

EMPLOYMENT LAW CHANGES IN CONTEXT

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Introduction

Areas covered

- Corporate responsibility
- Proposals for change to employment rights
- Changes to Employment Tribunal litigation
- The gold plating of EU Directives



Corporate Responsibility

- "...giving temporary workers the same pay and benefits as permanent staff after just 12 weeks in a job, could not be coming at a worse time for the UK..."
- "...a third of employers are planning to avoid the new rules by ending agency workers contracts in their 11th week..."
- "...thousands of temps are set to be moved onto permanent contracts with their recruitment agency in the coming week, making them exempt from the new law..."
- "...a number of recruitment agencies are planning to adopt the so-called "Swedish Derogation" model.



Corporate Responsibility

The above quotes ignore the fact that the Regulations are derived from and implement an EU Directive

- The Directive recognises the need to protect the abuse of agency workers in terms of their working conditions and/or benefits.
- Unions and workers representatives will need to guard against practices outlawed by the Regulations



Corporate Responsibility

- UN Committee on the Elimination of Racial Discrimination.
- CERD concludes that the UK needs to do more to address racial inequality.
- The need to adopt a detailed action plan for tackling racial inequality.
- Further efforts required to narrow the employment gap for ethnic minorities that should be stepped up.
- Wider measures required to ensure employment in specific sectors reflect wider society.



Corporate Responsibility

Specific views of business in relation to matters such as Agency Worker Regulations and the observations of CERD put into context the extent to which there is corporate responsibility

- Clear that there are inadequacies in the protection for working people.
- How can these views be reconciled in the notion of corporate and Government responsibility?



Proposals for changes to Employment Rights

- A number of proposals will weaken trade union rights.
- A reduction in the statutory collective consultation period of redundancy (in all cases) to 30 days.
- The statutory recognition procedure - mandatory ballots (in all cases).
- Industrial action ballots - a minimum threshold of at least 40% of the membership of the union voting in favour.



Proposals for changes to Employment Rights

In the case of industrial action the arguments for minimum threshold ignore a number of points:-

- A member will have exercised his democratic right to abstain from a vote.
- It is open at all times for a union member/non-member not to heed the union's call to induce them to take any action.
- Minimum thresholds and ballots are not uniformly applied - see election of MPs!



Proposals for changes to Employment Rights

The IOD has put forward a number of proposals to weaken Employment Rights:-

- No right to flexible working.
- Abolishing the time to write-off a training.
- A minimum deposit of £500 for pursuit of an ET claim.



Proposals for changes to Employment Rights

Unions fighting back with test cases:-

- ***RMT v. United Kingdom*** - the right to effectively organise industrial action. The case before ECHR.
- ***The Prison Officers Association v. United Kingdom*** - application to ECHR to challenge the prohibition to strike in the case of prison officers. ILO criticised the Government for failing to have an adequate mechanism to compensate prison officers.



Changes to Employment Tribunal Litigation

- Government's consultation paper - "Resolving Workplace Disputes".
- EHRC has made a number of comments.
- Long-term trend of men on average working longer service than women.
- Disparity between comparative groups may suggest indirect discrimination.
- The EHRC recommends proposal to introduce a system of financial penalties for employers found to be in breach of their obligations.
- Ineffective compliance and consistency between employers.



Changes to Employment Tribunal Litigation

ETS Statistics:

- Where is the evidence of a “compensation culture”?
- Do not suggest that claims remain on an upward curve.
- 218,100 claims lodged during 2010/2011.
- Represents an 8% fall compared with 2009/2010.



Changes to Employment Tribunal Litigation

Proposal to increase qualifying period for unfair dismissal to two years:-

- EHRC has already noted the disparate impact that this measure might have.
- 382,400 jurisdictions cited in 2010/2011.
- Only 47,900 such claims were pure unfair dismissal.
- Increase in the qualifying period of two years would only affect less than 13% of the claims presented last year.
- Other claims which do not have qualifying period could still be pursued.



Changes to Employment Tribunal Litigation

Reasons for litigation include:-

- Increasing individualisation of Trade Unions and Industrial Relations.
- Without union representation, Tribunal claims may be the only method of enforcing rights.
- The continued number of large multiple cases.
- E.g. Equal Pay and Working Time.
- Changing nature of working relationship - less paternalistic employers, more globalisation and the death of the job for life.



Gold Plating of EU Directives

- The coalition Government issued its agreement on 20 May 2010 regarding de-regulation of employment rights.
- First a “one in, one out approach” to employment regulations.
- A new regulation cannot be brought in without an equivalent or greater degree of other regulation being cut.
- This has not been given adequate thought or care. Many employment rights cannot be cut away to make way for a new law.
- See for example the implementation of EU Directive.
- If the Government wanted to scrap the Agency Worker Regulations, it would still need to ensure that minimum requirement of the applicable Directive were implemented by the deadline of 22 October 2011.



Gold Plating of EU Directives

The second proposal is an end to the “gold plating” of EU Directives.

- It is asserted that minimum requirements on directives are improved upon in domestic legislation - argument that UK businesses are therefore less competitive.
- This is likely to lead to some difficult practical issues. Some of the gold plating is aimed at reducing the lack of inconsistency and in some cases clarifying the scope of the law.
- See for example the definition of service provision change in TUPE.
- If this was repealed this would lead to the inconsistency and uncertainty of the extent to which there was a relevant transfer under the EU required rights directive.
- How does such a regression assist in defining the parameters of employment rights. - likely to lead to greater costs and delay



Conclusions

- A time of great challenge for workers, workers interest groups and Trade Unions - possibly unprecedented.
- The challenge is how the various stakeholders respond.
- The combined effects of:
 - Economic uncertainty.
 - The threats to Employment Rights.
 - The Government's ideological desire to reign back the public state and individuals rights.



Conclusions

- A clear and consistent message required.
- Rebut the ideological views stated by Government and business groups.
- Takes some of the points of this paper and other arguments to address the current problems.
- Not by reducing workers rights - encouraging an environment in which workers rights are respected.
- The advantage for employers is a more stable and content workforce.
- Numerous studies have shown that such a workforce is more likely to assist an employer in its commercial aims.

