

REVIEW



**UK labour law
changes widen the
gap with Manx law**



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Introduction

Welcome to our electronic news review published by M&P Legal. We hope that the publication is of interest to recipients. Please contact any of the individuals listed on the contact us page with comments for future articles.



Advocate John T Ayccock reviews ...

... some significant changes in employment law in the UK and how this affects the position in the Isle of Man.

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UK labour law changes widen the gap with Manx law

The need to think and look local when taking employment law advice has recently been accentuated by important changes that have taken place in the United Kingdom. Isle of Man labour law has always differed from that of the UK but the alterations now taking place across the Irish Sea have widened that divergence. It is time to mind the gap.

From 6 April 2012 the qualifying period for an employee to claim unfair dismissal increased in the UK from one year to two years. This significant change is limited to new employees who started on or after 6 April 2012 so those already in work do not lose their rights. Nonetheless, going forward, this is a big change that will likely prompt differing business practices for UK employers. Of course many other employment statutory rights such as the right not to be discriminated against accrue without a qualifying period and they remain unaffected.

It is important to make it clear that in the Isle of Man the qualifying period for unfair dismissal remains at one year. The Isle of Man has been consistent with this qualifying period whereas in the UK the period has over time been tinkered with depending upon the political colour of the governing party.

The UK authorities have also taken the opportunity to make procedural changes to the way Employment Tribunals hear cases.

Such changes including extending the right of employment judges (as they are called) to sit alone and decide unfair dismissal claims and increasing the maximum deposit that employers or employees may be required to pay if their case has been assessed as having little reasonable prospect of success. That deposit has been increased from £500 to £1,000. Further, the liquidated costs award a Tribunal in the UK can make has been increased from the old maximum of £10,000 to a new figure of £20,000. This is the figure that the Tribunal itself can settle without a detailed assessment of costs but the figure may be higher if the Tribunal decides to refer the costs for assessment. In the Isle of Man the costs figure that a Tribunal may summarily order is restricted to £500 with the same provision that a higher amount may be determined by way of assessment in accordance with the High Court Rules. Costs awards in our tribunals are however rare.

There are other UK changes to Employment Tribunal procedure but it is important to stress again that these changes do not apply to the Isle of Man Employment Tribunal practice or procedure. In this regard, the Employment Tribunal Rules 2008 read with the Employment Act 2006 continue to govern Tribunal practice and procedure in the Isle of Man and for that we can be thankful. The Manx practice and procedure is a good deal less complicated and has greater flexibility than the much tinkered with system in the UK.

UK labour law changes widen the gap with Manx law

Consultation in the UK continues on a number of controversial labour law issues. For instance a working party is still looking at the concept of a compensated no fault dismissal for smaller employers. If this goes ahead, it could mean that the unfair dismissal law was effectively bypassed for smaller employers provided sufficient compensation was paid. In practice, both in the UK and the Isle of Man, an informal compensated no fault dismissal frequently takes place in the business community under the auspices of a without prejudice discussion followed by a written settlement which is known as the compromise agreement.

In respect of compromising an employee's statutory employment law claims in the Isle of Man, it is important always to remember that one very significant difference with the UK is that the statutory concept of compromise agreements is not present in Isle of Man law and we therefore need to conciliate such agreements through the offices of the Manx Industrial Relations Service to ensure the waiver of statutory claims is valid. This is a frequent oversight when Isle of Man employment matters are being discussed by a human resources head office in the UK.

In the Isle of Man there is also new labour law in the pipeline. Work permit issues and equality points are matters that are taxing legislative draftsmen at present. The Isle of Man will continue to monitor employment

protection law and attempt to maintain its careful balance of keeping up to date with acceptable employment practice while not suffocating business with red tape. Put another way, those in the 'freedom to flourish' camp will engage in healthy debate with those in the 'ready to regulate' camp.

The UK changes also accentuate the need to ensure Manx workers are on proper Manx employment contracts with the governing law and jurisdiction being here in the Isle of Man. Sometimes this is overlooked and contracts with English law clauses are issued to staff here.

Those who deal with staff issues on a day to day basis in the Isle of Man, being large finance sector operations through to small enterprises, must therefore keep up to date with the evolving employment law situation. We get inundated with email updates setting out the UK position and it is important to take stock and reflect on Isle of Man labour law. Checking these things with an HR counterpart in the UK or looking at a UK employment law website are becoming increasingly risky exercises.

Advocate John T Aycock is head of the employment law unit at M&P Legal Advocates, Solicitors & Attorneys

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