

## TAYLOR REVIEW RECOMMENDS WIDE-RANGING CHANGES TO EMPLOYMENT LAW

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Yesterday's publication of the much-anticipated Taylor Review of Modern Working Practices gives much food for thought for employment lawyers, HR teams, pensions and tax specialists, and policy-makers. As well as containing some very thoughtful analysis of the different ways people work in the modern economy, their different motivations and goals, it also sets out a number of recommendations for changes to the legal framework for employment.

- ◆ Employment status: The report recognises that the current division of rights between employees, workers and the genuinely self-employed causes confusion, not least because the tax system only recognises two of those categories, and has no place for "workers". Rather than scrapping the three-way categorisations, however, the report suggests clarifying what kind of work will fall into which classification. It hopes that clearer demarcation of the boundaries between the three statuses will help those in work know where they stand, improve the collection of tax, and assist with the enforcement of rights. It also suggests "workers" be renamed "dependent contractors", reflecting the fact that many in that position are substantially controlled by a small number of businesses.
- ◆ Having redefined who is a dependent contractor, the report then suggests that government amend the national minimum wage regime so that dependent contractors are properly paid for the work they do. The report recommends adapting the (somewhat old-fashioned) concept of a piece rate for these purposes, whereby a worker is paid for each piece of work, or job, that they complete. This recommendation attempts to deal with the problem identified in the recent gig economy Employment Tribunal decisions involving Uber and City Sprint, in which the worker's working time proved hard to quantify and risked unfair manipulation by users logging on to the app platform but not actually providing services.
- ◆ If the report's recommendations are adopted, a range of new rights will come alongside the new concept of dependent contractors:
  - a right to a written statement of terms of work;
  - a higher minimum wage for hours that are not guaranteed;
  - an extension from one week to one month for the period that breaks continuity of service;
  - a change to the reference period for holiday pay from 13 weeks to 52 weeks, to allow for seasonal fluctuations;
  - a right to receive rolled-up holiday pay;
  - a right to request a contract with guaranteed hours, for those on zero-hours contracts who have been in post for 12 months;

- a right to statutory sick pay at all income levels; and
- a right to return from sick leave, similar to the mechanisms that exist on the return from the various forms of family-friendly leave .

Many of those rights would also affect employees, and would mark relatively substantial changes to the current employment law regime.

- ◆ The report also recommends changes to the way in which workers can become involved in the businesses they work for. Central to this is a suggestion that the trigger for mandatory workplace consultation under the Information and Consultation of Employees Regulations 2004 be reduced from ten per cent of the workforce making such a request to two per cent (the workforce to include dependent contractors).
- ◆ For similar reasons of transparency and involvement, the report then recommends businesses be required to publish a number of facts about their recruitment practices, particularly their use of agency workers and the number of guaranteed hours requests received.
- ◆ Agency workers are also the focus of another recommendation: the abolition of the so-called 'swedish derogation', under which agency workers are paid between assignments in exchange for the diminution of their other rights. This derogation has, according to the report, been widely abused in practice as a means of avoiding aspects of the Agency Workers Regulations 2010.
- ◆ The report then turns its attention to the enforcement of the various rights and obligations it suggests. It pushes for HMRC to have the primary role in enforcing the minimum wage, statutory sick pay and holiday pay, and couples this with a recommendation that Employment Tribunal determinations of status should attract no fee.

Mrs May's first speeches as prime minister devoted considerable time to the world of work. With so much effort necessarily being spent on Brexit, whether the government has the desire, the parliamentary power and sufficient time to enact any of Taylor's recommendations remains to be seen. The full report is available online at: <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

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