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UK Government Announces Changes to Employment Laws "To Reduce Burdens" on Businesses

UK – 11 May 2023

The UK government has this week made the first in a series of "regulatory reform announcements" as part of its efforts to "reduce burdens, push down the cost of living and drive economic growth". Its proposals for reform include some changes to employment law, although nothing significant for the most part – more tinkering around the edges.

First off is confirmation that (despite previous assertions to the contrary) the government will not be scrapping all EU-derived legislation by the end of the year. In a statement to Parliament, Kemi Badenoch (the Secretary of State for Business and Trade) said the government will amend the Retained EU Law (Revocation and Reform) Bill to remove the so-called "sunset clause" that would have repealed most EU-derived legislation in the UK by the end of 2023 unless the government took active steps to retain it. Instead, the government has set out a list of specific EU laws that will be scrapped. While, at face value, this approach seems more sensible (and one likely to be welcomed by businesses as it will give them much greater certainty about the future legislative landscape) it is clear that the government is rather more talk than trousers in terms of "freedom" from EU law, once one actually reviews the list. Although the list is relatively long, it mainly deals with relatively obscure pieces of legislation – very few of which have any impact on employment law, for our purposes, and even those that do are somewhat esoteric.

The other key proposals to be aware of as part of this reform package, from an employment law perspective, are as follows:

- **The Working Time Regulations 1998** – The government intends to introduce rolled-up holiday pay "so that workers can receive their holiday pay with every payslip". No further details on what this change might look like have yet been provided, but presumably this will be for only certain workers in certain circumstances, e.g. workers without fixed hours. It is not clear how this will sit with the proposed changes to holiday announced for part-year and irregular-hours workers in the government's recent consultation exercise.
- The government also intends to "merge" the current two separate leave entitlements (i.e. the four weeks' "EU leave" and the additional 1.6 weeks' "UK leave") to create "one pot" of statutory annual leave. One wonders whether this means the government might also be seeking to change the basis on which employers calculate statutory holiday pay, to reflect the more favourable case law position concerning UK leave, but, again, no further details have been provided at this stage. The final proposal is to reduce record keeping requirements on employers, although, as previous HSE guidance suggested that employers did not have to create records specifically to show compliance with the WTR, it remains to be seen what practical difference any such legislative change will make.
- **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)** – The government has been keen to make changes to TUPE for a number of years, although, at the last attempt, its efforts were thwarted mainly by businesses themselves who felt that any significant changes to TUPE would simply introduce unwanted uncertainty. In what can only be described as tinkering around the edges, the government has said it will remove the current obligation on businesses to consult with employee representatives (so if there are trade union representatives, they must still be consulted with) in a TUPE situation, but only for those businesses "with fewer than 50 people and transfers affecting less than 10 employees". Businesses will instead be able to consult with affected employees directly. A similar exemption already applies to micro-businesses, i.e. those with fewer than 10 employees.
- **Non-competition clauses** – In bigger news, the government intends to legislate to limit the length of non-competition clauses to three months. No further details have been provided yet, but presumably, at some stage soon, we will see the government's response to its previous consultation exercise on this very issue. It seems at least that the government has scrapped the suggestion that employers will have to pay compensation during the term of any such restriction. It should also be remembered that this proposal will not interfere with employers' ability to use notice periods or garden leave clauses, or other types of post-termination restriction, such as non-solicitation clauses. At this stage it is unclear how this change will apply to existing non-competition clauses that go beyond three months. We will have to wait for further details.

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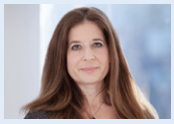

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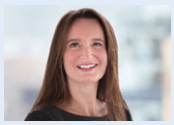

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