



XpertHR Weekly Podcast

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Bar Huberman: Hello and welcome to XpertHR Weekly with me, Bar Huberman. With just four weeks to go until we see in the New Year, today we're going to cast our minds back and reflect on the most significant changes for HR in 2015. This is the year that saw the election of the first majority Conservative government for the first time in nearly twenty years. But what, if anything, did this mean for employers?

Earlier in the year there was a big leap for parents and the amount of flexibility they have over how they care for their children in their first year, with the introduction of Shared Parental Leave. We also saw the ban on exclusivity clauses in zero hours contracts.

But now that some time has passed since these changes were introduced, what's the impact been on employers? With me to discuss all this and more is Employment Law Editor Laura Merrylees. Good afternoon, Laura.

Laura Merrylees: Hi, Bar.

Bar Huberman: Okay, so looking back to the first significant change we saw come in this year, with a fair amount of media attention, it has to be said, the introduction of Shared Parental Leave for parents of babies born on or after 5th April. It's a subject that we've covered extensively on the site but could you just remind us of some of the key features of Shared Parental Leave? [0:01:12.6]

Laura Merrylees: Yeah, of course. With the introduction of Shared Parental Leave (and it is a bit of a mouthful and is often referred to as SPL), parents – and we're talking here about both birth and adoptive parents – were provided for the first time with the opportunity to share periods of leave from work during the first year of the child's life, and this could be either by taking it in turns or both being off at the same time.

Bar Huberman: So can you give us an idea of how that works, then? [0:01:34.1]

Laura Merrylees: Yeah, well provided that a mother meets the eligibility requirements around length of service and earnings levels, a mother can bring her maternity leave to an end and take Shared Parental Leave with her partner. But here it's also provided that the partner meets the eligibility requirements that apply to him or her also.

Bar Huberman: So how much Shared Parental Leave can parents take? [0:01:51.6]

Laura Merrylees: The amount of Shared Parental Leave that parents can take between them is 52 weeks but this is minus the amount of Maternity Leave

taken by the mother. Just a reminder though that the mother cannot curtail her Maternity Leave until two weeks after the birth of her child (or that's four weeks for factory workers) and this is known as the Compulsory Maternity Leave Period.

Bar Huberman: Okay. So it's clear that the aim here was to provide parents with more flexibility and some more options, and in fact, parents can choose whether to take SPL in one block or in discontinuous blocks, can't they? [0:02:20.8]

Laura Merrylees: That's right. A parent could take a period of SPL. They could then return to work, take a further period of SPL, provided that it's all taken within the first 52 weeks of the child's life.

Bar Huberman: Now despite the significant public attention that SPL received at the time it came into force, from what we can tell the take-up rate doesn't seem that high, does it? [0:02:38.7]

Laura Merrylees: No. I mean, anecdotally that does seem to be the case. I don't know whether it's a slow-burn and rates will increase – it remains to be seen, I suppose. But I think for our listeners' purposes and as a take-away from this, I think what's key is the fact the systems will still need to be in place because a request could be made at any time. And to help with that, we've got a full suite of letters and policies on the site which address the various scenarios that can arise.

Bar Huberman: And we've also got some dedicated podcasts that listeners might find helpful if they want to delve a bit deeper.

Laura Merrylees: Yeah.

Bar Huberman: But this may not be the end of shared periods of carers' leave. There was an announcement recently by George Osborne that Grandparents' Leave might be due to come into force soon. Can you tell us a bit about that? [0:03:17.5]

Laura Merrylees: Yes, that's right. It's not actually due to come in until 2018, so our listeners can breathe a sigh of relief that the systems won't need to be up and running quite as yet. But it is on the cards and the government has indicated that it intends to start consulting during the first half of next year, so in 2016. We'll keep the site updated as we know more about that.

Bar Huberman: Okay, so that's something to look out for in 2016.

Laura Merrylees: Yeah.

Bar Huberman: Moving onto the next important change we saw in 2015, the ban on exclusivity clauses in zero hours contracts. As a first-off, Laura, could you just remind our listeners of what a zero hours contract is? [0:03:48.8]

Laura Merrylees: Yeah, sure. Generally speaking, a zero hours contract is essentially one where a worker is not guaranteed a fixed number of hours under their contract, but the zero hours contract can cover a variety of arrangements. I think it's safe to say that as for pay, though, they are only paid for the work which is carried out, and it is worth mentioning that they do also have an entitlement to statutory holidays.

Bar Huberman: So these contracts offer a fair amount of flexibility for employers. What's the government done about exclusivity clauses then in zero hours contracts? [0:04:16.7]

Laura Merrylees: Okay, well on 26th May this year, the government introduced a ban on the use of exclusivity clauses in a zero hours contract.

Bar Huberman: And so this means that any clause in a zero hours contract that prohibits the worker from working under another contract is unenforceable? [0:04:32.1]

Laura Merrylees: Correct. And it also covers the situation of any clause which requires the employer's consent for the worker to work under another contract. So it is an outright ban.

Bar Huberman: And how will that be enforced? [0:04:41.7]

Laura Merrylees: Well that was, at least at the time, the unanswered question, and at the time the ban came in, no enforcement procedures had been made. So in effect it didn't really have any teeth. However, in October just gone, we've seen draft regulations being laid in parliament and the aim of the draft legislation is to protect workers from any detrimental or dismissal that they might suffer as a result of working elsewhere or seeking their employer's consent to work elsewhere.

Bar Huberman: It sounds as though these regulations are long overdue, then. Do we know when they're due to come into force? [0:05:11.3]

Laura Merrylees: No, we don't have an implementation date at the moment but we will keep listeners informed of developments on that front. But just to add that in the meantime the government has issued new guidance for employers on the use of zero hours contracts and this includes details around their appropriate use and best practice. In terms of the resources that we've got on our site, we've also got a very helpful, practical how-to guide, and that can be found under the 'Tools' section, and that goes into detail about employing someone under a zero hours or a casual contract, and includes material on exclusivity clauses.

Bar Huberman: Laura, just to wrap up our discussion on zero hours contracts, there was an awful lot of attention in the press about this earlier this year, and in particular leading up to the election. How much of an impact do you think this ban has had for individuals working under such an agreement? [0:05:54.1]

Laura Merrylees: Yeah, that's right. I mean, it did get a fair old amount of media attention. As for the impact, well it really is just the exclusivity clauses that the government has tackled with this piece of legislation. Some might argue that, you know, how extensive was that in the first place? How many people actually had these clauses in their contracts? So we'll have to see what may come down the line on that front. But at the moment that is what we're dealing with.

Bar Huberman: So moving onto the next development we saw this year, and that was the full roll-out of the government's Fit for Work service. It's already been available to GPs but it's now become fully operational for employers too, since 8th September this year, hasn't it? [0:06:31.4]

Laura Merrylees: Yeah, that's right.

Bar Huberman: And what does it mean for employers? Can you tell us a bit more about it? Is it mandatory? What are the mechanics of it? [0:06:37.7]

Laura Merrylees: Well it's not mandatory but it does provide employers with an opportunity to refer an employee for government-funded occupational health advice when that employee has been off work for four weeks or more.

Bar Huberman: Right, so it's an alternative or possibly a further avenue that employers can explore in addition to their own occupational health referral service? [0:06:55.7]

Laura Merrylees: Yeah, that's right, and if an employee chooses to use their own occupational health advisors – or in fact doesn't opt to obtain occupational health advice at all – there isn't in fact an obligation on that employer to use the government-funded service. But it is worth remembering that an employer might find themselves involved with the service anyway because GPs can refer an employee to the Fit for Work service independently.

Bar Huberman: So how does that work then? [0:07:19.1]

Laura Merrylees: Well the government suggests that an employer might want to incorporate any recommendations of the Fit for Work service either into their own advice if they've obtained it or indeed take it on if they happen to be taking on any advice at all. But again, all of this is non-obligatory. It's non-mandatory.

Bar Huberman: That's interesting. So it's basically an option available to employers but it isn't mandatory. What if the employer wants to refer but the employee refuses, they don't want to be referred? [0:07:42.5]

Laura Merrylees: Yeah, well again the employee cannot be forced to participate in a Fit for Work service referral. They also have to consent. But in those circumstances, an employer may then need to take any decisions in relation to that employee without the benefit of any occupational health input and of course that may not be in the employee's best interests.

Bar Huberman: So it does sound like Fit for Work has its potential uses, perhaps in particular for smaller employers. Let's take a look at the last significant piece of employment legislation introduced this year, then. Just over a month ago, on 29th October, we saw the introduction of the Modern Slavery Act 2015. Many people will have heard about it but they might be confused by what it in fact means for employers and HR. So can you tell us a bit more about it? [0:08:24.8]

Laura Merrylees: The purpose of the legislation is to attempt to tackle the problem of modern slavery, and by 'modern slavery' we mean forced or compulsory labour, servitude or human trafficking. It may not be immediately apparent to our UK employers that this is an employment issue but it does have implications, particularly for larger employers who use supply chains.

Bar Huberman: So how large do employers have to be in order to be captured by the legislation? [0:08:48.7]

Laura Merrylees: Well under Section 54 of the Act, it needs to be a commercial company with a total turnover of at least £36 million per year.

Bar Huberman: Okay, so that's set the parameters, but what will companies who meet this threshold be required to do? [0:09:0.9]

Laura Merrylees: Well they'll need to provide a Slavery and Human Trafficking Statement for each financial year and the statement will need to detail the steps that the organisation has taken to tackle human slavery within their organisation or the fact that they have, in fact, taken no steps.

Bar Huberman: And I can imagine that providing a statement saying they've taken no steps doesn't sound like a very attractive option. I doubt it would be great for a company's reputation and presumably there might be a commercial downside? [0:09:26.4]

Laura Merrylees: That's it. I mean, there is a risk there and organisations may well take the view that it's not a position that they want to take.

Bar Huberman: So this is going to be completely new territory for many of our listeners. What can they do to prepare? [0:09:37.5]

Laura Merrylees: Well the government has recently issued guidance for employers and we have links to this on our site, together with our own resources of course, and in particular some useful FAQs. Perhaps as a starting point, employers need to review their business model and supply chains to identify areas of risk, look at any policies that may be in place or could be introduced to prevent human trafficking, and start taking any steps which they consider to be necessary.

Bar Huberman: And for those who want to find out more, do have a look at our new model Anti-Slavery Statement which we've just this week published. So we've already mentioned that the legislation was passed in October but when do employers have to provide the Anti-Slavery Statement? [0:10:13.3]

Laura Merrylees: There is still a bit of time as although the legislation is now in force, the requirement to provide a statement actually only applies to financial years ending on or after 31st March of next year, so that's 2016. The government's guidance states that they would encourage employers to publish their statements as soon as reasonably practicable and the government goes on to say that in fact they would encourage organisations to report within six months of their financial year end.

Bar Huberman: So employers do have some time to comply with this requirement but they really should start looking at it now and start preparing? [0:10:46.1]

Laura Merrylees: Yeah.

Bar Huberman: Well that brings us to the end of our round-up of employment law changes in 2015. Thank you, Laura, for providing an interesting update of where things stand at the end of the year. If you want to

find out more, head to our audio and video tool, where you'll find a link to our webinar on the A to Z of legal changes in 2015 and 2016. Do also join Susan Dennehy and I for our New Year podcast, when we'll be discussing the employment law changes affecting HR in 2016.

All that's left is for me to say thank you for listening to XpertHR Weekly. We're back next Friday with another episode but until then, it's goodbye from us.