

## The Good Work Plan: Government announces proposals for employment law reform in response to the Taylor Review

Matthew Taylor's Review of Modern Working Practices in July 2017 made no less than 53 recommendations for reform of employment law and its enforcement.

Since its publication, Government has been busy.

In February 2018 the Government responded to the Review and launched consultations into; (i) employment status ; (ii) agency workers; (iii) increasing transparency in the labour market; and (iv) enforcement of employment rights.

The Government is still analysing the response to (arguably) the most crucial of these consultations; employment status. The remaining consultations have concluded and culminate in the publication of the Good Work Plan in December 2018; which highlights broadly 17 proposed reforms to employment law and its enforcement in the Employment Tribunal and through state enforcement agencies.

The Plan proposes that;

1. Employees and workers should be given a right to request a more stable contract after 26 weeks of service.
2. The time required to break a period of "continuous service" as set out in *sections 210-219 of the Employment Rights Act 1996* should be extended from one week to four weeks, to enable employees to access their rights.
3. The so-called Swedish Derogation Clause set out in *regulation 10 of the Agency Workers Regulations 2010* should be repealed.
4. Employers should be banned from making deductions from staff tips.
5. The threshold of support required for an employee to request to negotiate an agreement in respect of information and consultation set out in *regulation 7 of the Information and Consultation of Employees Regulations 2004*, should be reduced from 10% of employees to 2% of employees. The 15-employee minimum threshold set out therein should remain.
6. The employment status tests should be clarified to reflect the reality of modern working practices. The tests to determine whether someone is self-employed, or a worker should place greater emphasis on control and less emphasis on notional rights to substitution.
7. The differences in the tests for employment status in tax and employment law should be reduced to a minimum.
8. Legislation should tackle employers seeking to misclassify or mislead staff as to their employment status.
9. The right to request a written statement of particulars of employment, currently available to employees under *section 1(1) Employment Rights Act 1996*, should be extended to workers.
10. The period of eligibility to access the right to request a written statement of particulars should be reduced from two months service, under *section 1(2) Employment Rights Act 1996*, to one month's service for both employees and workers.
11. The content of written information required to be provided following a written statement of particulars request, should be expanded to include beyond the content in *sections 1(3) and 1(4) of the Employment Rights Act 1996*;
  - How long a job is expected to last, or the end date of a fixed-term contract.
  - How much notice an employer and worker are required to give to terminate the agreement.

- Details of eligibility for sick leave and pay.
- Details of other types of paid leave e.g. maternity leave and paternity leave.
- The duration and conditions of any probationary period.
- All remuneration (not just pay) – contributions in cash or kind e.g. vouchers and lunch.
- Which specific days and times workers are required to work.

12. All employment businesses should provide to every agency worker a key facts page including;

- The type of contract a worker is employed under.
- The minimum rate of pay that they can expect.
- How they are to be paid.
- If they are paid through an intermediary company, any deductions or fees that will be taken.
- An estimate or an example of what this means for their take home pay.

13. The holiday pay reference period should be extended from 12 weeks under *regulation 16 of the Working Time Regulations 1998* and *sections 221 – 224 of the Employment Rights Act 1996*, to 52 weeks.
14. The maximum limit of an aggravated breach penalty in the Employment Tribunal should be raised from £5,000 under *section 150 of the Small Business, Enterprise and Enforcement Act 2015*, to £20,000.
15. Employment Tribunals should be obliged to consider the use of sanctions where employers have lost a case on broadly comparable facts in the past.
16. The remit of the Employment Agency Standards Inspectorate should be extended to cover umbrella companies so that where agency workers have had pay withheld or have had deductions made to their pay by umbrella companies, this can be investigated.
17. State enforcement of holiday pay rights for vulnerable workers should be introduced so that workers who have not received their holiday pay can raise a complaint, and the state enforcement body can pursue payment of arrears on the worker's behalf backed up by financial penalties.