 SI 2017 878	<p>Trade unions: (i) independent scrutineers of ballots and elections; and (ii) qualified persons for recognition and derecognition ballots</p> <p>These reforms:</p> <ul style="list-style-type: none"> • Amend the list of bodies that are qualified to supervise certain ballots and elections under trade union law. • Amend the list of bodies that are qualified to conduct a ballot on the recognition or derecognition of a trade union for collective bargaining.
1 October 2017	The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2017 SI 2017/880	<p>Whistleblowing: qualified persons for disclosures</p> <p>The list of persons a disclosure can be made to by a potential whistleblower will be updated to omit some persons, include another not previously included and to amend the matters for which others are prescribed.</p>
20 October 2017	<i>Royal Mail Group Ltd v Jhuti</i> : <u>Whistleblowing</u> : was dismissal automatically unfair?	<p>Previously, the Employment Appeal Tribunal had held that an employee was automatically unfairly dismissed for making protected disclosures despite the fact that the dismissing officer had no knowledge of the protected disclosures.</p> <p>However, in October 2017, the Court of Appeal held that the fairness of the dismissal should be judged by what the decision-maker knew, not what they should have known.</p> <p>As a result, an employee was <u>not</u> automatically unfairly dismissed for making protected disclosures to her line manager, because the person</p>

		who took the decision to dismiss her was unaware of these disclosures.
10 November 2017	<i>Uber v Aslam and others</i> : <u>Employment status</u> : 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 important, as workers are afforded more rights than self-employed individuals, and employees even more so.</p> <p>In October 2016, the Employment Tribunal decided that taxi drivers engaged by Uber were workers, rather than self-employed contractors.</p> <p>The consequence is that the Uber 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 appealed to the EAT, but, in a judgment handed down on 10 November 2017, the EAT agreed with the Tribunal and found that the drivers were workers.</p> <p>Uber is now expected to appeal to the Court of Appeal.</p>
14 November 2017	<i>Independent Workers of Great Britain and Roofoods Ltd t/a Deliveroo</i> : <u>Employment status</u> : are Deliveroo riders workers?	<p>The Independent Workers of Great Britain trade union applied for trade union recognition by Deliveroo. A preliminary issue to be decided is whether riders engaged by Deliveroo are workers or self-employed contractors.</p> <p>On 14 November 2017, the CAC found that they were self-employed because of their freedom to substitute (i.e. by allowing other riders to take their place on a job).</p>
20th and 21st February 2018 - appeal due to be heard at the UK Supreme Court	<i>Pimlico Plumbers v Smith</i> : <u>Employment status</u> : self-employed or worker?	<p>On 10 February 2017, 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 appealed to the Supreme Court and the hearing is expected to take place on 20th and 21st February 2018.</p>

6 April 2018	Changes to the taxation of termination payments	<ul style="list-style-type: none"> • From 6 April 2018, all payments in lieu of notice (whether contractual or not) will be treated as earnings and subject to tax and class 1 NICs. • From April 2019, any termination payments that are subject to income tax and are over £30,000 will be subject to employer national insurance contributions. • 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.
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). • 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>
25 May 2018	<p>General Data Protection Regulation EU 2016/679</p> <p>Data Protection Bill</p>	<p>Data protection: compliance with the General Data Protection Regulation (GDPR)</p> <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>

<p>June 2018</p>	<p>Trade Secrets Directive (EU) 2016/943</p> <p>The Trade Secrets Directive came into force in June 2016.</p> <p>Member States have 2 years from this date to implement the Directive into national legislation, meaning the UK must comply by June 2018.</p> <p>If the UK is a member of the EU at the relevant time then domestic legislation will need to be introduced to comply with the Directive.</p>	<p>Trade secrets</p> <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 somewhat 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 trade secret where the user (for example, 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>
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