



2020 Vision - A look at the year ahead

By **Paul Quain** - 23 December 2019

Well, first of all, the UK is going to get Brexit done! What this will feel like after years of wrangling will remain to be seen. There are some reports that Boris Johnson's newly elected government is squaring up for a massive run-in with the EU over regulatory alignment and whether we will agree to what is known as the level playing field. Wrangling over Brexit will be replaced with wrangling over the future trade deal which is supposed to be done by the end of 2020. Expect to hear the words "Extension", "No Deal", "Level Playing Field", "Regulatory Alignment" and the acronym "ERG" (which is apparently even stronger in the newly formed parliament). It may be however, that despite Johnson's majority and much enhanced position he is still at danger of losing parliamentary votes over European issues. This would happen if the ERG decided to vote against him even on his current numbers. There may be some surprises ahead.

The new IR35 rules are due to come into force as of April 2020 which may shift the burden of ensuring compliance with IR35 from your independent contractors' personal service companies to you as the end user. From that point onwards, if you do not operate IR35 correctly, you are at risk of having to pay out large tax and national insurance contribution bills for non-compliance, interest and penalties. There are options for end users to manage this new compliance burden, including accepting the risk; accepting that IR35 applies; changing practical arrangements, or converting contractors to employees. Our working assumption for most clients, especially those in the financial services sector, is that most contractors will become directly employed. We have set out a high-level overview of the changes to the IR35 rules and our preliminary thoughts on what you could do about them which you can read [here](#).

Trans rights are likely to be in the news in 2020 as a couple of cases make their way through the appeal courts. You may have heard about the high profile case of Maya Forstater -v-(1) CGD Europe (2) Centre for Global Development (3) Masood Ahmed in which judgment was handed down this month. Forstater was a public policy researcher and writer with the Centre for Global Development (CGD), an international thinktank that campaigns against poverty and inequality. Her contract at the charitable organisation was not renewed in March after a dispute over publicising her views on social media. She was accused of using "offensive and exclusionary" language in tweets opposing government proposals to reform the Gender Recognition Act to allow people to self-identify as the opposite sex.

In another case (Mackereth v Department of Work & Pensions), an employment tribunal found that a doctor engaged to carry out health assessments for the Department for Work and Pensions was not discriminated against on the grounds of religion or belief for

refusing to address transgender patients by their chosen pronoun.

The tribunal accepted that the doctor's Christianity was protected under the Equality Act 2010. It held that the doctor's particular beliefs that God only created males and females and that a person cannot choose their gender, his lack of belief in transgenderism and his conscientious objection to transgenderism, were views incompatible with human dignity which conflicted with the fundamental rights of others and so were not protected religious or philosophical beliefs under the Equality Act. The doctor intends to appeal the decision.

We may see the case about the "gay cake" come back in 2020. This was about the Christian owners of a bakery who refused to provide a cake bearing the words "Support Gay Marriage" to a gay customer. An application has been lodged with the European Court of Human Rights, so watch this space!

So what else is going to happen in 2020? Well, finally we are going to be clearer about determining the reference period for defining a week's pay (when cross-referencing paid annual leave with working time obligations). The reference period is changing from 12 weeks to 52 weeks or if the worker has been employed for less than 52 weeks, the number of complete weeks for which the worker has been employed. This will happen on 6 April.

Also on 6 April, some regulations will come into force which will lower the threshold required for a request to set up information and consultation arrangements from 10% to 2% of employees, subject to the existing minimum of 15 employees.

Considering the Conservative party manifesto, we can determine what other changes are likely to occur over the next year. It is somewhat thin on the ground in this area but the Conservatives promise:

- They will negotiate a future relationship with the EU which will allow them to raise standards in several areas including workers' rights and the introduction of an Australian Style points-based system;
- No rate increases of income tax, national insurance or VAT;
- To extend the period of leave for unpaid carers;
- To publish a national strategy for disabled people and reduce the disability employment gap (although they do not say how);
- To predict fewer migrants, but again they do not state how this will be achieved (although EU and non-EU citizens will be treated equally)
- That their government will "make the UK the best place in the world to work" by creating a single enforcement body to crack down on employment law breaches;
- To ensure workers can request a more flexible contract and can consult on introducing flexible working by default;
- To strengthen redundancy protections for women who return from maternity leave (although the reference to this is very unclear);
- To allow parents to take extended leave for neonatal care and to introduce the right to one week of leave for unpaid carers.

We will see how much of this actually features in the programme and there has been already some backtracking on "raising standards in... workers' rights", although it is unclear whether this represents its position or whether this is simply posturing in preparing for a trade deal negotiation with the EU.

Early next year an employment tribunal will consider and decide whether ethical veganism is capable of being protected as a philosophical belief. This is likely to be a hot topic!

In July next year, we shall see whether Uber is successful in attempts to overturn the previous decisions saying that Uber drivers should be classified as workers as its case will be heard by the Supreme Court.

The Supreme Court will also hear a case to decide whether it was direct or indirect sex discrimination, or a breach of the equal pay sex quality clause for two employers to fail to pay two male employees enhanced shared paternity pay.

As we wait to see what the new post-Brexit world will look like in the workplace and from an immigration perspective, 2020 promises to be an interesting year.

In the meantime, the whole team at GQ wishes you all the best during this festive season and a happy and prosperous 2020!

