

## European (& the GCC) Employment Law Update

Jurisdiction: United Kingdom

Date: October 2018

Impact date	Development	Impact
19 April 2018	<i>Abrahall &amp; Others v Nottingham City Council &amp; another</i> – Acceptance to a variation of a contract must be unequivocal	<p>The Court of Appeal was asked to consider the circumstances in which an employee could be deemed to have accepted changes to terms and conditions of employment which had been implemented unilaterally. The Court found that, while in certain cases acceptance could be inferred by conduct, the employee's behaviour would have to be capable of no other reasonable explanation.</p> <p>Acceptance has to be unequivocal and, where there is ambiguity, the employee will be given the benefit of the doubt.</p>
9 June 2018	Trade Secrets (Enforcement, etc.) Regulations 2018	<p>The UK has implemented the Trade Secrets (Enforcement, etc.) Regulations 2018, introducing an EU-wide definition of "trade secret" and setting out rules on the unlawful acquisition, disclosure and use of trade secrets. 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 Regulations prohibit the acquisition of a trade secret through unlawful access to materials or other conduct which is contrary to "honest commercial practices"; 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 (e.g. a subsequent employer) knew or ought to have known that the trade secret was acquired unlawfully.</p> <p>The Regulations also include enforcement measures, procedures and civil remedies, including interim injunctions and precautionary seizure of infringing goods.</p>

13 June 2018	<i>Pimlico Plumbers Ltd and another v Smith</i> – Plumbers held to be workers under the Employment Rights Act 1996 and employees under the Equality Act 2010	<p>The Supreme Court has dismissed the appeal against an Employment Tribunal decision that plumbers engaged by Pimlico Plumbers were workers under the Employment Rights Act 1996 and the Working Time Regulations 1998 and also employees under the extended definition of employment in the Equality Act 2010.</p> <p>The plumbers, therefore, acquire various employment rights such as the right to the national minimum wage, paid holiday, rest breaks and pension contributions, as well as whistleblowing and discrimination protections.</p>
9 August 2018	<i>X v Y Ltd</i> – Advice on how to commit discrimination is an inequity which defeats legal advice privilege	<p>Legal advice privilege protects advice given by lawyers to their clients. However, where there is a prima facie case that such advice was given to perpetrate or further an inequity, privilege will fall away.</p> <p>In this case, the Employment Appeal Tribunal confirmed that advising a client how to disguise unlawful discrimination could be iniquitous, however, merely warning of the potential for a discrimination claim to be brought would not be enough.</p>
19 October 2018	<i>(1) Timis (2) Sage v Osipov</i> – Whistleblowing: co-workers are personally liable for post-dismissal losses flowing from pre-dismissal detriment	<p>The Court of Appeal has held that an employee was not prohibited from bringing a claim against his co-workers based on pre-dismissal detrimental actions which had caused his dismissal.</p> <p>The employee was entitled to recover compensation for losses flowing from the dismissal which had been caused by the pre-termination detriment, subject to the usual rules on the remoteness of loss.</p> <p>Employers need to ensure that they have appropriate policies, training and insurance cover in place.</p>
6 April 2020	Employer's national insurance on termination payments over £30,000	<p>The new employer's national insurance contributions charge arising on termination payments of over £30,000 which had been to come into effect on 6 April 2019 has been deferred until 6 April 2020. This is likely to mean a significant tax saving for companies making significant termination payments pre-6 April 2020.</p>

6 April 2020 (proposed)	Employment and tax status reforms	<p>Following the government's consultation into off-payroll working in the private sector, it has announced that the rules which currently apply only to the public sector will be extended to the private sector.</p> <p>This will mean that large and medium-sized businesses in the private sector that engage contract workers will be responsible for determining the status of their workers, rather than allowing the worker to define this themselves</p> <p>Fee payers for contractors will be responsible for deducting the correct tax and national insurance.</p>
December 2020 (proposed)	UK's withdrawal from the European Union and EU Settlement Scheme	<p>The Prime Minister has reached a draft agreement on the UK's withdrawal from the European Union, the agreement has not yet been passed in Parliament. A key aspect of the deal relates to EU citizen's rights, and this largely reflects what has previously been agreed between the EU and UK government.</p> <p>The draft agreement confirms that if an EU citizen has not yet lived in the UK for the five years required to acquire permanent residency before 29 March 2019, or arrives during the transition period between 29 March 2019 and 31 December 2020, they will retain the right to live and work in the UK.</p> <p>It is likely that the protection of that right post-December 2020 will be subject to the rules under the EU's Settlement Scheme. The details of the new EU Settlement Scheme give EU migrants arriving before the end of the transition period until 30 June 2021 to apply for either 'settled' or 'pre-settled' status under the Scheme.</p> <p>EU migrants and their non-EU family members can obtain 'settled status' if they have lived in the UK for five years or longer. Those whom have lived in the UK for fewer than five years can apply for 'pre-settled status', which they can convert to 'settled status' when they meet the five year criteria. The application will look at three different criteria: identity, eligibility and criminality. It is intended that the Scheme will be open for applications from March 2019. Settlement Scheme status is likely to form part of employers' right to work check in the future.</p>

Unknown	Ethnicity pay gap reporting	<p>The government has opened a consultation 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 will close on 11 January 2019.</p>
Unknown	Non-disclosure agreement reforms	<p>The government is planning to open a consultation 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>