in brief

Early conciliation statistics

Much ink will no doubt continue to be spilt about the practical value and impact of early conciliation, and the approaches which employees and employers take to engage with its requirements. Parties may use the process to seek to demonstrate the strength of their position to the other party in order to deter litigation or encourage settlement, or may simply refuse to engage in the process if it is considered pointless, perhaps, from the employer's perspective, pending the individual showing commitment to his or her claim by paying the fee required to commence proceedings (if applicable). On 7 July 2015 Acas published statistics on the first year of operation of early conciliation. In excess of 83,000 cases went to early conciliation between 6 April 2014 and 31 March 2015. Some 84% of claimants and 87% of employers said they would use it again. Some 15% of early conciliation cases were concluded by way of a COT3 settlement, 63% did not progress to an employment tribunal claim and 22% led to a tribunal claim, although over half of those cases were eventually resolved by Acas. While the scheme is assisting the resolution of cases to some extent, it would seem likely that the fees regime has a rather greater impact on whether cases end up proceeding to the tribunal.

National Living Wage

The biggest news for employment lawyers from the recent Budget was the effective rebranding of the National Minimum Wage as the National Living Wage – and its planned material increase from 2016 onwards for those aged 25 and over. This forms part of the Government's objective of a 'higher wage, lower tax, lower welfare society'. The National Living Wage will operate for eligible workers by way of a premium payable in addition to the National Minimum Wage. From April 2016 this premium will be 50p, thereby increasing the statutory minimum wage to £7.20. The Government will ask the Low Pay Commission to address how the National Living Wage should reach 60% of median earnings – a target of more than £9 – by 2020.

In terms of the economic impact of this move, the Treasury considers that employment will increase by 2021 by 60,000 jobs fewer than would have been the case but for the introduction of the National Living Wage; of course, employers may also have to fund the consequent increase in their labour costs from lower profits, adjusted wages elsewhere or higher prices. There are those who will argue that, even though this move should improve the position of the low paid, it is a flawed re-branding exercise since the National Living Wage will be less than the 'real' living wage, depending on how that is defined. The risk will then be that employers, feeling under commercial and other pressure to pay a living wage, may seek to avoid paying the 'real' living wage on the basis they are paying the statutory living wage.

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Jurisdiction clauses

In the context of internationally mobile employees, a great deal of case law over recent years has focused on the territorial reach of domestic employment protection legislation and, as Jacques Algazy and Fiona Bolton's article in this issue of *ELA Briefing* demonstrates, the complex issues which can arise in relation to jurisdiction issues can continue to be challenging. Nonetheless, the need for a choice of jurisdiction clause in an executive's employment contract, and whether the choice of jurisdiction should be exclusive or non-exclusive, remains potentially important as demonstrated by the recent case of *Wright v Lewis Silkin LLP* [2015] EWHC 1897 (QB). The absence of a choice of jurisdiction clause conferring jurisdiction on the courts of England and Wales caused delays in the executive's ability to enforce his contractual claims against an Indian employer and ultimately prejudiced his ability to do so.

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