

A Symatrix Whitepaper:  
Employment Law Update September 2019



## Table of Contents

- Good Work Plan ..... 1
- Unfair Working Practices.....2
- Misuse of Non-Disclosure Agreements .....2
- Extending Pregnancy Protection from Redundancy.....2
- Senior Managers and Certification Regime .....2
- Top Twenty Steps to Take .....3

## General Updates

### Good Work Plan - Consultation on Single Enforcement Body

On 16 July the government put forward proposals to create a new single enforcement body for employment rights which would be responsible for:

- Enforcing the payment of the national minimum wage and statutory sick pay
- Enforcing tribunal awards from the BEIS (Department of Business Energy Industrial Strategy)
- Addressing labour exploitation and modern slavery
- Safeguarding holiday payments for vulnerable workers
- Ensuring agency workers are not underpaid
- Providing an additional route for tackling sexual harassment alongside the EHRC (Equality and Human Rights Commission).

The Good Work review suggested the body takes on the role of Director of Labour Market Enforcement for one year from 1 August 2019. The Consultation Closes on 6 October 2019.



### Good Work Plan - Consultation on Parental Leave & Flexibility

On 19 July the Government published a consultation document arising from the Good Work Plan regarding strengthening support for working families. It covers three aspects of protecting parents at work;

- Parental leave and pay
- Neonatal leave and pay
- Transparency of flexible working and family related leave and pay policies.

Parental Leave and Pay Consultation asks for views on paternity leave and pay, a shared parental pay pot rather than mothers controlling the system, whether shared parental pay should be enhanced, or whether there should be an overhaul of family leave entitlements. (Consultation closes on 29 November).

Neonatal Leave and Pay proposes a “day one” Right to neonatal leave for parents of seriously ill babies needing two weeks or more hospital care. The amount of leave will be capped and paid at the statutory rate subject to qualifying conditions for paternity pay.

Transparency of flexible working and family related leave and pay policies asks whether employers with 250+ employees should be required to publish details of their family friendly policies including flexible working arrangements, on their websites, and whether job advertisements should be required to state their approach to flexibility. (Consultation closes on 11 October).

### Unfair Working Practices

A separate consultation launched on 19 July addressing unfair flexible working practices, seeking views on proposals from the Low Pay Commission on providing a right to reasonable notice of working hours, appropriate compensation for workers' shifts cancelled without reasonable notice. This consultation closes on 11 October.

### Misuse of Non-Disclosure Agreements

On 21 July the Government announced that a consultation held earlier in the year has resulted in the Government saying it will legislate when time allows and plus considering the responses to the Sexual Harassment Consultations recently launched when considering what those changes will be.

### Migration Advisory Committee - review of shortage occupation list.

The Migration Advisory Committee (MAC), which advises the government on immigration matters, has recommended increasing the shortage occupation list (SOL) to cover around 9% of jobs in the labour market (including nurses, computer programmers, web designers, and chefs working in food takeaways) instead of the 1% the list currently covers. The shortage occupation list allows employers to offer work to non-EU nationals without carrying out a resident labour market test.

### Extending Pregnancy Protection from Redundancy

On 22 July the Government responded to Consultation earlier the year on Pregnancy and Maternity Discrimination. The legislation will be brought forward when Parliamentary time allows.

Currently an employee at risk of redundancy while on maternity, adoption or shared parental leave has the right to be offered any suitable alternative vacancy that is available. The Government is proposing to extend the protection to:

- Pregnant employees, once they have told their employer of the pregnancy

- Employees returning from maternity or adoption leave within the previous six months
- Parents returning from shared parental leave (although how the limits on this right has not been confirmed).

### Senior Managers and Certification Regime

The SMCR replaces the current Approved Person Regime and aims to allow the FCA to more easily assign individual responsibility for regulatory breaches and it comes into effect on 9 December 2019. It has three parts;

1. Senior Managers will require pre-approval for the FCA. A statement of responsibility must set out the scope of each manager's functions and responsibilities. Senior Managers will owe a "duty of responsibility" and they must take reasonable steps to carry out their regulatory obligations and will be held accountable if they do not.
2. Individuals performing functions which could cause significant harm to the firm or customers must be certified by the firm as fit and proper to carry out their role.
3. High-level standards of behaviour will apply to almost all staff. The firm must ensure staff are trained on how the conduct rules apply to them. Breaches must be reported to the FCA.

The SMCR requirements vary depending on which of three 'tiers' a firm is in: enhanced (the biggest and most complex firms), limited scope (primarily those which are currently subject to limited application of the APR) or core (all other firms). The first step is to establish which tier they are in.

**Top twenty steps to take before the changes come into effect are:**

1. Identify who performs the specified senior manager functions
2. Allocate responsibility for all business areas and the FCA prescribed responsibilities
3. Draft statements of responsibility for each senior manager
4. Train senior managers on SMCR requirements and conduct rules
5. Enhanced-tier firms must prepare a responsibilities map
6. Update template employment contracts for new hires and amend existing employee contract for senior managers and certified persons
7. Update other HR templates e.g. References, settlement agreements
8. Update disciplinary and performance management policies and processes
9. Consider impact of SMCR on reward policies
10. Review recruitment process to assess fitness and propriety of certified persons before they join
11. Regulatory references covering the previous 6 years must be sought for relevant people
12. External checks should be completed e.g. CRB, Credit Checks, Companies House search, Financial Services register
13. Ensure appropriate handover for incoming senior management
14. Issue certificates to certified persons by December 2020
15. Consider how certification fits with performance management
16. Consider a process for collating information in relation to fitness and propriety e.g. qualifications, training, financial soundness
17. Identify who will be responsible for certifying certified persons
18. Review record keeping for regulatory references
19. Ensure compliance with rule breach reporting requirements e.g. within 7 days for senior managers and annually for other employees
20. Planning sponsorship from senior management.



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We partner with our clients to enable the deployment of best practices underpinned by industry leading Oracle HCM solutions.

Our knowledge and experience of HR, recruitment, talent, performance and learning management and payroll best practice has been developed over hundreds of projects delivered for some of the UK's largest organisations. We use this to help forward thinking businesses to get the most from their people.

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