



XpertHR Podcast

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- Susan Dennehy: Hello and welcome to this week's podcast with me, Susan Dennehy. I'm joined this week by Bar Huberman, Employment Law Editor. Good morning, Bar.
- Bar Huberman: Morning, Sue.
- Susan Dennehy: So Bar, you're going to be taking us through the key legal changes due to take place this year. Some have been in the pipeline for a long time, like gender pay reporting, but some are brand new, like the National Living Wage. So shall we start by looking at the National Living Wage that's due to come in on 1st April 2016? Could you explain what it is? [0:00:34.3]
- Bar Huberman: Yes, of course. So the National Living Wage is the new compulsory statutory minimum wage for all workers aged 25 and over, and initially it's going to be set at £7.20 per hour.
- Susan Dennehy: So what's the difference between the National Living Wage and the Living Wage? [0:00:50.7]
- Bar Huberman: They can get a little bit confusing. So the Living Wage is the non-statutory wage recommended by the Living Wage Foundation as the minimum people need to be paid to meet the cost of basic living standards but the wage that employers are going to have to pay from the 1st April is the National Living Wage.
- Susan Dennehy: So they're two different things and the National Living Wage is compulsory. Presumably this could have a big impact on employers where they have a lot of staff who are paid the national minimum wage, who will have to increase it for older workers from now on? [0:01:23.6]
- Bar Huberman: Well yes, absolutely. In some sectors this could be a really big deal for employers and their finances might be stretched. So if they haven't already done so, employers will need to start thinking about how they're going to finance the National Living Wage. Are they going to increase their pay budgets? Are they going to increase prices for customers? Or might they cut back their pay budget in other ways? So for example they could look at delaying the increase in wages for other staff that might have been planned. It is 50 pence per hour extra for workers aged 25 and over, so it's quite a big consideration for lots of employers and there are also differentials for other staff to add on top of that.

Susan Dennehy: And what are the other indirect effects of the National Living Wage? [0:02:03.2]

Bar Huberman: Well the National Living Wage doesn't just necessarily affect pay for staff aged 25 and over on the minimum wage. Where organisations have pay grades – for example where managers or more senior people are paid just above £7.20 per hour – differentials between the different grades might be squeezed and this could mean that some employers might increase pay for those staff as well.

Susan Dennehy: And there's quite a big fear that employers will be caught out inadvertently by not paying the national minimum wage because of salary sacrifice schemes, because they're not taken into account - apart from the accommodation offset. [0:02:39.6]

Bar Huberman: Yes, that's right.

Susan Dennehy: Do you think that employers will go beyond the National Living Wage and pay workers under 25 the new rate for doing the same job even if they are a younger worker, for instance? [0:02:50.3]

Bar Huberman: Well yeah, I'm sure some employers will think that it's unfair to have employees performing the same job but because of their age they're paid different amounts, so they might actually decide to pay all staff who are on minimum wage rates the National Living Wage rate of £7.20 an hour.

Susan Dennehy: For those who want to know more about the National Living Wage, we have a webinar coming up on 27th January on this subject, so listeners should look out for more details on the XpertHR website.

So let's move on, Bar, and talk about what the government's doing around the issue of reporting on gender pay gaps. [0:03:21.5]

Bar Huberman: Well yes, until now it's been voluntary but gender pay reporting is going to come in and it's going to apply to organisations with 250 or more employees in the private, public and voluntary sectors. So we know that employers are going to need to provide information about the differences in pay between men and women, and they're also going to need to provide information about the gap in bonus payments.

Susan Dennehy: So what information are we still waiting for? [0:03:47.3]

Bar Huberman: Well we don't know what details about the difference in pay between men and women employers are actually going to need to provide. So for example, how they're going to deal with differences in pay between full- and part-time employees, is the calculation of pay going to need to include overtime and shift pay allowances, for example. Are they going to be required to provide a narrative to explain differences in pay? Another question is, 'Where is the information going to need to be published?' So while we can try and make some assumptions about how the government's going to deal with these issues, until we have the regulations we can't say for sure.

Susan Dennehy: We don't know actually even the timescale, do we? We don't know if it's annual reporting. [0:04:20.2]

Bar Huberman: That's right.

Susan Dennehy: So it's hoped that the regulations will provide all these details. When are the regulations due in? [0:04:25.9]

Bar Huberman: Well we're expecting regulations to come into force by 26th March 2016. We will, of course, keep listeners posted about that. We are expecting employers to be given a bit more time after the regulations come in to get used to the reporting requirements before they actually need to report on their gender pay gap.

Susan Dennehy: Let's turn to the trade union bill. This is currently making its way through parliament. There's been a lot of controversy surrounding the proposed changes. Can you remind us what the changes are going to be? [0:04:52.7]

Bar Huberman: Well yes, there are some substantial changes that are going to be made by the trade union bill and some of those changes relate to taking industrial action. So for example, the bill is going to introduce a 50% voting threshold for strike action. So that means that 50% of those entitled to vote will need to do so. For key public services there's also going to need to be 40% support for strike action from those entitled to vote.

Susan Dennehy: And are there any other notable requirements about industrial action? [0:05:19.5]

Bar Huberman: Well yes. The trade union bill also amends requirements around the contents of the voting paper. So the union's going to need to provide reasonable indication of the matters at issue so that members know what they're voting for. In addition, there's going to be a four-month time period within which industrial action will need to be taken and if the dispute remains unresolved after that period, then the union's going to need to ballot their members again before taking strike action.

Susan Dennehy: Can you tell us about some of the aspects of the trade union bill which concern the trade unions? [0:05:48.2]

Bar Huberman: Well yes, one of the things that unions are worried about is the increase in the notice period of strike action to be given to employers from seven to fourteen days. Unions are worried that this is going to undermine negotiations. Unions are also worried that this is going to allow employers to recruit agency workers to cover striking workers. Another change they're concerned about is the requirement for the union to appoint a picket supervisor. They're going to be required to carry a letter of authorisation from the union and their details are going to need to be given to the police, and the unions are worried that this is excessive monitoring and undermines civil liberties.

Susan Dennehy: Shall we move on and look at the next item on the government's employment law agenda, which has also had quite a bit of opposition. There are some new rules around exit payments for public sector workers, aren't there, coming in? [0:06:34.1]

Bar Huberman: Yes, that's right. So there are two new restrictions here. So exit payments are going to be capped at £95,000 and public sector

workers who earn £100,000 or more are going to be required to return the payment if they return to the same part of the public sector within twelve months. And we know that the repayment requirement's coming into force on 1st April. We're not sure yet when the £95,000 cap is coming in, but it might be that both regulations will come into force together. Again, we'll keep our listeners informed.

Susan Dennehy: Presumably these rules – particularly the requirement to repay an exit payment – could alienate high-earning public sector employees?
[0:07:10.0]

Bar Huberman: Yes, that's quite right. So there is a risk that the public sector could lose really experienced staff who would rather find another job in the private sector than return an exit payment to the public sector if they return to the public sector within twelve months. So yeah, that's a real risk for the public sector.

Susan Dennehy: There are tapering provisions in place that apply to the repayment of the amount that the public sector workers will have to repay and that goes down monthly as you approach the twelve months. [0:07:39.2]

Bar Huberman: Yes, that's right.

Susan Dennehy: Are there any other employment law changes that employers need to look out for for 2016? [0:07:44.0]

Bar Huberman: Well yes, I thought it was worth a mention because there hasn't been a big government announcement about this, so it might have passed some people by. So the statutory weekly rate of payment for those on maternity leave, paternity leave, adoption leave or shared parental leave won't increase in 2016 and that also applies to statutory sick pay. So 2016 is going to buck the trend because normally these weekly rates increase every April. And the reason for the freeze is the fall in the consumer prices index.

Susan Dennehy: So the statutory sick pay rate is frozen at the current rate of £88.45 and the statutory payments that you mentioned they're frozen at the current rate of £139.58. And is there anything else that employers need to be aware of for 2016? [0:08:28.0]

Bar Huberman: Well yes. I'm sure most of our listeners will be aware that last year exclusivity clauses in zero-hours contracts were banned. In 2016 this is going to be taken a bit further by the government and they're introducing a right to make a claim where somebody's been dismissed or subjected to a detriment for going behind an exclusivity clause that still exists in a zero-hours contract by working for another employer, and it's recently been confirmed that this right is going to come into force on 11th January 2016.

Susan Dennehy: And it's worth mentioning there are also some changes coming to force regarding apprenticeships and employing foreign workers, so do have a look at our XpertHR legal timetable for more information. Thank you, Bar, for that very handy look at the employment changes for 2016.

Bar Huberman: You're very welcome.

Susan Dennehy:

As I said earlier, we will be doing a webinar on the new National Living Wage on 27th January so do listen out for that. If you have any particular concerns about the National Living Wage you can also email us now – see the hot topic on the National Living Wage for that link, and we'll cover as many of those queries as we can. Remember, there are always more resources on our website covering all the issues that Bar has taken us through today.

That brings us to the end of this week's XpertHR podcast, which you've been listening to with me, Susan Dennehy. We're back again next Friday but until then, it's goodbye from us.