

“Good Work” – The Taylor Review of Modern Working Practices

United Kingdom

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The Taylor Review of Modern Working Practices (the “Review”) published its wide-ranging report yesterday. Of central importance to employers are the recommendations to replace the current legal definitions of “worker” with a revised classification of “dependent contractor” and to change the national minimum wage rules for those employed in the gig economy.

Launching the report yesterday, the Prime Minister said that the government would consider the Review’s recommendations over the summer and respond in detail later in the year. However, as the government is of course now a minority one, it is not certain that any of the proposals will ultimately translate into legislation.

Running to 116 pages, the report covers almost every aspect of work, from the apprenticeship levy to careers advice in schools. While some of the Review’s recommendations suggest immediate changes, many involve issues that should be considered in the future, for example by recommending that the government’s statutory evaluation of the Right to Request Flexible Working in 2019 should include additional ways to promote flexible working.

The key highlights are:

1. Employment status - the dividing lines between different types of employment status and the rights which accrue to each of them should be clarified. The current three tiers of legal classification - employee, worker and self-employed - should remain, but workers should be renamed dependent contractors.
2. Definition of dependent contractor - primary legislation should be changed to adopt a clearer and more detailed definition of worker/dependent contractor (which can be easily updated by secondary legislation or guidelines). Greater emphasis should be placed on the “control” test, and there should be less reliance on the need for personal service/whether there is a right of substitution.
3. National minimum wage for gig economy workers - a new method of calculating the working hours of individuals working via platforms for national minimum wage purposes should be introduced (effectively entitling these workers to piece rates).
4. National Insurance contributions - given the gap which has arisen between self-employed labour and employed labour, the government’s previous attempt to reform NI should be renewed and the level of NI contributions paid by employees and self-employed people should be moved closer to parity.

These are the most important recommendations from the Review from an employer’s perspective. However, there are a number of other proposals which are worth noting:

- The right to receive a written statement of terms at the start of an engagement should be extended to workers/dependent contractors.
- There should be a higher national minimum wage for hours which are not guaranteed by contract, which would allow employers to maintain flexibility by using zero and short-hours workers but also encourage them to offer guaranteed hours.
- The law on continuous employment should be made clearer, with gaps of up to one month not breaking continuity, to discourage employers from disentitling workers from accumulating sufficient continuous service to accrue rights.
- The pay reference period for calculating holiday pay should be increased from 12 to 52 weeks to take account of seasonal variations.
- Workers/dependent contractors should have the opportunity to be paid ‘rolled-up’ holiday pay.
- Agency workers should have a right to request a direct contract of employment after 12 months with the same hirer and those on zero hours contracts should have a right to request a contract that guarantees hours which better reflect the actual hours worked after 12 months.
- The ‘Swedish derogation’ under the Agency Workers Regulations 2010 (“AWR”) should be removed. Very broadly, this currently enables agency workers to opt out of equal pay entitlement under the AWR where they receive some pay between assignments.
- Negotiation for employee representation under the Information and Consultation of Employees Regulations 2004 should be obligatory when 2% of the workforce request it (rather than the current 10%).
- An individual challenging their employment status in an employment tribunal should not pay fees for doing so, and should be given an expedited preliminary hearing to determine their status.
- Statutory sick pay (SSP) should be reformed so that it becomes a basic employment right, comparable with the NMW.
- The legal analysis of employment status for both tax and employment law purposes should be aligned. Being found to be an employee for tax purposes should mean that the individual is an employee or a dependent contractor for employment law purposes, and decisions in one jurisdiction should bind the other; that is, if an individual is judged to be an employee in the tax tribunal, they should also be an employee at law.
- It should be easier for individuals to enforce their rights and improvements should be made to the powers of government bodies (such as HM Revenue & Customs) to enforce certain statutory obligations on businesses, such as the national minimum wage, sick-pay and holiday pay for low-paid workers.
- There should be a push for greater transparency on the make-up of an employer’s workforce, to include reporting publicly on requests received from (and granted) by zero hours workers for fixed hours after a certain period and the use of agency services beyond a prescribed threshold.

The Review was commissioned against the backdrop of changing patterns of work, increased self-employment, and new and innovative ways of working, such as the gig economy. These developments have thrown a spotlight on the current legal and tax framework which underpins the United Kingdom’s labour market, and have led to questions being raised as to whether the current system remains suitable given that the market today is much more dynamic and flexible than it has ever been before.

Many of the Review’s recommendations were leaked prior to publication, and it is clear from recent press commentary that for some organisations, such as the trade unions, they do not go far enough. The tone of the report is business friendly and supportive of flexibility, without stepping too far into regulation.

At this stage, we would not recommend that employers make any changes to policy or process, but rather keep a watching brief on this area. We do not

expect any further government announcements until later in the year. We will keep you advised when important developments occur. You can read the Review in full [here](#).

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