

SERVICE UPDATE

<u>Name of Function:</u>	People and Organisational Development
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<u>Title of Update:</u>	Employment Law Changes
<u>Report Author:</u>	Keith Tennant, Policy and Advice Officer
<u>Chief Officer:</u>	Isla Newcombe, Chief Officer – People and Organisational Development
<u>Contact Details:</u>	ktennant@aberdeencity.gov.uk Tel 01224-523094

UPDATE:

The purpose of this Service Update is to provide Members with summary details of forthcoming changes in employment legislation. Certain of these changes relate to the Government's 'Good Work Plan', others relate to separate legislation, as detailed below.

The 'Good Work Plan' was produced from the Taylor Review of Modern Working Practices concluded in July 2017. This 'Plan' outlines a range of new employment related legislation that aims to better serve and protect workers in the UK. It will affect all organisations that employ people and use agency workers.

1 and the second part of 2 below relate to the 'Good Work Plan'. The first part of 2, and 3 and 4 relate to other separate legislation.

The key legislative changes are as follows: -

1. New right to a written statement of terms and conditions

Effective from the 6 April 2020

Current law

Employees who have been continuously employed for more than one month must be provided with a written statement of terms within two months of employment commencing. This is in line with section 1 of the Employment Rights Act 1996.

The rights of individuals and responsibilities of an employer may differ depending on employment status of an individual (i.e. whether they are an **employee** or **worker**). Only **employees** are entitled to a written statement of terms at present; **workers** are not.

New law

From 6 April 2020, the Employment Rights (Miscellaneous Amendments) Regulations 2019 amend section 1 of the Employment Rights Act 1996 to require that all **new employees and workers** will have the right to a statement of written particulars from their **first day** of employment. **Additional information** will have to be included as part of the extended right, as specified in the legislation.

As the new obligation is to provide particulars on 'day one', employers will likely need to begin preparation of the statement of particulars during the recruitment stage and ensure that these comply with the new additional legislative requirements. Employers will also need to consider who might qualify as a '**worker**', and issue different forms of written particulars to **employees** and **workers** to reflect the different contractual arrangements in place.

Implication for the Council

A change is being made to the process in the Council for producing written statements of terms and conditions (i.e. contracts) to ensure that they are produced and issued prior to a new employee starting. The same is the case for new workers, although they will receive a separate shorter document.

The current contractual documentation for employees and workers is currently being checked to verify whether it contains all that is now required under the new law. If any additions are needed, they will be included in the templates in advance of 6 April.

People and Organisational Development are organising the necessary changes to documentation and are working with the HR Service Centre regarding the necessary changes in process.

2. Amendments to agency workers rules

Effective from the 6 April

Current law

The Agency Worker Regulations 2010 entitles agency workers to receive the same pay and basic working conditions as direct recruits once they have completed 12 weeks' continuous service working in the same role. The law currently provides an exemption to the right to equal pay, if agency workers are employed under a permanent contract of employment with the agency and are paid by the agency for periods between assignments (known as the "Swedish Derogation" in the Agency Worker Regulations).

New law

From 6 April 2020, the 'Swedish derogation' will be abolished. Once agency workers have satisfied the 12-week qualifying period, they will be entitled to equal pay with workers who are engaged directly by the employer.

On or prior to 30 April 2020, agency workers who have an existing contract that contains a Swedish derogation provision must be provided with a written notification by the agency that it will no longer have effect. Ultimately, any increase in wages will be passed on to the end user (i.e. the Council).

In addition, from 6 April 2020 all agency work-seekers must be provided with a key facts statement setting out the terms under which they will undertake the work (including type of contract under which the work-seeker will be engaged, the minimum rate of pay, any deductions that will be made to their pay, how they will be paid and by whom, and annual leave entitlement). The key facts statement must be provided before the agency worker undertakes work.

Implication for the Council

The removal of the 'Swedish derogation' should not involve any actions on the part of the Council, with this legislation being relevant to agencies as employers, who will need to notify their staff of this change. However, the cost implications of any pay increases will be passed to the Council. People and Organisational Development will liaise with Commercial and Procurement to identify what the increases could amount to, considering current agency usage.

Commercial and Procurement have confirmed, following a check with the suppliers on the agency framework, that the second change above will not have an implication for the Council, with it to be the agency's responsibility, as the employer, to provide agency workers with the new 'key facts statement'.

3. Holiday pay reference period adjustment

Effective from the 6 April 2020

Current law

Following recent case law, the calculation of holiday pay can be a complicated issue, particularly for those with variable hours and fluctuating rates of remuneration. Currently, a week's pay for the purposes of calculating holiday pay, for those with variable hours and fluctuating rates of remuneration, is averaged over a 12-week reference period (prior to the annual leave commencing).

New law

From 6 April 2020, the holiday pay reference period will increase from 12 weeks to 52 weeks. Employers will be required to look back at the previous 52 weeks where a worker has worked and received pay, discarding any weeks not worked or where no pay was received, to calculate the average weekly pay.

It is anticipated that this change will help to even out the variation in pay for workers, particularly those in seasonal or atypical roles.

Implication for the Council

A review is currently being undertaken by Legal, in liaison with People and Organisational Development and Payroll, to identify if there are any implications for the Council of this change, also considering recent court decisions on holiday pay.

4. New parental bereavement law

Effective from 6th April 2020

New law

There is no existing law, but The Parental Bereavement (Leave and Pay) Act 2018 is to come into force in April 2020. Bereaved parents will have the right to two weeks of leave following the loss of child under the age of 18, or a stillbirth after 24 weeks of pregnancy.

Bereaved parents will be entitled to take their leave in one two-week block or in two separate blocks of one week. The leave must be taken before the end of a period of at least 56 days beginning with the date of the child's death.

Bereaved parents employed with a minimum of 26 weeks' continuous service will also be entitled to receive statutory parental bereavement pay. Those with less than 26 weeks' continuous service will be entitled to take two weeks of unpaid leave.

Implication for the Council

This new piece of legislation has been examined to identify the details. The necessary documentation and process will be put in place, including in relation to the administration of statutory Parental Bereavement Pay. The policy position of the Council will be updated to take account of Parental Bereavement Pay. It is likely that contractual pay will be offered for both weeks of Parental Bereavement Leave (rather than applying statutory pay), with this to be approved by Committee to enable a change to the Special leave policy. A report is planned to go to the Staff Governance Committee of 30 March 2020.

The new provision would then need to be appropriately publicised in the organisation.

These actions will be undertaken by People and Organisational Development in conjunction with the Payroll Section.

5. Financial implications and risk

There should be a minimal financial implication for the Council as a result of applying the new Parental Bereavement legislation. It is likely that contractual pay will be offered for both weeks of Parental Bereavement Leave (rather than applying statutory pay), subject to Committee approval. If this were the case, it would have a minimal cost implication. It should be noted that there is already a bereavement leave provision for the death of a close family member (including a child) in place of up to five days' pay. The number of cases is likely to be small with the death of a child being a relatively rare occurrence.

The amendment to the agency workers rules due to the removal of the 'Swedish Derogation', could have a financial implication for the Council if agencies decide to pass on their additional costs to clients. As mentioned above, People and Organisational Development will liaise with Commercial and Procurement to identify what the increases could amount to, considering current agency usage.

The holiday pay reference period adjustment could have a financial implication, if it is established that it affects any groups of employees in the Council and if the averaging of the pay calculation resulted in higher amounts of holiday pay being made. As mentioned above, the review currently being undertaken by Legal (in liaison with People and Organisational Development and Payroll), will identify if there are any cost implications for the Council

No additional costs have been identified in relation to the other forthcoming legislative changes.

If the changes were not implemented in the Council on time, there would be a risk of the organisation not being legislatively compliant. This could potentially leave the Council open to challenge at employment tribunal and incurring costs. It could also cause reputational damage in terms of negative press coverage.