

The biggest shake up of Employment Law in a generation?

On Tuesday 11th July, the UK government published Matthew Taylor's Review of Modern Working Practices. The Taylor Review was commissioned by Prime Minister Theresa May to consider how the UK labour market can address challenges of modern working practices.

The Review follows a number of high profile employment tribunal decisions involving the gig economy and Teresa May's commitment that workers will benefit from more – not less – rights at work following Brexit.

The key recommendations are:

- All workers to be subject to PAYE/payroll tax withholdings and national insurance/social security payments.
- Employees to have a choice to be paid "rolled up" holiday pay for the first time (i.e. by payment of a 12.07% premium above their normal weekly earnings, in exchange of which they would not receive separate holiday pay).
- The UK's "worker" test to be re-cast and broadened with a view to including all gig economy workers (for whom the status is currently unclear and subject to legal challenge).
- Reversal of the burden of proof so there is a presumption of worker/employment status unless the "employer" proves otherwise.

In addition to the headline points, other recommendations include:

- The existing three-tiered approach of employee, worker and self-employed to remain.
- A statutory test for employment status to be introduced. Whilst the "worker" category will be broadened the employment test will be based on existing case law meaning no broadening of the "employee" category.

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- The “worker” category should be renamed “dependent contractors” (we continue to use the term “worker” in this note).
- Special national minimum wage rules for those working through technology platforms which will be based upon 120% of the average hourly rate. Platforms will be required to give notice at beginning of pay period of the average hourly rate and also in real time.
- “Workers” entitled to a statement of terms on day one of a job (in a similar way to that which is currently required for employees).
- The Government should use artificial intelligence to develop an online employment status indicator tool to give greater certainty.
- Agency workers should have the right to request a direct employment contract after 12 months. The hirer should be required to consider requests in a reasonable manner.
- Right for “zero hours” workers with 12 months service to request a contract with guaranteed hours which reflects those hours actually worked.
- The threshold for employee consultation arrangements to be reduced. Consultation arrangements will be required if 2% of the workforce request it (reduced from 10% of workforce and with “workers” being included for the first time).
- Large employers to disclose details of their employment practices.
- All agency workers will be entitled to equality of terms with permanent staff irrespective of whether or not they are entitled to pay between assignments (i.e. repeal of the so called “Swedish derogation” which currently allows a 12-week grace period before the equal remuneration requirement applies).
- HMRC (the UK’s tax authority) to assume responsibility for holiday pay compliance.
- A judgement on employment status should be exempt from employment tribunal fees. On the broader controversial issue of employment tribunal fees its says “*With regret we recognise that it is unlikely that the Government will move to abolish these higher fees but we do ask that the Government continues to keep the level of the fees under review*”). "*Since the time of writing, the Supreme Court have held that the employment tribunal fees are unlawful*". For details see here https://www.gqlittler.com/resources-centre/features/article-852-2017-07/supreme-court-finds-that-employment-tribunal-fees-are-unlawful]
- Improved enforcement of tribunal awards and sanctions for employers who have previously lost similar cases.

The Taylor Review merely makes recommendations and so none of the recommendations will necessarily make it into law.

We understand that the Review had broad support within government and the expectation before the election was that the findings are likely to be broadly adopted. Theresa May has spoken repeatedly about workers’ rights and has clearly identified herself with the Taylor Review - choosing to speak at its launch. The fate of his Review will ultimately depend on the duration of her premiership and the response of the opposition.

To place the above in context please click here for a summary of the main rights that attach to each category of worker/employee/self employed person.

Please contact anyone in the GQ team if you wish to discuss the implications of the Review.

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