

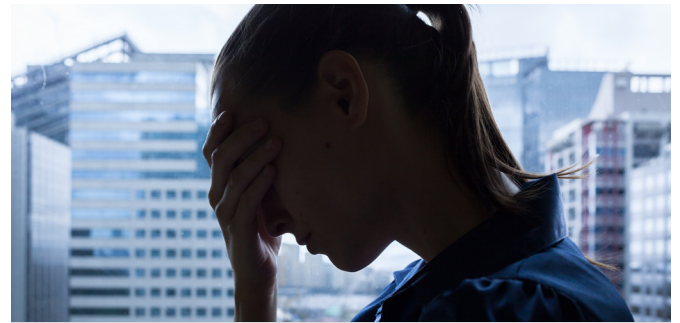
LEGAL SYSTEM 'FAILING' WOMEN AND IN NEED OF REFORM

A new ground-breaking report published by the Fawcett Society concludes that our legal system is failing women and needs fundamental reform. The report, which is the conclusion of the Fawcett Society's Sex Discrimination Law Review (SDLR), also found that violence against women and girls is 'endemic' in the UK.

The report calls for a number of explicit changes to the legal system. These include strengthening the laws on sexual harassment at work to protect women from harassment by third parties, making 'up-skirting' an offence, making misogyny a hate crime, making any breach of a domestic abuse order a criminal offence and extending protection from pregnancy discrimination 6 months after maternity leave ends.

There has been much progress for women at work since the arrival of the Sex Discrimination Act in 1975. But, in some areas, undue legal complexity and delay have hampered that progress. The report makes a very powerful case for change, to ensure that our sex equality laws are fulfilling their purpose, that employers do more to prevent sex discrimination in the first place, and that working women have access to justice to enforce their rights where they need to.

The vast majority of pay discrimination claims settle before they get to the Tribunal but once at the Tribunal stage pay discrimination claims can drag on for many years. The report points out the need to apply time limits to these cases.



KEY RECOMMENDATIONS

Employment, pay and leave

- Introduce an indicative timetable to keep all Equal pay cases on track and stop unacceptable delays
- Extend gender pay gap reporting to employers with 50 employees or more and include data on other protected characteristics such as race, disability and LGBT status (with due consideration to privacy)
- Extend protection from pregnancy discrimination to 6 months after maternity leave ends and increase statutory pay rates
- Fundamentally reform the parental leave system to provide for a longer, higher paid period of leave for fathers.
- Legislate to address multiple discrimination, following the example of Canada or Germany

The report found that Sex Equality legislation in Northern Ireland is significantly behind the rest of the UK with no Single Equality Act in place, directly reliant on EU law. Women's access to abortion remains severely limited and they face life imprisonment if they break the law.



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FIVE KEY EMPLOYMENT LAW ISSUES TO BE AWARE



From the removal of tribunal fees to widespread claims regarding sexual harassment, 2017 has been a busy year in employment law. Although employers might hope for a quieter 2018, it's looking likely that there will be a number of issues that are prevalent throughout the year, amid the ongoing uncertainty of Brexit.

1. GENERAL DATA PROTECTION REGULATIONS (GDPR)

The European General Data Protection Regulations (GDPR) are set to come into force across Europe on 25 May 2018. These regulations seek to enhance the rights of individuals and make changes to existing data practices. The potential consequences of non-compliance are costly, with maximum fines of 20 million or 4 per cent of annual turnover. Experts have said that Uber may have been fined £17.75m for their recent data breach under GDPR.

2. EMPLOYMENT STATUS

2017 saw numerous claims from individuals questioning their status and their employment rights, with the most prolific cases within the gig economy. Status is going to continue as a big issue in 2018. Pimlico Plumbers are taking their appeal against the decision that a plumber was a worker to the Supreme Court in February. Uber has also applied to leapfrog the Court of Appeal and have their appeal heard in the Supreme Court. The government is expected to respond to the Matthew Taylor Report on modern working practices and recommendations on clarifying status.

3. INCREASE IN TRIBUNAL CLAIMS

The most significant decision in 2017 was the Supreme Court deciding the tribunal fee regime was unlawful. Since 26 July 2017, claimants no longer have to pay a fee to bring a tribunal claim. The impact of this decision is that claims are likely to increase, and potentially keep increasing in 2018. There is no longer a financial deterrent on individuals who wish to challenge their employers in the tribunal. Claims fell around 79 per cent once fees were introduced.

4. GENDER PAY GAP REPORTING DEADLINE

Employers caught by the gender pay gap reporting requirements have to publish their report by 4 April 2018, or 30 March 2018 if they're a public sector employer. The report needs to be uploaded to the company's own website and a government website, allowing full public access to the data. It's currently thought that many employers have already calculated their gender pay gap but are sitting on the data to avoid the negative publicity that follows, which we saw when the BBC released their gender pay report. This is likely to result in an influx of reports being released close to the deadline date.

5. PAYMENTS FOR SLEEP-IN SHIFTS

Payments for sleep-in shifts continue to be a significant area of concern for many care employers. The Court of Appeal will hear appeals in two important cases regarding the right to receive the national minimum wage for sleep-in shifts in 2018. The government has recognised the uncertainty around this area, and the financial impact of getting this wrong, and has introduced the Social Care Compliance Scheme.

TORIES SEEK TO CUT WORKER'S RIGHTS UNDER COVER OF EU WITHDRAWAL BILL



Conservative ministers have indicated that they will seek to cut worker's rights under cover of the EU Withdrawal Bill, which is intended to smooth the way for a timely exit from the EU.

Environment minister Michael Gove and Foreign Secretary Boris Johnson recently declared that they would try to use the EU exit process as a way to attack worker's rights. The news broke as the EU Withdrawal Bill was processing through Parliament, with Brexit ministers initially targeting the working time directive, which ensures that workers are limited to 48 hour weeks.

The TUC pointed out that loss of the working time directive could see 7 million workers lose their guaranteed legal right to paid holidays. That includes nearly 5 million women and many workers on part-time and zero-hours contracts. *"Brexit promised ordinary working people more*

control over their lives, not a draining away of power to bad bosses and big corporations," said Frances O'Grady, general secretary of the TUC. *"No one voted for that. No one voted to be forced to work excessive hours. No one voted to lose out on their paid holidays or their lunch breaks."*

Other Tory ministers have indicated their hostility to worker's rights with Liam Fox, the trade secretary, referring to the working time directive as *"a burden,"* while David Davis, the Brexit secretary, described EU red tape as *"crippling."* The comments of these ministers of course fly in the face of the earlier guarantees given by Prime Minister Theresa May that the government would *"protect and extend"* workers' rights as a result of the Brexit process.

The Bill has now gone to the House of Lords, after passing the third reading stage in mid-January, with a vote of 324 to 295. There were 470 amendments tabled to the legislation, the most significant of which saw a defeat for the government by 309 to 305 on a rebel amendment ensuring that the final terms of Brexit are enshrined in a bill to be debated and voted on by Parliament.

There are also concerns about how the Bill allows ministers to make changes in legislation without reference to Parliament – the Henry VIII powers – in order to bring the new law in line with reality once the UK has left the EU. Government amendments, though, now mean only items actually in the bill can be *"corrected"* in this way. In the case of the devolved administrations, though, it appears that Westminster reserves the overriding powers to make these changes in EU law, thereby seemingly trumping the devolved powers of the Scottish, Welsh and Northern Irish assemblies. This though has to be further considered under amendments in the Lords. The Scottish National Party object to the amendment on devolved powers being taken in the Lords as the party does not have any representation in that house.

Keir Starmer MP, Labour's Shadow Secretary of State for Exiting the European Union, said: *"There is nothing to address the fundamental concerns that MPs across Parliament have about watering down workers' and environmental rights, the extreme scope of Henry VIII powers and the disregard of the devolution settlement."*

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