



## XpertHR Weekly Podcast

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- Susan Dennehy: Hello and welcome to XpertHR Weekly with me, Susan Dennehy. It's that time of the year again when the new employment law legislation comes in. Some commentators have said that there isn't actually much going to change in October. To see if that's correct, with me this week to discuss the changes are senior employment law editor Susie Munro and employment law editor Fiona Cuming. Welcome to you both.
- Susie Munro: Hi, Sue.
- Fiona Cuming: Hi.
- Susan Dennehy: So Susie, can you tell us, what are the changes coming in in October? [0:00:34.2]
- Susie Munro: So one that's going to be important for larger employers is the introduction of the requirement to publish a modern slavery statement. Fiona's going to come on to explain what that's about in a bit.
- Also coming in on 1<sup>st</sup> October we've got changes to the exemption for Sikhs from wearing safety helmets. We've got changes to the national minimum wage, the removal of the power of tribunals to make recommendations in discrimination cases, and there's also a ban on smoking in cars when a child is present.
- Susan Dennehy: So shall we start with what looks like the biggest change, the new requirement for employers to publish modern slavery statements. Now we know what most people mean by slavery, but what actually is modern slavery, Fiona?
- Fiona Cuming: Well although we had the abolition of slavery in the nineteenth century, unfortunately slavery isn't something we can say is confined to the past. It still exists and it exists today in the form of forced or compulsory labour, servitude or human trafficking. And modern slavery, well it's not restricted to just a few countries. In fact, it really is a global problem. It takes place in every country in one form or another and indeed, the Global Slavery Index estimates that there are around 36 million victims of slavery across the world, and that includes the UK.
- Susan Dennehy: Well the definitions of slavery and human trafficking are in the Modern Slavery Act and the government has introduced the Act as part of its strategy to tackle the problem of slavery? [0:01:55.1]
- Fiona Cuming: Yes it has. And this Act has received a lot of headline news, not least because it is the first Act on modern slavery in Europe. Now the government says the Act offers a comprehensive approach to tackling

slavery and the Act's got four main components. So it's consolidating the current offences that we have relating to trafficking and slavery. It's also creating new civil orders to prevent modern slavery, as well as establishing an Anti-slavery Commissioner. And it's making provision or better provision for the protection of victims of modern slavery.

Susan Dennehy: And it includes a requirement for large companies to publish a modern slavery statement on the company's website? [0:02:35.9]

Fiona Cuming: Yes. This is provided for under Section 54 of the Act and it was added as an amendment. There was much lobbying on this point and at the committee stage of the bill, the parliament committee well it concluded that to make the Act effective, large companies should be required to check their supply chains for slavery.

Susan Dennehy: It is only commercial companies. You mentioned large companies there. What is a large commercial company for these purposes? [0:02:59.8]

Fiona Cuming: Well on that point there was actually quite a lot of discussion and following consultation, the government has now confirmed that this duty, well it will apply to organisations with a total turnover of at least £36 million a year.

Susan Dennehy: And what exactly is the duty, Fiona, in relation to the new anti-slavery statement? [0:03:18.1]

Fiona Cuming: Well these organisations are going to have to prepare a slavery and human trafficking statement for each financial year. Now this statement well it will either set out the steps that the organisation has taken to prevent modern slavery existing in any part of their business or supply chain, or alternatively it will state that the organisation has in fact taken no such steps.

Susan Dennehy: So an organisation doesn't actually have to take steps to prevent slavery – it just has to publish an annual statement on the website saying whether or not it has taken any steps? [0:03:48.4]

Fiona Cuming: Yes. An organisation could just do this minimum but in practice it's probable that most organisation statements will actually set out the steps that they have taken because if they state that they haven't taken any steps, it's not very attractive and it could damage its reputation and have a knock-on effect on its profits.

Susan Dennehy: We're still waiting from the government for some guidance, but what sort of information should be included in the statement, do you think? [0:04:12.2]

Fiona Cuming: Yes, well you're right, the government has yet to publish its guidance but Section 54 is relatively detailed and it sets out the types of information that might be included in a statement. So I'll just touch on some of the types that could be included.

So it could be a description of the organisation's business model and supply chain relationships and organisations will need to consider the extent of the information that they would want to disclose.

It also could contain the policies that an organisation has in relation to combatting slavery and human trafficking in its supply chains. And then it could state the training that it's provided to its staff and supply chain

management on preventing and tackling modern slavery, and also well it could identify the parts of the business and supply chains where it considers there is a risk of modern slavery occurring and then the steps that the organisation has taken to manage and assess those risks.

Susan Dennehy: So that gives us some idea of what the guidance might say about the information that employers will be expected to produce. And what has the government said about producing the guidance? [0:05:19.6]

Fiona Cuming: Well the government has promised to provide clear and informative guidance because it's said that it doesn't want this duty to become a simple tick-box exercise and the aim of the guidance will be to direct business, well it hopes, towards the kind of important steps and actions that they can take.

Susan Dennehy: And in the meantime, while we're waiting for the guidance, is there anything employers can do to prepare for the statements? [0:05:43.3]

Fiona Cuming: Yeah, there is. If they haven't already done so, the first thing they need to do is to appoint someone senior in the organisation to be responsible for the compliance, and they should then review and check their supply chains, their operational structures and risk management processes to ensure that they really are vigorous and that modern slavery is not capable of existing in any part of its operations.

And finally, they should consider what training they should make available to staff and ensure that their procurement teams are aware and fully understand the new law.

Susan Dennehy: Okay, thanks very much for that, Fiona.

Fiona Cuming: Thank you.

Susan Dennehy: Shall we move on now, Susie, and look at some of the other changes that we mentioned earlier? Shall we look at the exemption for turban-wearing Sikhs to wear safety helmets? What change is coming in October? [0:06:30.1]

Susie Munro: Yes, so since 1989, Sikh men who wear a turban have been exempt from requirements to wear a safety helmet on a construction site where they wear a turban instead. And until now it's only work on construction sites that's been covered. But under the Deregulation Act 2015, from 1<sup>st</sup> October this is being extended to all workplaces. So it won't just cover construction sites. So, for example, if there's a requirement to wear a safety helmet in a factory, turban-wearing Sikhs won't have to wear one.

Susan Dennehy: Does it mean that employers are no longer required to provide safety helmets to Sikhs from 1<sup>st</sup> October? [0:07:05.8]

Susie Munro: No, they should still make helmets available. It's really down to the employee to make the decision whether or not to use one. So if a turban-wearing Sikh is injured in an accident at work and if that injury is more serious because he wasn't wearing a helmet, the employer wouldn't be liable to pay compensation for an injury to the extent that it's more severe than if he had worn a helmet. So in effect, the employee is accepting the risk in his decision not to wear a helmet.

- Susan Dennehy: Okay, and are there any exceptions to the rule where a Sikh employee will still be required to wear a helmet? [0:07:37.2]
- Susie Munro: Yes, there are some exceptions relating to people working in the emergency services and the military. So unless one of those exceptions applies, employers should be aware of this change and they should allow Sikh employees not to wear a safety helmet if they're wearing a turban.
- Susan Dennehy: Okay. Moving onto some of the other changes, how about the national minimum wage. Is it just the annual increase to the rates happening in October or is there anything particular happening? [0:08:01.2]
- Susie Munro: Well as far as the changes on October 1<sup>st</sup> go, yes, it's just the annual increase to the rates. So there's a 20p rise in the adult rate. So that's going up from £6.50 to £6.70 an hour. The other rates for apprentices and younger workers are also increasing and you can find all the current and the new rates in the statutory rates section on XpertHR.
- Susan Dennehy: The government's also announced a new living wage but this isn't happening in October, is it? [0:08:28.7]
- Susie Munro: No. We've heard a lot about the government's decision to introduce what they call a 'national living wage' but this isn't happening quite yet. That's being introduced in April 2016 and that's going to be a new rate for workers aged 25 and over, set at £7.20 to begin with. The current national minimum wage rates will continue to apply to workers under 25.
- Susan Dennehy: And just to be clear, the new living wage it has nothing to do with a living wage recommended by the Living Wage Foundation? [0:08:57.5]
- Susie Munro: No, that's set independently by the Living Wage Foundation. It's calculated as the rate that a worker needs to meet basic costs of living but the government hasn't adopted that rate. The government's aim is that the rate of the national living wage will increase each year so that it reaches 60% of median earnings by 2020, which would be more than £9.00 an hour by 2020 on current wage forecasts.
- Susan Dennehy: Okay, and another change you mentioned was the power of employment tribunals to make wider recommendations in a discrimination case. Can you tell us a bit more about that and when it's coming in? [0:09:30.8]
- Susie Munro: Yes, so again this is from 1<sup>st</sup> October, employment tribunals no longer have the power to make wider recommendations in discrimination cases. This wasn't something that was widely used anyway. It's about recommendations relating to the respondent organisation that would benefit other people, not just the claimant who's brought the case. So for example, it might be a recommendation for something like the training of all managers on equal opportunities issues and avoiding discrimination or a recommendation that the organisation monitors recruitment statistics to identify underrepresented groups. So these are things that might not benefit the individual who brought the successful claim, but they could have a wider benefit for other people. And the government's rationale, or part of the government's rationale, for repealing this power was that it was over-burdensome red tape for employers, albeit that it has hardly been used since it was introduced. But it's not something that employers are really going to notice much difference on 1<sup>st</sup> October.

- Susan Dennehy: It was really just a threat that it might happen. Okay, is there anything else coming in in October that we should know about? [0:10:35.3]
- Susie Munro: It's not directly related to employment, but there is this ban on smoking in cars when there's a child present. That's somebody that's under the age of eighteen. It's not going to have too much of an impact on employers because there's already a requirement for company vehicles to be smoke-free where they're used for work purposes by more than one person, except where it's a vehicle that's provided primarily for private use. So the ban on smoking with a child in the car applies to all private vehicles. It's something that employers might want to inform their employees about, this change in the law, but it's going to be the driver and the person smoking who are going to be liable for any fine, and that could be a fine of £50. So for example, an employer wouldn't face liability if an employee has a company car and smokes in it in the presence of their children. That liability would be the driver and the person who's smoking, if that's a different person.
- Susan Dennehy: Finally just to wrap up, a recent development rather than something coming in on 1<sup>st</sup> October, the launch of the Fit for Work service. Can you tell us a bit about that briefly? [0:11:36.5]
- Susie Munro: Yes. So this is a service that has been rolled out over the year and it's now fully operational. So where an employee has been off work sick for at least four weeks, their GP or the employer can refer the employee to the Fit for Work service for a free occupational health assessment and they'll get a return to work plan with recommendations of how to help the employee get back to work.
- GPs have already been able to make these referrals but as of 8<sup>th</sup> September employers can now refer their employees to the Fit for Work service.
- Susan Dennehy: But the new service, it's not mandatory. Employers do not have to refer an employee after four weeks or more sickness? [0:12:14.6]
- Susie Munro: No, they don't have to make a referral and not all employers will want to make use of the service. Many will prefer to stick with their own occupational health providers who are likely to be able to offer a more comprehensive service. But even if an employer doesn't want to refer their own employees, then the employee's GP might make a referral. So employers have to understand how the service is going to work and their responsibilities working with it. There's a lot more information on XpertHR in our FAQ section and we've got model policies and documents for employers to use to ensure that all their managers and occupational health people understand the potential impact of the new service.
- Susan Dennehy: Thank you very much. That wraps up our look at the October changes. Thank you very much to both of you, Susie and Fiona.
- Susie Munro: Thanks.
- Fiona Cuming: Thank you.
- Susan Dennehy: That brings us to the end of this week's XpertHR Weekly, which you've been listening to with me, Susan Dennehy. We're back again next Friday but until then, it's goodbye from us.

