

## labour and employment lawflash

18 September 2012

### **Additional UK Employment Law Reform Proposals Announced**

*Government aims to reduce regulatory burden on employers with new proposals.*

On 14 September, Vince Cable, the UK government's Business Secretary, announced further employment law reforms, adding to the changes that took effect in April 2012.<sup>1</sup> The announcement is part of the government's ongoing initiative to streamline UK employment law in order to aid economic growth and reduce the regulatory burden on employers.

#### **Additional Proposals**

The government has announced that it plans to do the following:

- Support the use of "settlement agreements", which are currently known as compromise agreements, to help employment relationships end in a fair and consensual way. The government has launched a consultation on this proposal. In addition, the Advisory, Conciliation and Arbitration Service (ACAS) will produce a new code of practice on settlement agreements.
- Consider reducing the statutory cap on compensation for unfair dismissal claims. The statutory cap on the compensatory award for unfair dismissal is currently £72,300, and the cap has traditionally increased by a few thousand pounds in February each year. The government has launched a consultation on reducing the cap to either 12 months' pay or a new, lower amount, which has not been specified.
- Streamline the Employment Tribunal procedure. Following the review of the Employment Tribunal procedure by Mr Justice Underhill, the former president of the Employment Appeal Tribunal, the government has launched a consultation on his recommendations, which include allowing judges to dismiss "weak" cases more easily and reducing the number of preliminary hearings.
- Consult on specific proposals in relation to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE protects employees when the business in which they are employed is being transferred to another organisation, including the sale of a business or an outsourcing. In November 2011, the government launched a call for evidence on the effectiveness of TUPE, which ended on 31 January 2012. The government has just published its response to the evidence it received and will launch a consultation on proposals to amend TUPE by the end of the year.
- Work with ACAS to make its code on discipline and procedure more accessible, particularly to small businesses.

#### **"Compensated No Fault Dismissals" Proposal**

The government also confirmed that it has decided not to pursue the proposal to allow compensated no-fault dismissals for micro businesses, i.e., those with fewer than 10 employees. In the UK, for a dismissal to be fair, there must be a fair reason and a fair procedure. Employees have statutory protection from unfair dismissal after one year (if they started employment before 6 April 2012) or after two years (if they started employment on or after 6 April 2012).

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1. View our 30 March 2012 LawFlash, "UK Employment Law Changes", on the changes that took effect in April 2012, available at [http://www.morganlewis.com/pubs/LEPG\\_LF\\_UKEmploymentLawChanges\\_30march12.pdf](http://www.morganlewis.com/pubs/LEPG_LF_UKEmploymentLawChanges_30march12.pdf).

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The compensated no-fault dismissals proposal had been one of the government's more radical suggestions for employment law reform, even though it would only affect a very small number of UK businesses. The proposal would have allowed affected businesses to dismiss an employee without having to establish a fair reason or follow a fair procedure, provided that a set amount of compensation was paid to the employee. Such employees would have lost their statutory protection from unfair dismissal.

## Consultations

The consultation on “ending the employment relationship” will close on 23 November 2012. It covers the use of settlement agreements and the change to the unfair dismissal award. The consultation can be accessed at <http://www.bis.gov.uk/Consultations/ending-the-employment-relationship>.

The consultation on streamlining the Employment Tribunal procedure following Mr Justice Underhill's recommendations will also close on 23 November 2012. The consultation can be accessed at <http://www.bis.gov.uk/Consultations/employment-tribunal-rules-review-justice-underhill>.

## Implications

Mr Cable has said that the key to these proposals is “balance”. The government does not want to create a “hire and fire” culture, but it does want to reduce the burden that UK employment law places on employers.

The use of settlement or compromise agreements is already commonplace, as they provide certainty that the employee cannot sue the organisation. Employees typically waive all employment and other claims under settlement agreements. The impact of the government's support for settlement agreements on sophisticated employers may therefore be limited.

The potential reduction of the statutory cap on compensation for unfair dismissals is one of the more controversial reform proposals. It sits alongside the increase of the eligibility period from one to two years for statutory protection from unfair dismissal, which was introduced in April 2012. The potential reduction may lead to more employers settling claims even where they have little or no merit to avoid incurring costs and spending management time fighting the claim—if the potential value of the claim is low, an employer is more likely to settle claims than run up costs mounting a defence. The reduction of the compensatory award could also lead to more claims that do not have a cap on compensation being added on to unfair dismissal claims, such as whistleblowing or discrimination claims, in order to put commercial pressure on employers.

It remains to be seen how far the changes will go. However, the government's attempts to reduce the burden of employment law on UK employers has, understandably, been broadly welcomed by employer organisations. We will issue further updates as the changes are announced.

## Contacts

If your organisation would like assistance with responding to the consultations or if you have any questions on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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Morgan Lewis's Labour and Employment Practice includes more than 265 lawyers and legal professionals and is listed in the highest tier for National Labour and Employment Practice in *Chambers USA 2011*. We represent clients across the United States in a full spectrum of workplace issues, including drafting employment policies and providing guidance with respect to employment-related issues, complex employment litigation, ERISA litigation, wage and hour litigation and compliance, whistleblower claims, labour-management relations, immigration, occupational safety and health matters, and workforce change issues. Our international Labour and Employment

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