With the prospect of new rules on employment status and confidentiality clauses, and challenges on harassment, mental health and equal pay, there's plenty for employers to get to grips with this year.

Douglas Friedli asks four lawyers what to watch out for

**EQUAL PAY**

Richard Thomas, partner at Capital Law, predicts we will see a series of employment tribunal decisions in cases on the issue of equal pay which involve Tesco, Asda, Morrisons and Sainsbury. The claims are being brought by groups of predominantly female shop workers who claim they are being paid less than predominantly male warehouse staff, despite carrying out a similar role.

Thomas says: "These decisions may well be subject to appeal by the losing party, but they will provide some interesting points on the issue of equal pay and could lead to more claims being brought against private sector employers."

And he predicts the consequences could be substantial for other employers:

"Previously, equal pay claims have been brought successfully against public sector employers, such as local councils. However, combined with the requirements for all employers employing more than 250 employees to report annually on their gender pay gap statistics, a victory for the claimants in the equal pay claims could open the door to many more claims being brought against private sector employers."

**EMPLOYMENT STATUS FOR FLEXIBLE WORKERS**

A follow-up to the UK government’s Taylor Review and Good Work Plan will aim to clarify employment status.

And, according to Anthony Rees, partner at law firm Eversheds Sutherland, they are likely to extend certain employment rights for a wider category of workers, and impact on the use of agency workers. Changes may also be made to how zero-hours contracts and flexible arrangements can be used by business.

He adds: "More generally, ongoing economic uncertainty will be the main driver for employers relying on their employment rights, while the recent large rise in employment tribunal cases is likely to continue."

**MENTAL HEALTH**

The cost of mental health issues to the economy and to individuals has become much more visible over the past five years.

A survey by the mental health charity Mind last year found that almost half (48 per cent) of employees had experienced a mental health problem in their current job, but that only half of those had talked to their employer about the problem.

Debra Gers, senior practice support lawyer at Blake Morgan, says: "With no signs of any reduction in poor mental health, this will remain a key issue for employers, staff and government in 2019."

Gers highlights a push from the leaders...
HOW MIGHT BREXIT CHANGE EMPLOYMENT LAW?

Anthony Rees  
Eversheds Sutherland

“UK employment law is unlikely to change in the short or medium term as a result of Brexit, whether a deal is agreed or not. Current EU law on employment rights will overwhelmingly remain as part of UK law.”

If anything, the government appears to be suggesting that it is keen to increase workplace mental health protections rather than reduce it. “Poor mental health can be experienced by anyone regardless of age, gender, race or social background. Mental health issues cost the UK economy more and more each year alongside the detrimental and harmful effects on the individual concerned, it is an issue of the highest importance,”

Debra Gers  
Blake Morgan

“Initially there will likely be little or no impact. If the UK leaves the EU via a no-deal Brexit, it would be free to change its employment laws immediately, but it would need to get parliament to approve any such changes. Parliament is very unlikely to do so without first having a general election, which would need to produce a majority in parliament for those who wished to change employment laws.”

Richard Thomas  
Capital Law

If your business engages workplace sexual harassment.

And in March, a consultation paper was issued on how to prevent misuse of confidentiality clauses in situations of workplace harassment or discrimination. Gers says: “There is concern that some employers have used confidentiality clauses to prevent victims of harassment from speaking out.” The consultation period ends on 29 April.

Eversheds Sutherland’s Rees says that the government is consulting on restating the use of confidentiality clauses in employment contracts and settlement agreements “only to situations where there is a reasonable commercial interest to protect”.

Paul Shuttleworth  
EJM Solicitors

“The government’s approach to workers’ rights has been clear that major employment rights — discrimination, working time, TUPE (Transfer of Undertakings, Protection of Employment) — would be preserved.”

“The government published a paper last year which stated that the EU [Withdrawal] Act 2018 would bring across the powers from EU directives. That meant UK workers would continue to be entitled to the rights they have under UK law but which are derived from EU law. Amendments would be made to legislation to reflect that the UK was no longer part of the EU, but generally it wouldn’t change, only really making provisions for redefining relevant legislation to remove references to the EU.”

Note: Views were given between 11 and 15 March. Facts and opinions related to Brexit may have changed since then.
New role for Ferriman

Jon Ferriman, the former hub director of Tata Steel UK, has been appointed integration director of Liberty, the industrial group headed by Sanjeev Gupta. Ferriman served as a board member of Specific, the flagship research and development project involving Tata Steel, Welsh Government, Swansea University, and other industrial companies. In his new role, he will lead Liberty’s expansion in continental Europe. Liberty has made a binding conditional offer to acquire seven steel producing sites from ArcelorMittal in six European countries. Liberty also owns works in Newport and Tredegar.

Carbon Law offers stakes

Carbon Law Partners, the legal services business, has provided its lawyers and staff the opportunity to acquire shares in the firm and its platform. According to Carbon, its stakeholder model enables Carbon’s partners to develop their own legal businesses and service their clients under the Carbon brand and using its IT platform, while also acquiring shares in the firm. This structure allows partners to keep 70 per cent of their fee income, build their own client bases and own a stake in the whole platform. Carbon’s central management and support team has also become eligible for Carbon shares as part of an equity participation plan.

Millett to head JLL office

Justin Millett has been appointed as lead director of property consultancy JLL’s Cardiff office and will remain its head of capital markets in Wales. He replaces Chris Sutton, who left to set up Sutton Consulting, which will focus on industrial and commercial property and economic development. Sutton is a former chair of CBI Wales.

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