ECIA Engineering Construction Industry Association

May 2024

Employment Newsletter

Prime Minister calls snap General Election

This edition of the Employment Newsletter must be read through the 'filter' of the very recent announcement of a snap General election on 4th July 2024.

It is fair to say that, for the next 6 weeks, the focus of the Government and the other political parties will shift away from progressing or obstructing the development of new employment law and will swing into full electioneering mode.

By the time of the next Employment Newsletter, at the end of June, the manifestos of all the major parties should be available for scrutiny. Given that, the next newsletter will focus on the employment aspects of each manifesto, aiming to do a bit of 'crystal-ball gazing' about what the likely impact on the employment landscape might be, dependent on the political complexion of the next Government.

Tribunal system enters the 21st century

In the coming months ECIA members, faced with Employment Tribunal (ET) claims, may notice changes in the way the administrative process around ET claims operates, as the tribunal system tries to modernise its processes.

HM Courts and Tribunals Service is attempting to counter criticism about its "old-fashioned" paper-based systems by continuing to roll-out the digitisation of the ET process. Two new portals: the **MyHMCTS** portal (for claimants who have professional legal/Trade Union representation) and the **CitizenUI** portal (for claimants running their own claims themselves) will enable the lodging of claims, the filing of responses and relevant correspondence to become digitized. The aim is to make the system more efficient, and to allow the claim parties and their representatives to "*have access to the right information at the right time*".

The two portals have been being trialled on a limited basis in selected parts of the UK.

HMCTS have now announced that from 30 May 2024, represented claimants will be able to lodge ET1 forms (the original application) online, via the MyHMCTS portal, in Scotland, Midlands East, South West England and South, East and Central London. A further roll-out across the remaining regions is expected over the next few months. The intention is that the roll-out will complete by the end of the summer 2024, after which time the only route available for claimants with representatives to lodge Employment Tribunals claims (ET1 forms) will be via the MyHMCTS portal. The Office of the Tribunal will continue to notify respondents (employers) that a claim has been lodged against them.

Whilst the date has not yet been officially confirmed, it is currently expected that it will become mandatory for represented respondents to use only the MyHMCTS portal to submit responses to claims (Form ET3) from October 2024. Until such time, respondents should continue to submit ET3 forms in the traditional manner unless notified by the Tribunal service that a digital option is being trialled in their region should they wish to use it.

The Tribunal service has produced several videos to assist employers and professional representatives get ready for the changes.

No timescales have been put on the roll-out of the digital systems for claimants representing themselves (CitizenUI), though this will happen in the next couple of years guided by lessons learnt from the roll-out of the MyHMCTS portal.

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Uncertainty around the Extension of Auto-Enrolment Pensions

'Auto-Enrolment' pension schemes were introduced in 2012. They were phased in, starting with larger employers and contribution levels were stepped up over time to their **current levels of 8%** (made up of a 3% employer contribution, and 5% combined contribution from the Employee and the Government in the form of tax relief). All employers have now been called into AE pensions. The Government says that in the 12 years since the introduction of Auto-Enrolment: 10.7 million people have been automatically enrolled into a pension; and the average earner's pension savings are now 50% higher than before auto-enrolment.

ECIA members might well have heard about the Private Members' Bill aimed at expanding the auto-enrolment pension regime when it successfully passed through parliament and received Royal Assent in the autumn of last year. The Pensions (Extension of Automatic Enrolment) Act 2023 (the 2023 Act) will **abolish the lower earnings limit** for contributions (which is currently £6,240 per annum) and **reduce the age for being automatically enrolled into a pension scheme from 22 years down to just 18 years old**.

The 2023 Act did not automatically lead to these changes, but provided the Secretary of State with the authority to introduce regulations to enact these changes. However recent announcements by the Government suggest they are now in less of a hurry to enact these changes than first thought, proposing instead to push the changes back to the "mid 2020's".

The Bill was originally introduced in the House of Commons by backbench MP Jonathan Gullis, having been previously proposed in 2017 following a review of the operation of Auto-enrolment pensions arrangements by the Department for Work and Pensions (DWP).

So what would these proposed pension changes mean for employees and employers if enacted?

- If an employee was between 18 and 22 they would need to be automatically enrolled into a pension by their employer.
- With no lower earnings threshold, very low paid workers would be able to participate in auto-enrolment pension schemes and the employer would need to pay a minimum of 3% of wages a year into a pension on any earnings from £1 to £50,270.
- Every eligible worker would have the opportunity benefit from an employer pension contribution from the first pound they earned.

Since the Bill received Royal Assent the Government have undertaken a Review of auto-enrolment and linked Impact Assessment. In the review, published on February 6, 2024, the Government confirmed that the auto-enrolment earnings trigger and qualified earnings band will remain frozen for the 2024/25 tax year.

This means that the proposed changes are very unlikely to happen this year and the Auto-enrolment scheme parameters remain as follows:

The earnings trigger remains at £10,000 p.a.

The lower limit of the qualifying earnings band remains at £6,240 p.a.

The upper limit of the qualifying earnings band remains at £50,270 p.a.

That said, the recent announcement of a snap General Election on 4th July only increases the uncertainty as it is possible that an alternative Government might choose to move ahead rapidly and introduce these changes as a matter of priority.

Carer's Leave

Some ECIA members may be aware that the Carer's Leave Act 2023, which came into effect on 6 April 2024. The Act means that anyone who is legally classed as an employee can take time off to help a dependant who needs long-term care.

Whilst it will be no surprise that the Act includes within the definition of a "dependent" the employee's spouse, civil partner, child or parent, members need to be aware that **a "dependent" does not have to be a family member,** but can be somebody who relies on the employee for care e.g. an elderly next-door neighbour.

The Act gives employees the right to **take up to one week of unpaid leave per year**. This one week of leave relates to the length of the 'week' the employee normally works, so somebody working a 4-day week could only take 4 days of Carer's leave. The employee can either take a whole week off in a block or take individual days or half days throughout the year.

If an employee needs to care for more than one person, the Act does not give the right to take a week of Carer's leave for each dependant. The employee can only take one week every 12 months and, if required, they may split that week to provide care to more than one dependent.

To trigger the employee's rights to take Carer's leave, the dependent must have:

- a physical or mental illness or injury that means they're expected to need care for more than 3 months
- a disability (as defined by the Equality Act 2010)
- care needs because of their old age.

Employees are not required to give their employer evidence of their dependant's care needs.

Carer's leave is a 'day one right', so employees are entitled to Carer's leave from their first day of work for their employer. ECIA members need to be aware that, if an employee takes Carer's leave: the individual's employment rights (e.g. accrual of annual leave or returning to their job after the leave etc.) are protected; the employee should not be subject to any detriment; and any attempt to dismiss them for taking Carer's leave would be automatically unfair.

Whilst employees are required to give their employer notice before they want to take Carer's leave, this notice does not have to be given in writing.

The minimum notice period the employee must give will depend on how many days of leave they wish to take. If the request is for half a day or a day, then the notice given to the employer must be at least 3 days. If the request is for more than one day, the notice period must be at least twice as long as the requested leave e.g. if the request is for 3 days, the notice period must be at least 6 days.

The Act does not permit employers to refuse a Carer's leave request, but it allows the employer to ask the employee to take the leave at a different time if the employee's absence would cause serious disruption to the company.

If they do delay the leave, the employer must:

- agree another date for the leave, within a month of the original requested date.
- write to the employee, citing the reason for the delay and new date for the Carer's leave, within 7 days of the original request, or before the requested start date of the leave, if sooner.

Given that Carer's leave is unpaid, ECIA members may not find themselves swamped with requests from their employees. That said, members do need to be familiar with this new type of leave and how to handle requests appropriately to ensure that they remain within the law.