

Government Announces Radical Proposed Changes to Employment Law

After months of speculation, consultation and leaked hints, Vince Cable has announced the Government's proposals for reforming Employment Law on 23 November 2011 to mixed reviews.

The Government has been consulting on reforms to employment law for some time. Mr Cable has now outlined the main changes that will be put before parliament:

- An increase in the qualifying period for employees to claim unfair dismissal from one year to two years effective in April 2012
- All claims to go to compulsory pre-claim conciliation with ACAS before Employment Tribunal ("ET") proceedings can be issued
- Introducing fees for issuing ET claims (mooted to be £250) and for listing the claims for a Hearing (mooted to be a further £1,000)
- Internal mediation of disputes will be encouraged
- ET's will be given the power to impose financial penalties on employers that breach employees' rights – the penalty being paid to HM Exchequer.

It is also proposed to change the ET Rules in 2012 to allow:

- Unfair dismissal cases to be heard by an Employment Judge sitting alone
- A doubling of the maximum amount of costs awardable by an ET to £20,000
- A doubling of the maximum amount of a deposit payable by a party with a weak case to £1,000 per claim
- Withdrawing the automatic payment of expenses to parties and witnesses attending ETs
- Witness statements shall be taken "as read" (i.e. not read out loud) in ETs

Mr Cable then went on to announce consultation on a whole raft of potential changes for the future, including:

- A total review of the Rules of the ET by Mr Justice Underhill to be completed by April 2012, with changes scheduled to be implemented by "early 2013".
- A proposal to reduce the length of compulsory consultation on redundancies of more than 100 workers from the current 90 days
- Changing the current law on Public Interest Disclosure ("whistle blowing") so that an employee cannot refer to their own contract the potential subject of a protected disclosure
- Simplifying the TUPE Regulations
- Streamlining the regime for the Recruitment Industry
- Merge all Minimum Wage regulations into one set

- Introduce “protected conversations” that will allow employers to discuss poor performance, retirement and other issues without the risk of the discussions being used in subsequent ET proceedings
- Introduce the right for employers with less than 10 employees to dismiss the employees on a “no-fault” basis by payment of a redundancy payment and notice
- Simplify Compromise Agreements, which will be renamed “Settlement Agreements”
- Looking at a “rapid solution scheme” to replace ET proceedings in some cases.

The reaction of employers can said to be warmly positive, but the Chartered Institute of Personnel and Development (“CIPD”) was critical of some of the proposals.

The Institute’s head of public policy, Ben Willmott, said “Genuine proposals to simplify employment law and reform the employment tribunal system are welcome – but where it comes to ‘protected conversations’ the government needs to beware the spectre of unintended consequences.

Unsurprisingly, Trade Unions have been up in arms. Unite's general secretary Len McCluskey said: "At a time when unemployment is at a 17-year high and youth unemployment has topped a record one million, it is appalling that this government should concentrate on making it easier to fire people, rather than getting people back to work.

"Ministers are hell-bent on removing long-established rights at work, making dismissal easier and promoting a culture of fear in the workplace. These proposals are a charter for rogue employers and bullies."

Shore Stewart recommends that all employers consider the effect that the proposals may have on their businesses now, rather than wait for things to happen. Contact Michelle Shore on 01302 260161 or michelle.shore@shorestewart.co.uk for further advice.

1. A copy of Vince Cable’s speech can be found at www.bis.gov.uk
2. The Government response to the ‘Resolving Workplace Disputes’ consultation can be found at <http://www.bis.gov.uk/Consultations/resolving-workplace-disputes>. The ‘Resolving Workplace Disputes’ consultation was launched on the 27 January and closed on 20 April.
3. The Calls for Evidence on collective redundancies consultations and TUPE can be found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/c/11-1371-call-for-evidence-collective-redundancies> and <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/c/11-1376-call-for-evidence-effectiveness-of-tupe-regulations> They will end on 31 January 2012.

