



## What's coming up? 2018 in employment law

By **Raoul Parekh** - 21 December 2017

You've read our résumé of employment law developments from 2017, and now you wonder: what should I expect from 2018? Let GQ Employment Law gaze into its crystal ball on your behalf...

*Employment status: some clarity at last?*

OK, so we made the same call for [2016](#) (and said something similar in [2017](#)), but this time we really mean it! Two years ago we were looking forward to the Court of Appeal's decision in *Pimlico Plumbers v Smith*. Now we are a couple of months away from a Supreme Court decision in the same matter (the hearing is scheduled for 20 – 21 February 2018).

The decision concerns whether self-employed plumbers working for the sharply branded firm are "workers" and therefore entitled to holiday pay and certain other rights. The [recent European decision](#) of *King v Sash Windows* suggests that, if so, the plumbers could claim holiday pay stretching back to 1998. Given the six-figure earnings of the plumbers, some commentators have speculated that failure for Pimlico could lead to the liquidation of the company. Whatever happens, the consequences for the employment law world will be significant. This will be an eagerly watched decision.

As if that wasn't enough, we are also expecting the Government's response to the [Taylor Review](#) on modern working practices, which focussed on the challenge of "gig work" platforms and other flexible employment models. We anticipate that the current relative drought of statutory employment law changes will come to an end with some new proposals in the first few months of next year. How much will see the light of day will depend on how all consuming Brexit becomes.

*The chickens come home to roost*

2018 is going to be the year you've all been waiting for when it comes to several employment law developments everyone's been talking about for a long time:

(1) GDPR finally takes effect on 25 May 2018.

(2) Larger employers must publish their gender pay gap statistics by 4 April 2018. Expect lots of news stories about big companies with misleading percentages attached.

(3) The financial services senior managers and certification regime is due to extend to all regulated firms in 2018.

(4) A flood of employment tribunal claims will follow the abolition of fees. It's already started, but the increased volume of claims will hit employers with full force next year. We also expect the Tribunal service to experience significant delays as a result: London Central is already taking 12 months to find a listing for 3 day hearings. Expect more of the same...

#### *Holiday pay claims will finally take off*

Employment lawyers have been warning about the spectre of historical holiday pay claims haunting employers since the *Williams v BA* judgment in 2012. With limited exceptions, though, the predictions have not really come to pass thus far. We think that will change in 2018 for three reasons:

- As mentioned above, the *King v Sash Windows* case means that wrongly classified workers could reclaim unlimited amounts - making claims more valuable.
- The Government's two-year backstop limit introduced in 2015 is vulnerable to challenge (see, for example, Caspar Glyn QC's analysis [here](#)), and we understand a case seeking to overturn it has already been brought with support from the IWGB (*Flisher v Kent County Council*, due for hearing in September 2018).
- The aforementioned abolition of Tribunal fees has reduced the barriers to bringing a claim further.

#### *Technology*

There will be even more talk about Artificial Intelligence (AI) and robots in the workplace and how this will affect the economy and people's jobs. There will be big stories about driverless cars, and a growing realisation that machines are going to be to do far more than we ever dreamed about.

Technology is allegedly coming to the courts as part of a project called Transforming our Justice System! The purpose is "to automate and digitise the entire process of civil money claims by 2020" - a very ambitious target. The UK's first Courts and Tribunal Service centres will be opening in Birmingham and Milton Keynes.

#### *We still won't really know what's happening with Brexit*

Brexit still looks most likely to happen on 29 March 2019 (although that date could be put back by agreement with the other 27 member states). The date is going to appear in legislation, but amendments will allow it to be changed, if necessary. Although there are differing views on this, it also looks like it will be a soft Brexit (at least until 2021). We predict there will be continuing membership of the single market and customs union in the short term and we will still be abiding by the decisions of the European Court of Justice until 2021.

Negotiations with the EU will progress during the next 12 months, but our prediction is that we will still be in a state of considerable uncertainty when we're getting ready for Christmas 2018. As the French say, "Plus ça change, plus c'est la même chose" or as we might say "Same old, same old..."