

#107 HR Newsletter

August 2017: Taylor Report

Summary of the findings and recommendations from the Taylor Report

The Government recently commissioned a report into the various types of contractual engagements operating in the employment market today (Zero-hours, self-employed etc.) as a result of the growing "GIG" economy and more increasing use of flexible workers.

Matthew Taylor, (chief executive of the RSA and a former adviser to Tony Blair) has completed it and it has just been published as a set of recommendations to the Government

The Review has made a number of **significant recommendations** some of which should be achievable in the short term (over the next year or so) and others which are longer term strategic shifts.

The thrust of the Review is that the current UK framework operates **pretty well in terms of flexibility for employers, engagers and workers (in the broadest sense)** and we should not therefore throw the baby out with the bath water. However, the over-arching goal for the UK should be "fair and decent work for all". To achieve this, particularly to deal with changing and emerging business models, there are areas of employment law which do need clarification and which can be adapted to address exploitation where it exists, enhance engagement between employers, engagers and workers (in the broadest sense) and make sure they are each aware of their rights and responsibilities.

Some key proposals to support the over-arching goal are:

- Development of legislation and supporting guidance which clearly sets out the test for employee and **dependent contractor** (the new name proposed for workers) to reflect recently developed case law. This will be particularly important to address the grey area between the dependent contractor and the genuinely self-employed which has led to a number of recent cases involving the likes of Uber and Pimlico Plumbers. It is recommended that there should be greater emphasis on the control exerted over dependent contractors by those who engage them and easier access to justice for those who challenge the employee/worker/self-employed status afforded to them.
- The right to a written statement (contract) setting out terms should be available from "day one" for all employees and dependent contractors.
- The status of employees and dependent contractors will also be **supported by an online tool** which it is proposed the Government creates for the benefit of employers, engagers and workers alike.

- Shifting the burden of proof so that it is for the **employer to prove** that the individual is not an employee or dependent contractor depending on which status they assert. This would be subject to certain safeguards such as confirmation of status from the on-line tool.
- Adaptation of the piece rate legislative framework which measures output to ensure those who operate in the gig economy, for example, can enjoy the protection of the NMW but maintaining a balance and providing checks and balances on the calculation of working time so that those who operate these platforms can still operate and develop their businesses.
- Renewed focus on employee engagement particularly in low paid sectors and those with high numbers of atypical workers.
- Review of the effectiveness of the Information & Consultation Regulations 2005 including their scope and the thresholds for activation of collective consultation rights under them.
- Currently a **one week break in service** will (with some exceptions) break continuity. This period to be increased to one month and a review of when cessation of work can be justified should be undertaken.
- Zero-hours workers and agency workers to benefit from **enhanced rights after 12 months** where they request them, for zero-hours workers a right to request a contract that guarantees hours and for agency workers a permanent contract which the hirer must consider reasonably. Agency workers are also to benefit from transparency around pay.
- Agency workers are no longer to be able to opt-out of "equal pay" rights after 12 weeks (the "Swedish Derogation") and scrutiny is to be increased of umbrella companies.
- Reporting requirements on employers to report on their workforce structure, including, to reflect atypical working arrangements and requests (and agreement to those requests) from agency workers for permanency and zero-hours workers for guaranteed hours. There may also be a requirement for those who fail to pay Employment Tribunal awards to report this.
- Extending the reference period from **12 weeks to 52 weeks** for the calculation of holiday pay for atypical workers and publicity around entitlement to holiday pay.
- Better alignment of the tax treatment of the different status to avoid taxation driving status decisions.
- Review whether a **higher NMW** can be paid in respect of non-guaranteed hours.
- Look at ways of promoting further, genuine flexible working.
- Those on long term sick leave to have the ability to return to the same or a similar job.
- An end to **unpaid internships**.

- SSP to be offered to all workers including dependent contractors and awareness of this right to be raised amongst workers and businesses.
- Review and consolidate guidance on the legislation which **protects those who are pregnant or on maternity leave** and consideration be given to further legislative intervention.
- Improvement of health and well-being at work.
- A general review of the legal framework with input by businesses and TU's to ensure fair and decent work.
- HMRC to take on responsibility for enforcing rights of the lowest paid workers.

These are recommendations only at this point, and we have yet to see the government's response to the report.