

**E-ALERT | Employment Law Briefing**

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**UK EMPLOYMENT LAW REFORM - WHAT LIES AHEAD IN 2012?**

In November 2011 we reported on a number of reforms to employment law proposed by the UK Government in response to the consultation on Resolving Workplace Disputes. Since then various proposals have evolved, some coming into force on **6 April 2012**. The Government's initiatives are designed to reduce red tape and to stimulate the economy by encouraging employers to hire new staff. This edition of Employment Law Briefing summarises the key changes and the likely timeline for implementation.

**APRIL 2012 CHANGES**

- **Qualifying period for unfair dismissal claims will increase from one to two years of continuous employment.** The extended qualifying period will apply to employees who commence employment on or after **6 April 2012**. The number of workplace disputes reaching the Employment Tribunal has increased dramatically in recent years (over 200,000 claims were filed between April 2010 and March 2011) and the Government hopes that this change will reduce the number of claims filed. It remains to be seen whether the increased qualifying period will have the undesirable result of increasing the number of claims requiring no qualifying period, such as discrimination and whistleblowing claims.
- **Changes to the Employment Tribunal Rules of Procedure.** The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012 implement various procedural changes aimed at deterring unreasonable, misconceived or vexatious claims and speeding-up the Tribunal process for claims filed on or after **6 April 2012**:
  - Witness statements will be taken as read unless the Employment Judge directs otherwise.
  - The upper level of costs that can be awarded by the Tribunal will increase from £10,000 to £20,000.
  - The Tribunal may require a claimant to pay a deposit of up to £1,000 in order to proceed with a claim (increased from £500).
  - The Employment Judge will be able to direct a party to pay the costs of a witness to attend a Tribunal hearing and the losing party can be ordered to reimburse the winning party for any such costs.

Unfair dismissal claims heard on or after 6 April 2012 will be adjudicated by an Employment Judge sitting alone (without the usual two supporting lay members), unless the Judge orders otherwise. This practice will be reviewed after one year.

**CONTACTS**

If you have any questions on UK or European employment or employee benefits issues, please contact any of the following members of our London employment team:



**Christopher Walter**  
Partner  
T: +44.(0)20.7067.2061  
Email: [cwalter@cov.com](mailto:cwalter@cov.com)



**Chris Bracebridge**  
Special Counsel  
T: +44.(0)20.7067.2063  
E: [cbracebridge@cov.com](mailto:cbracebridge@cov.com)



**Helena Laughrin**  
Associate  
T: +44.(0)20.7067.2070  
E: [hlaughrin@cov.com](mailto:hlaughrin@cov.com)



**Robin Wolfenden**  
Associate  
T: +44.(0)20.7067.2117  
E: [rwolfenden@cov.com](mailto:rwolfenden@cov.com)

**The London Employment Team**  
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## FUTURE CHANGES

Dates have yet to be announced for the implementation of the following proposals:

- **Charging fees in the Employment Tribunal.** The Government's consultation on introducing a fee in order to file a Tribunal claim closed on 6 March 2012. Participants' views were sought on two alternative options for charging fees. The first option would require a claimant to pay both an issue fee and a hearing fee, with the amount of the fee to be based on the nature of the claim (for example, for an unfair dismissal claim a claimant might pay an issue fee of £200 followed by a hearing fee of £1,000). The second option would require an issue fee only, with the amount of the fee set depending on the value of the claim as stated by the claimant (for example, an unfair dismissal claim worth less than £30,000 might require an issue fee of £500, with a higher value claim requiring a greater issue fee). The Government has indicated that the first option could be introduced next year, whereas the second option would likely not be implemented until 2014.
- **Early conciliation of employment claims.** The Government's response to Resolving Workplace Disputes announced an intention to require claimants to submit details of their dispute to the Arbitration, Conciliation and Advisory Service (ACAS) before presenting their claim at an Employment Tribunal. Claimants will be offered pre-claim conciliation for a period of one month, during which time the statutory limitation period will be stayed. If conciliation is unsuccessful, the claimant may proceed with the claim. The ACAS website advises that the new conciliation procedure is not expected to be introduced until April 2014 at the earliest.
- **Mediation.** The Government has announced a pilot scheme for two regional mediation networks in Cambridge and Manchester for small and medium-sized enterprises (SMEs). The Department of Business Innovation and Skills aims to train employees from 24 SMEs to act as internal company mediators in each pilot area later this year. The pilots will run for 12 months and, if successful, may be introduced into other areas of the UK.
- **Financial penalties for employers.** The Government intends to introduce at the level previously reported financial penalties for employers who breach employment rights (half of the total compensation awarded by the Tribunal, subject to a maximum cap of £5,000). There is a 50 per cent reduction for payment within 21 days.
- **Whistleblowing claims.** The Government is considering a reform of the current statutory provisions governing whistleblowing in order to remove protection for claimants who blow the whistle on a breach of their own employment rights (a principle developed by the courts that is considered to be inconsistent with the underlying purpose of the original Public Interest Disclosure Act 1998).

## FUTURE CONSULTATIONS

The Government has announced additional consultations, although no dates for these have been confirmed:

- **Simplifying compromise agreements.** The Government announced in November 2011 that it intends to consult on the use of compromise agreements and, in particular, ways in which they could be simplified (for example, by removing the list of all possible causes of action). The Government is also considering issuing a model compromise agreement (which will be re-named a "settlement" agreement) and guidance to assist parties to settle their disputes.
- **Protected conversations.** The Prime Minister has confirmed that the Government will consult on the introduction of "protected conversations", which would allow an employer and employee to engage in a frank discussion about workplace issues such as retirement and poor performance without fear of the conversation being disclosed in any subsequent Tribunal hearing. It is unclear how such conversations would work in practice without offending the current laws against unfair dismissal and discrimination or whether this consultation will form part of the wider consultation on simplifying compromise agreements.
- **Rapid resolution scheme.** The Government will consult on the introduction of a fast-track scheme for the resolution of simple, low value claims (such as claims for holiday pay) outside the Tribunal system. This might take the form of a binding decision based on a review of the case papers, without the need to involve an Employment Judge or for the parties to attend an oral hearing.

## CALLS FOR EVIDENCE

- **Collective redundancy consultation.** The Government's call for evidence exploring the consequences of reducing the 90-day period for collective consultation in large-scale redundancies to 60, 45 or 30 days closed on 31 January 2012. The evidence gathered will be used to formulate a proposal to be put forward for public consultation. A reduced collective redundancy consultation period would allow employers more flexibility when planning restructuring activities and would also reduce the amount of compensation payable to employees where such consultation falls short of the legal requirements.
- **TUPE 2006.** The Government sought views on improving and simplifying the Transfer of Undertakings (Protection of Employment) Regulations 2006, in light of concerns that the Regulations - in particular the rules on service provision changes - go further than is required to implement the European Acquired Rights Directive, and create an additional burden for enterprise. The call for evidence closed on 31 January 2012 and will be followed by a public consultation.
- **"Compensated no-fault dismissals" for micro-businesses and simplified dismissal procedures.** A further call for evidence seeks views on the possible introduction of compensated no-fault dismissals, which would allow businesses with ten or fewer employees to terminate employment without risk of unfair dismissal (provided there is no discrimination and the employee receives a modest termination payment). The call for evidence also covers the simplification of the existing dismissal procedures to create a quicker and clearer dismissal process. This may result in changes to the ACAS Code of Practice on Disciplinary and Grievance Procedures. The call for evidence closes on 8 June 2012.

## AND FINALLY

- **Consultation on Modern Workplaces.** The Government's consultation on Modern Workplaces sets out a four-stage plan for "a culture of flexible, family-friendly employment practices". Proposals include: a new flexible system of parental leave that can be shared between parents; an extension of the right to request flexible working to cover all employees; more flexible rules on holiday; and the introduction of compulsory equal pay audits. The consultation closed in August 2011 and the Government's response is expected shortly.
- **Pension Auto-enrolment.** This year marks the start of a new Government scheme whereby employers must enrol eligible employees in a qualifying pension scheme or the National Employment Savings Trust ("NEST"). The scheme will be implemented in stages over a five year period starting on 1 October 2012. Staging dates will depend on the size of the employer although employers will be able to commence auto-enrolment voluntarily from July 2012.

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