



Employment law 2020 – did I miss anything?

In short yes just a bit! 2020 has been a frantic year for keeping up with employment law and changes to legislation, so here are some of the key changes that you may have missed.

The furlough scheme has dominated the news agenda in 2020, and the second phase (which replaced the scheme due to end 30 October 2020) continues until 31 March 2021. However, the job retention scheme which was going to be paid as a bonus to employers in January 2021 if they didn't dismiss furloughed staff continues to be put on hold.

Also due to Covid-19 there are changes to the statutory sick pay (SSP) scheme which remains in place and means SSP it is now payable by

the employer from the employees' first day of absence and where they were having to self-isolate under advice from official health authorities. Small and medium sized employers can also claim up to two weeks SSP paid to employees for Covid-19 related absence.

There continues to be the responsibility for workplaces to be Covid-19 secure which includes ensuring social distancing, providing adequate handwashing and sanitising facilities, PPE and following face covering regulations. Many businesses have made a considerable investment to change work practices and the challenge ahead will be getting people back into workplaces and or introducing a new, blended working arrangement once current tier restrictions change. There is still a long way to go and working from home for many will remain for the foreseeable future.

As Britain now has a new trading relationship with Europe and many other countries there are changes to the immigration system being trialled which went live from 1 December 2020. These changes include the introduction of a skilled worker scheme where applicants have an approved sponsoring employer and an employment offer for one of the eligible skilled occupations. Restrictions for these workers to stay a maximum of six years have been removed.

Annual Gender Pay Gap reporting was and continues to be suspended for the 2019/20 period however it is still not known if this data will need to be reported on in the future or if the period will be skipped completely. Employers are advised to continue with producing this disclosure as it has been an important catalyst for change in many

organisations and not prioritising it could be seen as sending the wrong message to employees and customers.

From 6 April 2020 there have been new compensation limits for terminations of employment. Redundancy payment calculations are based on a new maximum limit of one week's pay which is £538. For general unfair dismissal awards there is a maximum basic award of £16,140 and the maximum compensatory award is £88,519. There is a new minimum basic award of £6,562 for unfair dismissals specifically relating to trade union membership, health and safety duties, pension scheme trustee duties or employee representatives. There is a new weekly rate of statutory sick pay of £95.85 and a new weekly rate of parental statutory entitlements of £151.20.

Also, for parents there is now a new (and many agree a long overdue) right to statutory

parental bereavement leave for those who lost a child under the age of 18 or suffered a stillbirth from the 24th week of pregnancy. Parents are now entitled to two weeks leave which may or may not be consecutive, however statutory pay is limited to employees with more than 26 weeks continuous service or who are earning in excess of the lower earnings limit.

Employers must now provide a written statement of terms to all workers and employees including a list of additional information to provide a greater degree of certainty regarding working arrangements. These statements should be provided on the first day of working at the latest and apply regardless of their length of service.

For businesses who fail to pay their workers the national minimum wage the Government has the right to 'name and shame' them where they exceed £500 in payment arrears.

There are also further changes which include enabling employers to select the most suitable calculation year for pay monitoring purposes, expanding how salaried hours workers are defined and guaranteeing that workers entitled to the NME remain unaffected by any extra payments made to them (for example for working on a bank holiday).

Holiday leave can now be carried over (up to four weeks) of accrued statutory annual leave for two years (2021/22). Employers will therefore need to carefully manage requests for annual leave over the next couple of years.

Finally, from November 2020 there is a new cap of £95,000 on exit payments made in the public sector which apply where a public sector employee or office holder receives a payment for the loss of employment or position excluding death in service.

Tribunal rulings highlight bullying issues in the workplace



Rulings in two recent employment tribunal cases highlight the importance taking accusations of bullying in the workplace seriously.

In a case against Talbot Underwriting Services the claimant Mr Vaughan alleged that his resignation in 2019 was 'the culmination of acts of unfair treatment' by his employer. He submitted a grievance regarding bullying by a senior manager which was upheld and the manager was changed. The employer was accused of subsequently 'managing out' Mr Vaughan who worked as an accounts assistant.

The Judge stated in his ruling "following the claimant's grievance and on his return to work no steps were taken by the respondent to check the claimant's wellbeing after what had

been significant incidents of bullying towards him" which along with a 'coldness' from the senior management in the finance team, he goes on to say contributed to his view "that the respondent no longer wanted him to work for them" and involuntary resignation as a result of the employer's conduct occurred.

In the second case a disabled teaching assistant has won a £35,200 settlement from Durham County Council after being subjected to a bullying campaign by a headteacher which lasted for seven years.

Sandra Clifford accused the head of harassment because of her disabilities and said: "Over the course of my employment, the headteacher treated me unfavourably and harassed me because of my disabilities" and requests for reasonable adjustments were not taken seriously, were responded to reluctantly or they

failed to implement them. She also said on many occasions during sickness absences she was told she was "causing stress and extra work for my colleagues and that I was costing the school money due to those absences."

The Judge ruled "The manner in which (Ms Clifford) was addressed by the headmaster amounted to both unfavourable treatment and harassment" and added "it was unwanted conduct which had the effect of violating the claimant's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for her."

Both of these rulings highlight that action should have been taken faster by senior management to deal with the allegations of bullying behaviour. Employers should make sure all staff receive better education and training to prevent bullying taking place in the future.



Employing family members

According to the Institute for Family Business State of the Nation report on the UK Family Business Sector 2019-20, family businesses here in the UK make up over 87% of the UK's private sector firms and employ 14.2m people – half of all of the employees in the private sector.

The family business sector also earns over £1.9 trillion in annual revenue contributing £657 billion to UK GDP. Regionally and in many business sectors such as farming, hospitality and construction, the number of family businesses make up a considerable proportion of total private sector businesses.

A common theme in many family businesses is therefore the employment of family members and how can this be done without holding a business and its potential back?

When businesses recruit, they generally want people with a specific skill set or expertise to help take the business to a new level but there is no guarantee that family members will naturally possess what is needed. Employing family members can certainly test bonds and it is worth asking yourself what the individual can bring to the business and would you employ a non-family member if they also brought no outside knowledge and experience to your business?

Before employing family members, consider the following:

- Are they suitable for the position and will they be willing to work hard and earn the respect of your other employees?
- Can you and they put business objectives over and above family ties and in particular family politics?
- Will you apply the same pay policy, disciplinary and appraisal procedures to all workers?

Another important point to note is that all employees need to be treated the same because the law doesn't distinguish between someone being a family member or not. Therefore, they still need to have a written statement containing certain information about their employment usually via an employment contract or letter of engagement. Other information

such as details of the company's disciplinary and grievance procedure, sick pay, pension and other employee schemes should also be provided in a staff handbook.

If you are employing a family member to head up a team for example you must be careful not to demote or reassign other employees, especially anyone who is already in this role, as this could lead to a claim for unfair dismissal. So think about the structure of the business carefully.

Family members should be treated equally and the rules in relation to discrimination apply in the same way as they would with any other employee, so they cannot be treated less favourably because of a protected characteristic.

More common are issues around staff morale, especially if you have employees who have been working towards the next step in their career and a promotion only to see a family member joining and being appointed to the role.

If you decide to terminate the employment of a family member you need to ensure you follow the same procedures as you would for any employee with the same length of service and if that is because of issues of their performance, that should first include following a performance management process to give them the chance to improve. Keep a documented record of everything as you would with any other employee.

Like all employees there is a risk that the family member could subsequently leave the business and set up a new business in competition. Make sure you have a well-drafted employment contract which includes restrictive covenants to protect your business in the future. There are different types of restrictive covenants such as non-solicitation, non-poaching, non-dealing and non-compete and they must be reasonable and relate to a specific time period.

There are certainly many issues around running any business and employing all staff, so if this is a new step for your business then make sure you take legal advice first, to ensure you get it right first time.



Succession planning for the future

Every business owner needs to consider what will happen when the time comes for passing on their business and ensuring this transition is well planned and thought-out is really important for the future success of the organisation.

It can be both a daunting and sensitive process, especially if it is a business you have built up yourself and if there are more than one natural successor or non-family business partners. Therefore, what are the key legal considerations to think about?

For a limited company, you should have a Shareholders' Agreement in place, which sets out what happens to your shares and those of other shareholders when leaving the business. It is likely that there will be provisions giving any other shareholders the entitlement to buy the shares first, so this will need to be addressed and changed, if you would prefer the shares to pass otherwise. It is important for shareholders and directors to get on with each other as serious differences of opinion or shareholder disputes can damage or destroy a business. For this reason, the right for other shareholders to buy is generally included. If shares are to pass otherwise, please consider whether any incoming shareholders will be able to run the business harmoniously with the existing shareholders.

For a partnership, you should have a Partnership Agreement in place. This will generally provide for the remaining partners to buy you out if you wish to leave. It will not allow for an incoming partner without the consent of the remaining partners. An alternative arrangement would need to be agreed upon.

Good communication about future plans is important for helping to avoid disputes and it is essential not to shy away from what might be difficult conversations to reach an outcome which is satisfactory for all.

Think about the value of your business and whether you are looking to receive a payment for your ownership or whether you are planning to gift it as there may be tax considerations. Other options could include setting up a trust and putting your rights into that. Any such arrangements will be subject to the Articles of Association and any Shareholders' Agreement, in respect of a Company, or a partnership agreement in respect of a partnership.

Consider if you will you leave the business completely or if you will have a phased exit, perhaps moving into a consulting role. Leaving suddenly can leave a huge vacuum, which it could be hard for the business to recover from.

Everyone wants to leave a lasting legacy, so don't be afraid to seek outside help to plan and navigate your departure to ensure the future success of the business.

Quick reference section

Statutory minimum notice periods:
An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 2020	April 2021
Apprentices	£4.15	£4.30
16-17	£4.55	£4.62
18-20	£6.45	£6.56
21-24	£8.20	£8.36
25+	£8.72	£8.91

Statutory Sick Pay (from April 2020)
Per week £95.85

Statutory Shared Parental/Maternity/Paternity/Adoption Pay
(basic rate) (from April 2020) £151.20

Statutory Holiday
5.6 weeks for a full time employee.
This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2020 at £538.00.



CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



Amanda Finn
☎ 01622 689795
✉ a.finn@gullands.com
🐦 @Gullands_HR_Law



Sarah Astley
☎ 01622 689727
✉ s.astley@gullands.com



Andrew Clarke
☎ 01622 689733
✉ a.clarke@gullands.com



Jonathan Haines
☎ 01622 689736
✉ j.haines@gullands.com



Gabriela Alexandru
☎ 01622 689716
✉ g.alexandru@gullands.com

Gullands Solicitors are Authorised and Regulated by the Solicitors Regulation Authority, Number 50341

16 Mill Street
Maidstone
Kent ME15 6XT
01622 678341

Whitehall Place
47 The Terrace
Gravesend Kent
DA12 2DL
01474 887688

www.gullands.com
info@gullands.com



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