

Complex challenges for employers in the year ahead

January 2017



Constant changes and increasing complexity have helped make employment law a frontline challenge for business and this year looks set to continue the trend.

The first weeks of January saw [Maggie Dewhurst, a bike courier with City Sprint](#), winning her case to be treated as a worker, rather than a self-employed contractor. The high-profile case follows hard on the heels of the similar ruling given late last year in the action brought by Uber drivers, which the company has said it will appeal.

A worker may be entitled to certain rights such as the [national living wage](#), paid holiday and sick leave, where a contractor would not. An employee may also be a 'worker', but with extra employment rights and responsibilities.

"The decision in the case of Maggie Dewhurst vs City Sprint will apply only to her personally, but it puts such working practices under the spotlight, especially in the so-called 'gig economy', where people are employed by companies on a job-by-job basis," our employment lawyer, [Karen Cole](#), explained "but the issues involved can equally apply in many other sectors where companies may be trying to optimise their staffing, if they do not realise the distinctions between an employee, a worker and a self-employed contractor. Many cases are now working their way through the courts and I expect we'll see this topic in the headlines throughout 2017."

Alongside, the Government is moving to crack down on unscrupulous employers to stamp out exploitation in the workplace, after several companies hit the headlines for poor practices in recent months, including reports that workers at Sports Direct were receiving less than the [national minimum wage](#) and being subjected to humiliating working practices. The new [Labour Market Enforcement](#) body will take the lead in this, headed by

Prof Sir David Metcalf, a founder of the Low Pay Commission.

Together with other employment legislation already announced for introduction this year, bringing further significant changes and new requirements, businesses need to make sure they are up to date with their practices and terms of employment. The up and coming legislation includes:

Gender pay gap reporting: [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations](#) are set to come into force on 6 April 2017 meaning all private sector organisations with at least 250 employees must publish details of their gender pay gap, for both basic pay and any bonus payments. [For further detail, see Karen Cole's earlier article on the same](#). The first reporting will be due no later than 4 April 2018, and annually after that. This could be a raw topic for supermarket employer Asda who face an equal pay claim brought by retail workers, mainly female, who argue their work is of equal value to the predominantly male warehouse workers. The preliminary [judgement](#) agreed that a comparison could be made between retail and depot work, and now the Employment Tribunal will look to see if there are jobs of equal value and, if so, any pay differences. Asda has been granted leave to appeal the preliminary judgement.

Apprentice levy: Also due on 6 April is the annual [apprenticeship levy, under the Finance Act 2016 \(part 6\)](#). In a Robin Hood style approach, the levy must be paid by all private and public sector employers in the UK with a pay bill of £3m and above. It will be charged at the rate of 0.5% on their total pay bill, with an annual allowance of £15,000 to offset against the levy payment. The income will be used to fund a new system of post-16 apprenticeships, which will also be available to those employers falling below the £3m threshold.

Salary sacrifice schemes: As announced in the Autumn Statement, the Finance Bill 2017 will set out changes to the tax status of salary sacrifice benefits with effect from April 2017. The changes will see an end to the tax saving benefits of most salary sacrifice schemes, which will become subject to the same taxation as cash income. Any arrangements in place before 6 April 2017 will be protected for one year, or four years in the case of cars, accommodation or school fees. The extension will apply until the arrangement ends, is renewed or otherwise modified. Remaining exempt from tax will be pensions and related advice, cycle-to-work and ultra-low emission cars.

Tax-free childcare: Also retaining its taxation benefits will be existing employer-supported childcare voucher schemes. These can remain open to new entrants until April 2018 with childcare vouchers and all associated tax savings available for the life of the scheme. However, the Government is expected to launch a new, alternative tax-free childcare scheme, which will allow working families satisfying a minimum/maximum income requirement to claim 20% of childcare costs for children under 12, or under 17 where children have a disability, capped at £2,000 per year. The two schemes can run in tandem, but once a new scheme has been established no new employees will be allowed to join an old-style childcare voucher scheme and still receive the tax benefits.

Holiday pay: An appeal by British Gas to the Supreme Court will challenge last year's ruling by the Court of Appeal that holiday pay should be 'normal pay' and include contractual results-based commission. The appeal is expected to be heard in March 2017 but in the meantime, the ruling stands and employers need to look at irregular payments made to employees and establish which are to be included within 'normal' pay and so be included in any calculation for holiday pay.

Karen added: *"The complexity around holiday pay calculations means employers are likely to need advice to get it right. It's just one example of how employment law continues to pose challenges for businesses, and the year ahead is certainly no exception. It's important to get ahead of the deadlines and make sure you're addressing the changes across all aspects of the business."*

"And while European law is behind some of the upcoming legislation or court rulings, it cannot be ignored on the basis that we are starting the process of withdrawing from the European Union, whatever style of Brexit is adopted by the Government. For now, everything stands and most likely will during transitional arrangements."

Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.



Karen Cole
020 7299 6909
karen.cole@riaabg.com