

RIP Fair pay agreements and the return of 90-day trials for all

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The new Government is moving at pace to achieve two of its key employment law related commitments before Christmas. The Government previously signalled its intention to repeal the fair pay agreements legislation, and to re-introduce the ability for all employers to use 90-day trial periods regardless of size.

Fair pay agreements

The Government has now passed legislation repealing Fair Pay Agreements. That will prevent initiation of bargaining for any new fair pay agreements and put an end to all work currently ongoing to negotiate fair pay agreements.

While no fair pay agreements have actually been agreed, there has been significant time and expense in preparing and initiating industry / sector bargaining (we understand six bargaining processes were underway). It seems this effort has been wasted. However, for many employers the repeal of fair pay legislation will be a welcome relief. Employers now have certainty that they will not be bound by industry negotiated minimum terms they may have had little, if any, influence over.

Return of 90-day trial periods for all employers

The Government has also signalled it intends to pass legislation under urgency before Christmas which will extend the use of 90-day trial periods to all employers, regardless of size. In effect, this is a return to the pre-May 2019 legislation, before the Labour led Government restricted trial periods to employers with 19 or less employees.

While the use of 90-day trial periods will be available to all employers once the new legislation comes into effect, it is important to keep in mind that there will continue to be stringent requirements around how trial periods are implemented and used. Employers only have protection if they both implement and then use trial clauses perfectly – any mistake means that the trial clause is void, and that typically leaves employers exposed to costly claims. We, therefore, strongly recommend that employers seek advice before using, or relying, on trial clauses.

More to come

These changes are the first in a raft of employment law changes the Government has signalled it will consider. Other changes that may be on the cards include:

- Amending the law to prevent workers who are engaged as contractors from challenging their employment status (we await with interest the government's proposals here – this will be a difficult and controversial change),
- reducing or removing the ability for employees to seek remedies in relation to a personal grievance if they have contributed to the situation with their own conduct, and
- preventing employees who earn over a specified amount from being able to raise a personal grievance.

These potential changes will likely require considerably more thought before they reached the point of becoming law. If or when that might happen, remains to be seen.

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