

Employment Law “blizzard of proposals”

It can't have escaped your notice that the Government seems keen to offer businesses opportunities to cut through the perceived red tape of employment law. There have been a blizzard of proposals. Here is a summary of the latest proposals (and you will see that I could not resist a brief comment or two!)

1. Being able to make offers to employees to leave without the fear of being sued – There is a consultation currently taking place on how such “Protected conversations” would work. This to my mind is a good idea – it happens already of course but there is a nervousness due to the narrowness of the “without prejudice” rules. However, the protection against it being used against you is only to apply to unfair dismissal claims. To my mind this will limit the usefulness of the new change as disgruntled employees who have received an offer to leave are likely to try their hand at other claims such as whistleblowing and discrimination. **Verdict: potentially useful proposal and one which will help businesses and employees.**
2. A cap on compensatory awards for unfair dismissal – we already have one of course (£72,300 currently) but the Government thinks this is too high and sets artificially high expectations amongst Claimants – proposal to limit awards to 12 months salary (plus the existing basic award). **Verdict: will not make much difference as the average award for unfair dismissal is far below even 12 months' salary**
3. Re-naming Compromise Agreements – to Settlement Agreements (wow!) **Verdict: hmmm**
4. Providing employers with a model Settlement Agreement, the suggestion being that they use it themselves without legal advice (although later in the proposals it does say that employers are still “recommended” to take legal advice) – curiously it looks just the same as an existing Compromise Agreement, and yes, the employee will still need legal advice for which the employer pays for. The model agreement however to me looks dangerously short of protection for employers, and employers are being encouraged under the proposals to “delete” those claims from the long list that are not applicable to the situation – how many employers are going to be willing to take a punt and delete claims that they think are not relevant? My view – employers will still want their lawyers to advise properly and fully and to have a proper Compromise Agreement. **Verdict: compromise agreements are working well – leave us alone!**
5. Views being sought on whether there should be a “guideline tariff” of sums to offer in different cases where employment is being terminated – eg “Your notice pay plus £X”. Whilst this is interesting – I still think this will completely depend on the facts of a particular situation and the commercial factors at play. Guideline tariffs might themselves set expectations artificially high. **Verdict: It's a “no”.**
6. Finally, proposals to allow employers to offer to prospective new employees an “Owner employee contract”. A new employee would be given between £2000 and £50,000 worth of shares in the company in exchange for agreeing to forgo basic statutory employment rights such as unfair dismissal and redundancy pay. The idea is that this would help to promote the growth of companies and encourage them to take on employees. However, will there really be an appetite amongst staff to forgo basic employment protection in exchange for shares of uncertain value and there does not seem to be a clear way of dealing with the shares on termination of employment. **Verdict: Another “no”.**