

Essential HR Calendar for 2012



We set out below our key employment law dates for 2012 (and a tentative look into 2013).

Date	Development	Comment	Priority
1 Jan 2012	<p>Salary Sacrifice and VAT</p> <p>Following on from the ECJ decision in Astra Zeneca, HMRC have issued a Business Brief which sets out their interpretation of this case. In HMRC's opinion, employers should account for VAT on benefits provided to their employees under a salary sacrifice arrangement from 1 January 2012 with some exemptions (which include child care voucher schemes).</p>	Consider any salary sacrifice arrangements in place and whether or not these fall within HMRC's exemptions. If not, the arrangements may need to be reviewed to ensure that they are structured in a way which is VAT efficient.	
4 Jan 2012	<p>Last day individual could make a request to extend their retirement date under the DRA</p> <p>Under existing statutory procedures, an employee notified of retirement can request to work beyond retirement. The Age Regulations, provide that this is the last day on which an employee being retired in accordance with the transitional procedures can make such a request.</p>	Any agreement to extend the retirement period must be 6 months or less. If not, a new notice of retirement would need to be issued and which would not comply with the transitional provisions (whereby notice must be issued on or before 5 April 2011 at the latest)	
1 Feb 2012	<p>Increase to compensatory award for unfair dismissal</p> <p>The maximum compensatory award for unfair dismissal will increase from £68,400 to £72,300 where the effective date of termination is on or after 1 Feb 2012.</p> <p>The maximum amount of a week's pay for calculating a statutory redundancy payment/basic award for unfair dismissal will rise from £400 to £430.</p>	These increases will need to be factored into any termination decisions effective 1 February 2012 onwards.	
5 April 2012	<p>Last day individual can be retired under the DRA</p> <p>In the absence of an agreed statutory extension, the last day on which an individual can be retired using the DRA transitional provisions is 5 April 2012.</p>		
April 2012	<p>Employment Tribunal Reforms</p> <p>In its Response to Resolving Workplace Disputes Consultation the Government has stated that it intends to bring into force a number of its planned changes in April 2012 including:</p> <ul style="list-style-type: none"> • Unfair Dismissal: The qualifying period of service for bringing this claim will increase from 1 to 2 years (but the protected circumstances where an employee may bring an unfair dismissal claim regardless of length of service will remain). • Deposit and Cost Orders: The amount of deposit order an ET will be able to order a party pay will increase from £500 to £1000. The maximum amount of costs an ET can award will increase from £10,000 to £20,000. 	These reforms have not yet been published in draft legislation. In relation to the increase in the qualifying period of service to bring an unfair dismissal claim it is unclear at present whether this new qualifying period will apply to existing employees or only new joiners. (Indications are that it will only apply to new joiners but we are still awaiting clarification).	

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	<ul style="list-style-type: none"> Witnesses: Witness Statements will be taken as read in an ET unless directed otherwise. ETs will also be given powers to direct parties to bear the costs of witness attendance, including the costs of witnesses called by the successful party. 		
April 2012	Statutory maternity and sick pay rates increase <ul style="list-style-type: none"> Statutory maternity and paternity pay will increase from £128.73 to £135.45 per week. Statutory sick pay will increase from £81.60 to £85.85 per week. 		
5 Oct 2012	Last day individual can be retired under DRA where statutory extension agreed		
Oct 2012	Auto-enrolment into Pension Schemes <p>The UK's largest employers will have to automatically enrol workers into a personal account scheme (NEST) or the employer's own pension scheme unless the employee opts out. Employers will also have to pay contributions into the scheme.</p> <p>Small businesses with less than 50 employees will not have to auto-enrol their employees to pension schemes until May 2015.</p>	Legal advice should be sought as to how this will impact on company pension schemes. The initial wave of employers will be able to auto-enrol as early as July 2012.	
March 2013	Parental Leave Directive <p>The Government is relying on an extension to bring the Parental Leave Directive into force on this date. It will increase the right to take Parental Leave to 4 months (it is currently 13 weeks).</p>	Parental leave policies will need to be amended once we have implementing legislation.	
Apr 2013	Child care benefit cuts for higher wage earners <p>It is has been announced that child benefit will be cut for those earning above the 40% tax bracket from 2013. However, whilst the Government has confirmed its intention to still cut this benefit, the press has recently reported that it may not be cut for the same individuals as originally intended.</p>	Employers may receive requests from higher wage earners to reduce their income to the basic wage tax bracket to remain eligible for child benefit; e.g. by sacrificing their salary in return for other benefits.	

Consultations and Other Developments

The Government is seeking to reduce the regulatory burden on business. As such, there has been a wave of announcements and consultations on a number of employment law issues as follows:

Consultations/Development	Comment
Consultation: Resolving Workplace Disputes: The Government has now issued its response to this consultation. It has indicated that it intends to introduce a number of measures in April 2012 (see above).	<p>Future changes the Government has indicated in its response it intends to make (although no implementation date(s) has yet been given) include:</p> <ul style="list-style-type: none"> Early ACAS Conciliation: Claimants will be required to submit details of their disputes to ACAS first for pre-claim conciliation of up to 1 month. Either party may refuse conciliation in which case the claimant will be able to present their claim to an ET. They will be able to do likewise if conciliation is unsuccessful.

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	<ul style="list-style-type: none"> • Financial penalties: Employers who lose at ET may be subject to a financial penalty. It is proposed that these penalties would be equivalent to 50% of the total award of damages made to the claimant but subject to a minimum threshold of £100 and a maximum cap of £5000. <p>The Government has also stated that it intends to consult further on a Rapid resolution scheme which would provide swifter and cheaper determination of low value straightforward claims such as claims for holiday pay.</p>
<p>Consultation: Introducing fees in Employment Tribunals and the Employment Appeal Tribunal: This consultation was launched on 14 December 2011 and seeks views on two different fee charging structures which might be adopted for charging fees in the ET and also a scheme of proposed fee charges for the EAT. The consultation closes on 6 March 2012.</p>	<p>The Government has indicated that it is looking to 2013 or 2014 to introduce fees depending on the fee structure decided upon. Its aim is to reduce the burden on the taxpayer for subsidising the cost of the ET service.</p>
<p>Consultation: Creating a Modern Workplace: In 2012 BIS issued a consultation on various proposals including a new system of shared parental leave, the extension of flexible working for all employees, amending the Working Time Regulations 1998 to ensure consistency with the Working Time Directive in relation to the interaction of annual leave with sick pay, maternity pay and parental leave and the introduction of equal pay audits in cases of discrimination.</p>	<p>The consultation closed on 8 August 2011 and the response has been delayed until early 2012.</p> <p>Whilst the Government has indicated that any changes to the Working Time Regulations will be introduced during 2012, we understand that any new system of shared parental leave will not be introduced before 2015.</p>
<p>Calls for Evidence: Collective Redundancy Consultation and TUPE</p> <p>On 23 November 2011, BIS published two "Calls for Evidence", both of which close on 31 January 2012:</p> <ul style="list-style-type: none"> • A call for evidence on the collective redundancy consultation rules will explore the consequences of reducing the 90 day period for collective consultation in large scale redundancy situations to 60, 45 or 30 days. • A call for evidence on the effectiveness of Transfer of Undertakings (Protection of Employment) Regulations 2006 which seeks views on the effectiveness of TUPE 2006 given concerns that the regulations gold-plate the Acquired Rights Directive and are overly bureaucratic 	<p>The evidence will be used to formulate policy proposals that will be put forward for formal public consultation.</p>
<p>Future Consultation: New right to Protected Conversations</p> <p>David Cameron confirmed in November 2011 that the Government intends to consult on the introduction of "protected conversations as he put it "so a boss and an employee feel able to sit down together and have a frank conversation at either's request". It has been indicated that this consultation will take place "in the new year".</p>	<p>Nick Clegg previously suggested that such a conversation could concern performance or retirement. No further details are available at present.</p>
<p>Reforming Employment Relation</p> <p>In his speech, Reforming employment relations on 23 November 2011, Vince Cable advised that the Government would be looking at a number of reforms over the coming year including:</p> <ul style="list-style-type: none"> • The introduction of "compensated no-fault dismissal" for "micro-firms" (with 10 or fewer employees) 	<p>The proposal on compensated no fault dismissals waters down the controversial leaked Downing Street commissioned report by Adrian Beecroft, a venture capitalist which was widely publicised at the end of 2012 and which suggested that unfair dismissal rights should be replaced by a concept of compensated no fault dismissal applicable to all employers.</p>

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<ul style="list-style-type: none"> • "Radically slimming down existing dismissal processes" which are considered to be too lengthy and unfair to both parties. The Government will be seeking views on introducing a "simpler, quicker and clearer dismissal process" which would potentially include changes to the ACAS Code of Practice on Disciplinary and Grievance procedures or introducing supplementary guidance for small businesses. • A further consultation to consider the use of compromise agreements and whether they are unnecessarily complex and prescriptive. • Closure of the loophole in the Public Interest Disclosure Act which enables employees to blow the whistle about breaches to their own personal work contract. <p>Mr Cable also indicated that the Government intended to review the Agency Worker Regulations 2010 in 18 months' time.</p>	
<p>Future Consultation: Equality Act 2010: Third Party Harassment Provisions</p> <p>In its Plan for Growth published alongside the Budget on 23 March 2011 the Government announced that it intended to consult on removing the third party harassment provisions in the Equality Act 2010 and which require employers to take reasonable steps to protect employees from third party harassment. The Government considers that this obligation is an "unworkable requirement". On 28 September 2011 the Government re-stated its intention to consult on this provision.</p>	<p>We have no further news on when this consultation is expected.</p>
<p>Red Tape Challenge</p> <p>This Challenge which aims to reduce the regulatory burden on businesses focused on employment law at the end of 2011. The Government invited views on whether or not existing employment laws are necessary and appropriate, the value of simplifying employment law and whether or not the implementation and enforcement of employment law needs to be improved.</p>	<p>The Government's response is expected in Spring 2012.</p>

For further information on any of these developments, please do not hesitate to call your usual OC Contact or:



Kath Sadler-Smith
Associate
T +44 118 925 2078
kath.sadler-smith@osborneclarke.com



Catherine Shepherd
Associate
T +44 117 917 3644
catherine.shepherd@osborneclarke.com

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