



2019 - The annual crystal ball article

By **Dónall Breen** - 31 January 2018

As the new year is nearly a month old (and as the UK continues to hurtle towards Brexit with alarming speed but without much of a coherent plan), what should employment lawyers, HR practitioners and employers be thinking about as they look to navigate the uncertain months ahead? Well thankfully, as sure as death and taxes, GQ|Littler is here to help guide you through the various labour law issues that arise. Here are our top predictions for what you will need to be aware of in 2019.

The Good Work Plan

The biggest reform in employment law in 20 years (or so they say) is scheduled to take place this year as the government rolls out its action plan in response to the Taylor Review. The measures include a right for workers to request a more stable and predictable contract, an increase in the period to break continuity of employment, a ban on deductions from staff tips and a commitment to improve the clarity of the employment status tests.

There is no doubt that this will have a significant impact on many employers and we have looked at this in more detail [here](#).

Restrictive Covenants

For the first time in over a decade, the Supreme Court will look at the construction of employment post-termination restrictions. In *Tillman v Egon Zehnder Ltd* the defendant contends that a non-compete restriction is too wide, as it seemingly prohibits holding shares in public companies.

The case is likely to have a profound impact on how covenants are drafted and, for employment lawyers especially, this will likely be the highlight of the year. We should get out more.

For further analysis on this case and how to draft your restrictions in the meantime, see our article [here](#).

Worker Status

2018 was a busy year for worker status and we expect that to continue in 2019. After a key dissenting judgment in the Employment Appeals Tribunal, the Supreme Court is due to rule on the status of drivers for a ride hailing app. This is a case which will be watched closely by all in the gig economy.

Following losses in worker status cases for Olympic cyclists and foster carers, it will be interesting to see which other claimants come forward to challenge the status quo in their industry. A new wave of unions representing these claimants have thrived over the last 12 months and only time will tell whether they can maintain momentum over the coming year to continue bringing and funding claims of this nature.

Equal Pay

Asda, Sainsburys, Tesco, Morrisons: so reads the list of supermarkets which are already facing enormous equal pay claims, some of which will be heard this year. It is hard to underestimate the sheer size and scale of these claims. 1,000s of claimants, billions (yes, billions) of pounds of compensation sought, dozens of hearings and hundreds of lawyers. If even one of these claims succeeds it will be a monumental shift, demonstrating that large scale equal pay claims are viable in the private sector, which to date has been relatively untouched by this type of claim.

GDPR

You thought this was all over? Well, you would be kind of right. Although the GDPR hysteria has somewhat passed, there are new data protection rules being introduced (the ePrivacy Regulations) and we suspect regulators will start looking to enforce the GDPR requirements more stringently.

There is also good news on this front. As the ICO slowly works its way through a small mountain of queries, we are expecting further clarity on how employers can lawfully comply with GDPR requirements whilst at the same time meeting business requirements. One currently unresolved issue on which we excitedly await guidance is when employers can perform criminal background checks in circumstances where they are not strictly legally required to do so. We shall keep you updated.

SMCR

The senior managers and certification regime will be extended to all firms authorised under FSMA on 9 December 2019. We expect there will be plenty of preparatory work before this date. SMCR will replace the approved persons regime and will affect around 47,000 firms including financial advisers, asset managers, mortgage brokers and consumer credit firms. SMCR will have particularly profound effect on how references can be negotiated for departing employees. With a regulatory angle now in the mix for a greater number of employers, we suspect the dynamics of an exit negotiation will start shifting as firms and employees grow accustomed to the new rules.

Transparency

New regulations mean that companies with 250 or more employees will now have to provide mandatory reporting on the ratio between CEO pay and average staff pay. The reports will actually be due in 2020, but data must be collected this year.

More broadly, there has been a package of other corporate governance changes which will affect how companies interact and communicate with their employees. The measures include the obligation to prepare an annual statement of engagement with employees for companies with 250 or more employees (including details of any information and consultation arrangements and how directors have had regard to employee interests).

The government also launched a consultation on mandatory ethnicity pay gap reporting last year. The consultation has now closed and it is expected that action will be taken over the course of this year.

Brexit

No round up of the year ahead would be complete without a reference to Brexit, which continues to dominate the legal and political landscape. In the short term, whether a deal is reached or not, employment law is unlikely to face drastic changes; much of the European legislation relevant to employment law is implemented by our own Regulations, which will continue to have an effect after (whether or not we enter a transitional period or drop of a "cliff edge" on 29 March).

Longer term, the outlook is far less certain and, of course, there are short-term concerns about immigration matters for employers and employees alike. Read our update [here](#) and sign up for our upcoming webinar with our partner Paul Quain and colleagues from around Europe [here](#).