



Cordant
Be More.



Legal Update

April 2014





Contents

Changes to the Rehabilitation of Offenders Act 1974	>
Amendments to the TUPE Regulations	>
Change to Penalties for Employing An Illegal Worker	>
National Minimum Wage	>
ACAS Early Conciliation	>
Onshore and Offshore Intermediaries legislation	>
Statutory Discrimination Questionnaire abolished	>
Right to Request Flexible Working to be extended to all employees	>
Financial penalties for breaches of employment rights with "aggravating features"	>





Changes to the Rehabilitation of Offenders Act 1974

Under the Rehabilitation of Offenders Act 1974 ("ROA") ex-offenders only have to disclose previous criminal convictions to potential employers if they remain "unspent". ROA provides that, if an offender does not reoffend for a certain period following their conviction, they are deemed to have been rehabilitated. In these circumstances the ex-offenders convictions are spent and they are not required to inform a prospective employer of their criminal past.

The period of time following which a criminal conviction will become spent will depend on the sentence imposed. Prior to 10 March 2014, if an offender had been subject to a custodial sentence of two and a half years or more their conviction will never have been spent. However, from 10 March 2014 changes to the ROA came into force which will mean that the periods following which a criminal conviction will become spent shall be reduced dramatically. As a result the period during which a potential employee is required to disclose their criminal past to their employer will also reduce.

Under the new regime the only circumstances in which a conviction will never be spent are those where an individual receives a custodial sentence of over 4 years or has received a public protection sentence following a conviction for certain sexual and violent offences.

The periods during which criminal convictions become spent is now as follows >

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





Sentence	Rehabilitation periods
A sentence of imprisonment or youth custody or corrective training for a period of four years or more.	The length of the sentence plus a buffer period of four years.
A sentence of imprisonment or youth custody or corrective training for a period of less than four years.	The length of the sentence plus a buffer period of two years.
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service.	Four years.
A sentence of dismissal from Her Majesty's Service.	Four years.
Any sentence of detention for a period of four years or more in respect of a conviction in service disciplinary proceedings.	The length of the sentence plus a buffer period of four years.
Any sentence of detention for a period of less than four years in respect of a conviction in service disciplinary proceedings.	The length of the sentence plus a buffer period of two years.
A fine or any other sentence subject to rehabilitation under the Act.	One year or, in the case of a person aged under 18 at the time of his conviction, six months.
A sentence of Borstal training.	Two years plus a buffer period of two years.
A custodial order under Schedule 5A to or section 71AA of the Army Act 1955 or the Air Force Act 1955, or under Schedule 4A to or section 43AA of the Naval Discipline Act 1957 for a period of four years or more.	The length of the sentence plus a buffer period of four years.
A custodial order under Schedule 5A to or section 71AA of the Army Act 1955 or the Air Force Act 1955, or under Schedule 4A to or section 43AA of the Naval Discipline Act 1957 for a period of less than four years.	The length of the sentence plus a buffer period of two years.
A sentence of detention passed under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) for a period of four years or more.	The length of the sentence plus a buffer period of four years.
A sentence of detention passed under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 for a period of less than four years.	The length of the sentence plus a buffer period of two years.
A sentence of detention in a detention centre.	The length of the sentence plus a buffer period of two years.

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





Amendments to the TUPE Regulations

On the 31st January 2014 changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 came into effect by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

Some of the key changes are:

Service Provision Changes The definition of what amounts to a service provision change is amended to clarify that for TUPE to apply the business activities carried on after the transfer must be “fundamentally the same as the activities carried out by the person who has ceased to carry them out”. The government decided against repealing all the regulations regarding service provision changes, as originally proposed.

Employee Liability Information The transferor’s obligation to provide employee liability information will be extended so information must be provided 28 days before the transfer, rather than 14 days as was previously required. This amendment will not come into force until 1 May 2014.

Changes to Terms and Conditions Clarification that any variation to a transferring employee’s contract is void only if the sole or principle reason for the change is the transfer. If the reason for the variation is merely connected to the transfer, the variation will not fall foul of TUPE. Even where the reason for the variation is the transfer, the changes will be permitted if (i) the reason for the change is an economic, technical or organisational (ETO) reason and the employee and employer both agree the change; or (ii) the terms of the contract allow the employer to make such a variation.

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with “aggravating features” >





Change to Penalties for Employing An Illegal Worker

From 6 April 2014, the maximum civil penalty for employing an unauthorised migrant worker will double to £20,000. The increased penalty will apply to employers who continually breach the prevention of illegal working rules.

National Minimum Wage

From 1st October 2014, the following rate changes will apply:

The adult national minimum wage rate will increase by 19p an hour to £6.50

The rate for 18 to 20-year-olds will go up by 10p to £5.13 an hour, a 2% increase.

The rate for those aged 16 and 17 will rise by 7p to £3.79, also a 2% rise.

Apprentices will earn an extra 5p an hour, taking their wages to at least £2.73

The Government has also introduced new Regulations to provide tougher penalties for employers who breach the National Minimum Wage legislation. Employers who breach the legislation could incur a penalty of up to 100% of unpaid wages and a financial penalty of up to £20,000. Previously the maximum penalty was 50% of unpaid wages and a maximum financial penalty £5,000. Employers who receive a notice of underpayment must pay the penalty within 28 days of service, unless stated otherwise.

The increase in financial penalties does not apply to a notice of underpayment relating to a period before 7 March 2014, the date when the new Regulations were introduced

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





ACAS Early Conciliation

From the 6th April 2014 most prospective claimants will have to contact ACAS before they can present an Employment Tribunal claim.

Upon receiving a valid early conciliation request/form ACAS will try and resolve the dispute quickly and cost effectively. However, there is no obligation upon either party to actively engage in conciliation. The only duty is on the Claimant to contact ACAS to discuss potential early conciliation prior to submitting a claim to the Employment Tribunal.

If the complaint is settled through ACAS, the agreement will be legally binding. If the parties are not able to reach a settlement or one party is not interested in early conciliation, then ACAS will issue the Claimant with a certificate to say that contact has been made with them. The Claimant's claim can then be lodged with the Employment Tribunal.

Submission of the Early Conciliation form will 'stop the clock' on the time period for a prospective claimant to submit their claim. Time will only start to run again when the certificate is issued by ACAS. This means the time limit for most claims will be three months plus the time during which ACAS seeks to conciliate. If time is due to expire within one month of the clock re-starting after ACAS involvement, there will be a minimum one month period to enter the claim.

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





Onshore and Offshore Intermediaries legislation

From the 6th April 2014, new legislation introduced under the Finance Bill 2014 came into effect relating to the tax treatment of workers that are employed and remunerated via a UK-based intermediary on a self-employed basis ("Onshore Intermediary"), or via a company incorporated outside the EU or Isle of Man ("Offshore Intermediary").

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





Statutory Discrimination Questionnaire abolished

The rules relating to statutory discrimination questionnaires in the Equality Act 2010 have been repealed from 6 April 2014 in favour of an informal approach.

ACAS has published good practice guidance on asking and responding to questions of discrimination in the workplace. The ACAS guidance applies from 6 April 2014 when the statutory procedure was abolished, and provides tips on how to raise and respond to questions about allegations relating to discrimination. There is no penalty for a breach of the ACAS guidance but a Tribunal may look at whether an employer has answered questions posed to it and, if so, the information that has been provided, as a contributory factor when making its decision in any discrimination claim brought by an employee.

Changes to the Rehabilitation of Offenders Act 1974	>
Amendments to the TUPE Regulations	>
Change to Penalties for Employing An Illegal Worker	>
National Minimum Wage	>
ACAS Early Conciliation	>
Onshore and Offshore Intermediaries legislation	>
Statutory Discrimination Questionnaire abolished	>
Right to Request Flexible Working to be extended to all employees	>
Financial penalties for breaches of employment rights with "aggravating features"	>





Right to Request Flexible Working to be extended to all employees

It has now been announced that the new rules extending the right to request flexible working to all employees with 26 weeks' continuous service will be implemented by 30 June 2014 and not the initial date of the 6th April 2014.

Changes to the Rehabilitation of Offenders Act 1974 >

Amendments to the TUPE Regulations >

Change to Penalties for Employing An Illegal Worker >

National Minimum Wage >

ACAS Early Conciliation >

Onshore and Offshore Intermediaries legislation >

Statutory Discrimination Questionnaire abolished >

Right to Request Flexible Working to be extended to all employees >

Financial penalties for breaches of employment rights with "aggravating features" >





Financial penalties for breaches of employment rights with “aggravating features”

At present, when an employment tribunal finds in favour of a claimant, it does not have any power to penalise the employer for breaching the statutory employment obligations it owes to the individual other than by way of an award of compensation or, in discrimination cases, awards in respect of injury to feelings, exemplary damages and aggravated damages. This will change from 6 April 2014, when employment tribunals will have the ability to impose a financial penalty on employers against whom a successful employment tribunal claim is brought where there is a breach of the individual’s statutory rights which has one or more “aggravating features”.

The penalty which the tribunal can impose will range from a minimum of £100 to a maximum of £5,000. Where an award of compensation is made to the individual, the penalty must be 50% of that award (subject to the cap of £5,000). The penalty will be reduced by 50% if paid within 21 days. The penalty is payable to the Secretary of State rather than the individual directly.

It will be at the employment tribunal’s discretion whether to impose a penalty. There is no statutory definition of what constitutes an “aggravating feature” and the employment tribunal will take into account any factors it considers relevant. The size of the employer, the duration of the breach of the relevant statutory employment right and the behaviour of the employer and of the employee are all likely to be considered relevant factors.

Changes to the Rehabilitation of Offenders Act 1974	>
Amendments to the TUPE Regulations	>
Change to Penalties for Employing An Illegal Worker	>
National Minimum Wage	>
ACAS Early Conciliation	>
Onshore and Offshore Intermediaries legislation	>
Statutory Discrimination Questionnaire abolished	>
Right to Request Flexible Working to be extended to all employees	>
Financial penalties for breaches of employment rights with “aggravating features”	>



Be More **Informed**



Cordant
Be More.

