



Planning ahead

The Northern Ireland employment forecast 2020

1. Brexit: immigration impact on workers

Following the general election, the UK Government confirmed its commitment to “get Brexit done” and depart from the EU on 31 January 2020. Brexit is therefore likely to be the first item on everyone’s agenda for 2020, including for immigration, where a new Australian-style points-based immigration system is expected to be introduced, with bespoke visa schemes for other non-sponsored migrants. The detail is awaited, but it is likely that the £30,000 minimum salary threshold requirement will go and the points-based system is expected to include three separate categories: ‘exceptional talent’, ‘skilled workers’ and a sector specific rules-based category. A digital immigration status is also likely, to ensure that all migrants have a full digital status to make it easier to prove their right to live, work and remain in the UK as well as allowing for improved enforcement. Finally, there will be new visas including a “fast-track” visa scheme for NHS roles.

Action – Whilst there remain a number of unknowns, upfront planning and reviewing contingency and recruitment arrangements will help to minimise disruption. In particular, ensure your current EEA workforce has applied under the settled status scheme and, for future workforce requirements, review whether your current sponsor licences are suitable for your needs as EEA nationals will need to be added to your current Tier 2 processes. Further, plan for additional training for HR staff in order to understand how to comply with the new immigration system and associated right to work checks.

2. Early conciliation: comes into effect on 27 January 2020

The introduction of early conciliation means that anyone who wishes to lodge a claim with the Industrial or Fair Employment Tribunal must first notify the Labour Relations Agency (“LRA”) and discuss the option of early conciliation. Potential claimants will not be able to proceed to tribunal without at least considering this option. Early conciliation has been in place in England, Scotland and Wales since 2014 and the process in Northern Ireland will largely mirror the same process.

Action – Employers should give thought now to how they will respond to contact received from the LRA from 27 January 2020 onwards. One option might be to nominate a member of staff to whom all calls from the LRA should be directed, for example someone in HR, so that they might conduct a brief risk analysis and seek advice, particularly if the circumstances are more complex or sensitive.

3. New consolidated Industrial Tribunal and Fair Employment Tribunal rules come into effect on 27 January 2020

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 replace and consolidate the old rules which separately dealt with claims in the Industrial Tribunal and claims in the Fair Employment Tribunal. The 2020 Regulations also take account of the introduction of early conciliation. There are transitional arrangements in relation to what rules will apply for claims issued before and after 27 January 2020.

Action – Employers who manage their own tribunal claims should familiarise themselves with the 2020 Regulations and, in the short term in particular, the transitional arrangements which will apply for existing claims and claims issued before 27 February 2020 onwards.

4. Holiday pay – the calculation of holiday pay

Case law in relation to the calculation of holiday pay under the Working Time Directive continues to present challenges for employers, even more so for employers in Northern Ireland. In June 2019, the Northern Ireland Court of Appeal upheld the tribunal’s decision at first instance that the Bear Scotland decision in GB was wrongly decided. The NICA confirmed that a series of (unlawful) deductions is not ended by a gap of more than three months between such deductions; and decided that it was impossible to categorise working time directive leave (the 20 days) from additional holiday leave entitlements. The two year limitation regulations in place in GB do not apply in

Northern Ireland. This means there is currently no statutory limit on how far back a claim for back payments of holiday pay can go, and therefore claims could date back to the introduction of the Working Time Regulations in 1998 or the commencement of an individual's employment, whichever is later. The decision is subject to appeal to the Supreme Court but it is unlikely that the appeal will have any impact on the way in which holiday pay should be calculated.

Action – Employers should review their current practices to ensure that holiday pay is being calculated correctly, and that they are making provision in holiday pay calculations to include any allowances such as overtime, commission or incentive bonus payments that an employee regularly earns.

5. Watch out for further developments on IR35

Responsibility for determining the tax status of workers who supply their personal services via an intermediary, such as a personal service company, is expected to transfer to the end user for medium and large private sector organisations from 6 April 2020 (under the extension of tax rule IR35). Legislation to implement the changes is currently awaited, pending the outcome of a Treasury review aimed at ensuring the "smooth implementation of the reforms".

Action – If using contract and freelance labour through intermediaries, you should monitor the progression of changes and continue planning for IR35 reform until the Government's intentions become clear. In particular, reviewing employment models and contractual terms. With end-users potentially liable for any underpaid tax, for example, when failing to take reasonable care over status determinations, training to ensure staff are equipped to carry out the necessary status checks will also be key.

6. Are you ready for National Living Wage changes?

The National Living Wage ("NLW") is set to increase by 6.2% in 2020 and the Conservative Party has pledged to increase it to two thirds of average earnings, currently forecast to be £10.50 per hour, and to extend it to all workers over the age of 21 by 2024. Further details on how this will be delivered are promised by spring 2020.

Action – You should ensure workforce planning incorporates the expected changes to the NLW. With many employers failing to appreciate the complex rules around the statutory minimum wage and HMRC's enforcement action continuing to rise, staff should also be trained about the rules to avoid inadvertent, technical breaches and associated fines, costs and reputational damage. The single enforcement body, which will feature in the new Employment Bill, will no doubt play a significant role in future.

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7. How proactive is your organisation in preventing workplace harassment?

A new statutory Code of Practice on harassment is expected to be published in GB in 2020, reflecting the Government's collation of evidence on the most effective employer interventions to prevent workplace harassment. As a preliminary step, the Equality and Human Rights Commission (EHRC) in GB has recently published technical guidance on sexual harassment and harassment at work. The EHRC had already issued guidance reflecting current law and best practice concerning the use of confidentiality clauses or non-disclosure agreements (NDAs), in discrimination cases.

Action – Given the continued focus on harassment claims and NDAs, we recommend that you review the guidance published in GB and review the effectiveness of your harassment policies, training and associated grievance/complaints procedures. Review your contracts and compromise agreements to ensure the use of NDAs is managed on a case-by-case basis and is explained clearly.

8. New decade, new approach – the restoration of Stormont

Some three years after the collapse of Stormont it has been restored. The New Decade, New Approach document does not explicitly make reference to any employment law matters but we hope to see some movement to implement the proposed changes in employment law that appeared in the Employment Act (Northern Ireland) 2016. These included matters such as changes to zero hours working, and gender, equality and disability reporting requirements.

Action – Keep a watching brief for further detail on the proposed employment law changes.

9. Employment law changes in Great Britain in 2020 that are not currently proposed in Northern Ireland

Employment law is a devolved matter in Northern Ireland. There has been a significant divergence in employment law between Northern Ireland and Great Britain over the last ten years which, in part, was a result of the collapse of Stormont. If you have responsibility for operations across the UK you should note that the following changes to be introduced in GB in 2020 are not currently planned to be introduced in Northern Ireland:

- Scrapping of the Swedish derogation;
- Enhanced redundancy protection for women on maternity;
- Parental bereavement leave;
- New reference periods for the calculation of holiday pay; and
- New rules on what an employment contract must contain.

Action – Employers with operations across the UK should check to understand what legislative changes will extend to Northern Ireland and which changes will not.

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