

ENABLING THE FUTURE OF WORK

FOLLOW UP
COMMUNICATIONS
ON THE
GOVERNMENT'S
GOOD WORK PLAN

ISSUED ON 17TH DECEMBER 2018

BACKGROUND

On 17th December, the Government launched The Good Work Plan.

The Good Work Plan is a logical and anticipated development that provides businesses with some clarity as to which parts of Matthew Taylor's recommendations will be adopted. It set out the government's plans for improving the quality of work in the UK, as well as changes to policy and legislation. These changes ensure workers can access fair and decent work by increasing their rights, while maintaining the advantages of flexible working – which has been so key to the recent success of the UK labour market.

When the Good Work Plan was launched, it was just a plan. As a result, Staffline created a guidance document that outlined the core areas of the plan for our customers. Given the important role that Staffline plays in both the UK labour market and in partnership with the DWP, we are well placed to advise on the Good Work Plan and its likely impact.

Speaking at the 2018 'Enabling the Future of Work' conference, Matthew Taylor commented: "Staffline is best practice, and if everybody operated like Staffline, the Government wouldn't have required me to write my report".

THE GOOD WORK PLAN: GOING FROM A PLAN TO LEGISLATION

On 17th December The Good Work Plan was a 'plan' and was some way from becoming legislation, although there was a draft legislation in circulation. Until it becomes legislation we cannot be sure on the timescales or the process of implementation, although the draft suggests a date for all the points to be implemented on 6th April 2020.

Since 17th December, very little has happened with regards to going from a plan to legislation, but we are still led to believe that the dates for implementation remain the same. One point from the Good Work Plan currently going through Parliament is below.

The introduction of a key facts document

The key facts document legislation is currently going through parliament. It will require employment businesses to provide work-seekers with a 'key facts' document before terms are agreed between the employment business and the work-seeker from April 2020. The legislation gives a clear outline of what information should be included. The principle behind the legislation is to increase transparency for the work-seeker on what they will be paid in different scenarios, for instance when an umbrella company is involved. This will also link with the government's plan to increase worker awareness of holiday pay entitlement.

THE GOOD WORK PLAN: GOING FROM A PLAN TO LEGISLATION CONT.

In February this year, the UK government and the GLAA launched a campaign to raise awareness of statutory holiday entitlement, to address the 1.8 million people who did not receive their entitlement from their employer during 2018.

During 2018, the GLAA's remit was extended to audit employers for compliance with paying workers their holiday pay, as it was believed that the £1.8 billion of holiday pay was unpaid each year. Staffline automatically pays all leavers with their full holiday allocation but is aware of a large number of competitors and employers that do not automatically pay holiday pay to leavers, so this additional governance is very welcome and we have been actively promoting the government's campaign to ensure workers get what they are entitled to.

Staffline are committed to consulting our customers on any progress with regards to the Good Work Plan, and we continue to work closely with advisory boards to understand any potential implications for Staffline and our Customers.

THE REMOVAL OF SWEDISH DEROGATION:

The new legislation is planned to be implemented on 6th April 2020.

The following guidance specifically relates to the removal of the Swedish Derogation on 6th April 2020, including the removal of articles 10 and 11, specifically around the definition of a comparator for the purpose of equal pay and how an employer may restructure their workforce to accommodate without falling foul of legislation.

12 Week Rights

With the removal of the Swedish Derogation, this means that after the 12 week qualifying period, all agency workers (as defined in the AWR), will need to receive parity of pay with comparable employees of the end user hirer. This involves the agency worker identifying an appropriate comparator so that they can be compared with that individual/role to achieve parity of pay (and other rights which are not covered by the Derogation).

After the 12 week qualifying period, the agency worker should receive the same terms as any comparable employee of the end user in the following areas: pay; working time; night work; rest period and rest breaks; and annual leave.

Comparators

In order to be a comparable employee, the hirer's employee and the agency worker must be (i) working under the supervision and direction of the hirer; and (ii) engaged in the same or broadly similar work where relevant, whether they have a similar level of qualifications or skills and the hirer's employee must also work at the same place of work as the agency worker, or if there is no comparable employee, works or could work at a different place of work.

THE REMOVAL OF SWEDISH DEROGATION CONT.

Potential Solutions:

- 1) Move to full pay parity. Since the launch of the Good Work Plan, some of Staffline's largest employers of SD contracts have decided to move to parity during 2018 ahead of the implementation, in order to avoid negative press nearer the implementation and to help attraction and retention during peak this year
- 2) Operate sliding pay scales dependent on qualifications and experience. If this was relied on, then one individual who is paid more because of their several years' relevant experience in that position may well be regarded as different to an agency worker just starting out in that position, who would be at the bottom end of that pay scale. The different treatment can therefore be justified, provided that the agency worker's experience or qualifications does not mean that if employed directly they would have gone in at a higher pay grade.
- 3) If there are employees who have negotiated their terms individually, i.e. there is no specific structure for a specific pay grade for a specific role, each employee negotiates their own terms so everyone is paid different rates of pay. This is going to be difficult to achieve in practice, in our view.
- 4) Only employ agency workers to carry out one specific job where the end user has no direct employees undertaking that job. So, for example, a specific job in a warehouse with a specific job title - provided it could not be deemed as broadly similar to a permanent employee's role. This would need to be carefully considered alongside all other roles within the end user to ensure there is no risk of their being a comparison on preferable terms.
- 5) There is potential for agency workers to work in different roles for the same hirer, but this runs a significant risk of breaching the anti-avoidance provisions (see above)

SUMMARY

The Good Work Plan is still a 'plan', with the introduction of a key facts document currently going through legislation.

We have focused on the removal of Swedish Derogation and removal of articles 10 and 11 specifically around the definition of a comparator for the purpose of equal pay and how an employers' workforce may be structured to accommodate without falling foul of legislation.

- The new legislation is planned to be implemented on 6th April 2020
- Staffline's recommendation is to move towards pay parity during 2018 ahead of the implementation to avoid negative press nearer the implementation and to help attraction and retention during peak this year
- Many of our clients already have a seasonal intake of workers on lower rates of pay than their permanent staff who undertake assignments of less than 12 weeks in duration which remains viable
- Many hirers have unskilled jobs for Staffline workers at the entry point of the employment scale that bare no comparison to the permanent employees who undertake more skilled jobs or duties that require more experience. These are also unaffected by the proposed changes

As the UK's largest blue-collar employer and provider of services to the Government Department for Work and Pensions (DWP), providing flexible workforces to 1,600 of the UK's best-known brands, Staffline couldn't be better placed to support our clients and government with the implementation of the Good Work Plan.

We will continue to work closely with the governing bodies to provide you with the best guidance on how to implement the Good Work Plan and will be delighted to provide bespoke consultative support on the best composition of our clients employment types to ensure the most cost effective flexible outcomes are achieved ahead of the imminent changes in legislation.



Staffline