

E-ALERT | Employment

July 1, 2013

SUMMER 2013 - SUMMARY OF U.K. EMPLOYMENT LAW CHANGES

The Enterprise and Regulatory Reform Act 2013 (“**Act**”) introduces a number of changes to the UK employment law landscape. For background on these developments, please see our [February 2013](#), [March 2012](#) and [November 2011](#) client alerts.

This alert outlines some of the key recent changes of significance for our employer clients. It also highlights some changes to watch out for over the coming months.

CHANGES INTRODUCED THIS WEEK

1. Whistleblowing reforms (effective 25 June 2013)

The Act has amended the existing whistleblowing legislation in three principal ways:

- a) **Public interest.** A worker who makes a disclosure under the new whistleblowing regime must reasonably believe that the protected disclosure is “*in the public interest*”. The introduction of the public interest test is designed to limit complaints about breach of individual employment rights, which are of little or no concern to anyone other than the individual and the employer. That said, it may still be possible for individual employees to allege that a breach of their employment contract is in the public interest (where, for example, it relates to a discriminatory practice or culture in the workplace).
- b) **Good faith.** The current good faith requirement necessary for a whistleblowing disclosure has been removed. However, if a disclosure is not made in good faith the Tribunal has a new power to reduce any compensatory award by up to 25%.
- c) **Vicarious liability.** An employer will in future be vicariously liable if its employees (or agents) victimise a whistleblowing colleague, unless the employer can show that it took all reasonable steps to prevent such behaviour. Personal liability may also be imposed on the perpetrator of the victimisation.

These changes only apply to whistleblowing disclosures made on or after 25 June 2013. Disclosures made before this date will be dealt with under the old rules.

2. Dismissals because of political opinions or affiliation (effective 25 June 2013)

The usual qualifying service requirement for unfair dismissal claims (i.e. one year for those employed before 6 April 2012, and two years for those employed on or after that date) will not apply to dismissals where the reason, or principal reason, for dismissal is, or relates to, the employee’s “*political opinions or affiliation*”. This does not mean that such dismissals will be automatically unfair, but simply that the qualifying service requirement will not apply. The statutory cap on compensation will still apply as usual.

This change will apply to dismissals taking effect on or after 25 June 2013.

WHAT ELSE IS ON THE AGENDA THIS YEAR?

July 2013

- **Unfair dismissal compensation.** The compensatory award for unfair dismissals will be limited to the lower of: (i) 52 weeks' pay; or (ii) the existing statutory cap of £74,200. The exact commencement date has not yet been confirmed, but it is expected to be 29 July 2013.
- **Tribunal fees.** Tribunal fees will apply to claims or appeals brought on or after 29 July 2013. A fee will be charged: (i) upon issue of a claim; and (ii) prior to hearing. The amount of the fee will depend on the type of claim (e.g. unfair dismissal, discrimination and whistleblowing claims will be subject to a £250 issue fee and £950 hearing fee). There will also be application specific fees (e.g. £160 for a counter-claim and £600 for judicial mediation). A remission scheme will be available for those who cannot afford to pay the fees.
- **New Tribunal rules of procedure.** The new Tribunal Rules of Procedure will come into force on 29 July 2013. New claim and response forms will also be introduced.

Summer 2013

- **Confidentiality of settlement discussions.** Any settlement discussion held with a view to terminating employment will be inadmissible as evidence in ordinary unfair dismissal proceedings, provided that the employer has not behaved improperly. This effectively extends the current 'without prejudice' rule to include certain settlement discussions where there is not yet an existing dispute. However, the new rule - which only applies to ordinary unfair dismissal cases - will not prevent such discussions being referred to in connection with other claims (e.g. automatic unfair dismissal, discrimination and breach of contract). In practice, therefore, it is likely that employers will need to exercise considerable caution before engaging in such protected conversations.

The Acas Code of Practice on Settlement Agreements ("**Code**") will provide further guidance on this new provision, including what constitutes improper behaviour. The Code also recommends that employees be given 10 days to consider a formal written settlement offer, and it will be considered good practice to allow the employee to be accompanied at any settlement discussion meetings.

September 2013

- **Employee shareholders.** Employers will in future be able to offer employees shares with a value of between £2k - £50k, in return for the employee surrendering certain employment rights (e.g. ordinary unfair dismissal claims and entitlement to a statutory redundancy payment). The shares will be exempt from capital gains tax (up to a threshold of £50k). For further background, please see our [November 2012](#) client alert. It is expected that the new employee shareholder status will be introduced on 1 September (although the exact date is yet to be confirmed).

October 2013

- **Third-party harassment.** Currently under the Equality Act 2010, an employer can be held liable for the harassment of an employee by a third-party (e.g. a customer) if the employer fails to take reasonable steps to prevent it. This provision will be repealed on 1 October 2013. Liability for third-party harassment will instead be dealt with under the general provisions on harassment in the Equality Act and the pre-existing body of case law.
- **Directors' remuneration.** Quoted companies will be affected by changes to the disclosure of directors' remuneration and shareholder approval of remuneration policies. For example, most payments to directors for remuneration or loss of office will need to comply with the

latest approved remuneration policy. Directors could face personally liability for approving non-compliant payments. These provisions are expected to come into force in October 2013.

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