

Issue 17 October 2017

Last call for GDPR compliance?

The General Data Protection Regulation replacing the Data Protection Act 1998 and increasing substantially the compliance requirements on businesses comes into effect on 25th May 2018.

By then all businesses should be compliant. If they are not they risk fines and large customers declining to deal with them whilst they remain non-compliant. Achieving compliance may take some time.

All businesses should ensure that they are fully aware of the new requirements and, if necessary, adjust their use of personal data and procedures for compliance.

Warner Goodman are running a series of workshops at our offices to explain what is required. The workshops last two hours, are interactive and cost £25 plus VAT per person. We will also provide them at your offices if you have enough delegates.

If you would like to attend a workshop please contact alicesamuel@warnergoodman.co.uk.



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What does the Supreme Court decision on Tribunal fees really mean?

A landmark decision was reached recently by the Supreme Court, who found that employment tribunal fees are unlawful as they “effectively prevent access to justice”. Unison has been in a legal battle with the Government since the fees were introduced, stating that the fees made it “virtually impossible or excessively difficult” for some individuals to exercise their employment rights, and that the fees regime indirectly discriminates against some groups. Emma Kemp, Associate Solicitor, here reviews what this decision means for employers and what the future may bring.

When tribunal fees were introduced in 2013, the Government reported that claims being brought to the Employment Tribunal dropped off by 79%. At the same time, the minimum service required to bring a claim rose from one year to two years, and ACAS Early Conciliation (a process to attempt to resolve disputes between employer and employee without going to Court) was introduced. It is therefore difficult to measure the exact impact the fees had on tribunal claims, and to predict whether the abolition of fees will see the number of claims being brought rise dramatically.



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What does this mean for employers?

There is currently speculation as to whether the Government will seek to introduce a different fees regime after a period of consultation, potentially with the employer paying a fee when they lodge their response or subsequent paperwork. However, for the time being employees are not required to pay a fee if they wish to issue an employment tribunal claim. The fees were abolished with immediate effect following the Court's decision.

Even though there is no payment to be made by the employee, they still have to be eligible to bring the claim, i.e. still have two years service for ordinary unfair dismissal claims. While the time limit for lodging a claim remains at three months following the action complained of, there is speculation that this may be extended to allow those who were put off bringing a claim by the fees.

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Commercial Property Leases: Checklist

Taking a lease of commercial premises is usually a big commitment. Issues to consider include:

1. Term: A longer term gives you security but ties you to a lease that is difficult or even impossible to get out of.
2. Breaks: An option to terminate early gives you a 'get out of jail free' card.
3. What are you leasing?: Is it a lease of a whole building, or just part of it? In either case repair obligations for the exterior and structure can be very costly and should be avoided if possible. There may be common facilities that are available for your use. Do you need parking spaces, access to toilets and kitchen areas, bins etc.? If so this should be in the lease.
4. Security of tenure: This is the right to have a new lease when the term ends. Many commercial landlords will wish to exclude this right. If you are expecting long term occupation ask for security to be included.
5. Rent reviews: Most longer leases will allow the landlord to increase the rent at regular intervals. Rents go up, never down.
6. Repair: Property is 'let as seen' so before you commit, go and switch on the lights, test the boiler, check the water is running, check the drains, inspect the roof – take a surveyor with you if you wish – but be sure you know what you are getting. If you're not happy, ask the landlord to fix it before you sign. If he won't, you may need to walk away. If the property is not in perfect repair ask for a repair obligation limited to current condition and agree a schedule of condition, with photographs to evidence it.

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Taylor report focusses on gig economy and cash in hand workers

A recently published report has been met with mixed reactions on how it will reform our current working practices. The Matthew Taylor report, Employment Practices in the Modern Economy, reviews areas such as the 'gig economy' and makes recommendations on proposals such as stronger incentives for firms to treat workers fairly and a more pro-active approach to workplace health. Natalie Rawson, Employment Lawyer, here reviews the key areas of the report and explains what it means for employers and employees in the future.

'Dependent Contractors'

In his report, Matthew Taylor states that while there has been an increase in the number of jobs under the Conservatives, there has been a fall in the quality of those jobs. "In essence this comes down to the so called 'gig economy'," explains Natalie. "A number of different Tribunal cases including Uber have highlighted the difficulty in establishing employment rights when defining whether a person is an employee, worker or self-employed. In the Uber case, the Tribunal found that those working for the company were in fact workers and not self-employed, meaning they are entitled to certain employment rights."

To continue reading this article, please visit our website [here](#).



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Not another Data Protection Act

In August I covered the Government's statement of intent on new data protection legislation. Now we have the Data Protection Bill—draft legislation currently being debated in the Lords.

It is much more extensive than predicted, running to 218 pages in all, so four times as long as the General Data Protection Regulation with which it deals. In part this is because English statutory drafting is always much wordier (we call it precise) than that from the European mainland and in part because it deals extensively with the interaction between data protection and the police, security services, HMRC and other governmental bodies, largely exempting them from inconvenient provisions of GDPR.

It does however contain some provisions very relevant to GDPR and businesses:

- Making clear that it is generally not necessary to disclose another person's personal data when dealing with a Subject Access Data Request.
- Confirming that legally privileged information need not be revealed.
- Stating that information required to be disclosed by GDPR need not be provided if it would self-incriminate and may not be used in criminal proceedings against the discloser.

To continue reading this article, please visit our website [here](#).

New deadlines for the People with Significant Control regime

Following the implementation of the Money Laundering Regulations on 26 June 2017, businesses need to be aware of important new deadlines under the People with Significant Control (PSC) Regime.

What are the changes to the “People with Significant Control” regime?

The regime, introduced by the Small Business, Enterprise and Employment Act 2015, requires all unlisted UK companies and LLPs to establish the identity of all “People with Significant Control” over them, and for these PSCs to be notified to Companies House. The regime was introduced in order to increase transparency of company ownership in a bid to tackle money laundering. Until 26 June any changes to the public PSC register could be notified using the company’s annual CS01 confirmation statement. That means there was no requirement to notify Companies House of the change until the CS01 was filed.

Following the implementation of the Money Laundering Regulations 2017 on 26 June pursuant to the Fourth Money Laundering Directive (4MLD), there is a new process firms must follow. The new process allows firms a 14 day time limit to update its own PSC register and a further 14 days to send the information to Companies House.

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In Brief...

In each issue of our Commercial Brief, we will bring you brief references to recent legal developments that could be of interest to you, our readers.

This issue of the In Brief includes the following topics:

- **Company operating a taxi booking App fined for sending unsolicited text messages**
- **The new Business and Property Courts of England and Wales is now in operation as of 02 October 2017**
- **New template developed by the Direct Marketing Association to focus on dealing with vulnerable customers**
- **Is your Debt Claim compliant with the new Pre-action Protocol?**
- **Cabin crew’s challenge to Ryanair’s exclusive jurisdiction clause is upheld**

To read more on these topics, simply click [here](#).



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