



Legal update — October 2017

## Employment Refresh those contracts

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**Given that the beginning of April is the time when many employers implement changes to contractual terms and conditions, the autumn is a good time to start the planning process! Contracts should be revisited on a regular basis to ensure that they are up-to-date, legally compliant and, most importantly, that they continue to work for you!**

### Ensure compliance with the General Data Protection Regulation

While a pending Brexit ushers in a host of uncertainties there is one thing that we can be sure of, the General Data Protection Regulation will apply to all Member States, including the UK, from 25 May 2018. Although when the UK leaves the EU the Regulations will not directly apply to the UK, if the UK wants to trade with the Single Market on equal terms, it will have to prove "adequacy" by May 2018. It therefore makes sense to review any data protection clauses in your contracts to ensure that they are compliant with the new measures.

### Consider restrictive covenants

In a market where recruitment is increasingly difficult it's also worth bearing restrictive covenants in mind. Putting in measures to seek to prevent solicitation of customers, clients, suppliers, other employees or general competition for a defined period after termination are a good way of protecting your confidential information, customer connections and the stability of your workforce.

### Calculating holiday pay

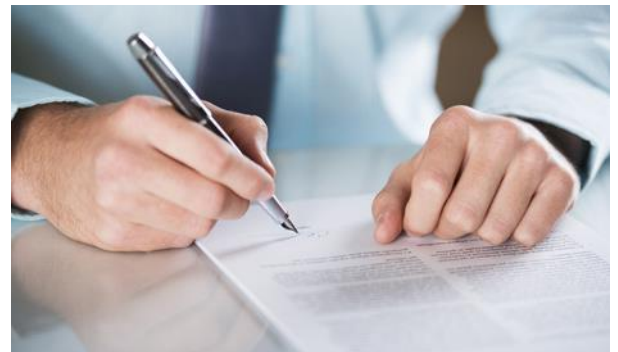
Do your contracts reflect the latest position on holiday pay? Recent case law has dealt with how such payments should be calculated.

### Pension benefits

Finally, now is a good time to review your pension benefits, and to ensure that any reference to pensions in your contracts is limited as far as possible to keep the benefits flexible should you wish to introduce changes and to avoid the risk of creating unintended contractual entitlements.

### Honour any collective agreements

In the recent case of Dunkley and others v Kostal UK Ltd an employment tribunal considered whether an employer's attempt to bypass a recognised trade union by negotiating directly with individual employees amounted to unlawful inducement contrary to section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A).



Source: Shutterstock

The employer entered into a recognition agreement with Unite to establish a framework for collective bargaining. The agreement provided that formal pay negotiations would take place annually, and that any proposed changes to terms and conditions of employment would be negotiated with the union. When a package including pay increases, a Christmas bonus and some detrimental changes to terms and conditions was rejected in a consultative ballot the employer took the matter into its own hands. It wrote to all employees directly offering the same package, and posted a notice stating that if employees did not agree to the new terms, they would forfeit their Christmas bonus. The employer then wrote again to the employees who had not accepted the pay proposals offering them a 4% pay increase and stating that dismissal might be a possible outcome if agreement could not be reached.

A group of employees brought claims in the employment tribunal alleging that their rights under section 145B TULR(C)A had been infringed on two separate occasions by the letters they had received.

Published by  
Trowers & Hamblins

Trowers & Hamblins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ

t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001

[www.trowers.com](http://www.trowers.com)

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The tribunal upheld the claims. Offers had been made directly to the claimants and these offers had the prohibited result (the purpose of the offers was to cease collective bargaining). The tribunal made the point that it is not permissible for an employer to abandon collective negotiation when it does not like the result of a ballot, to then approach employees on an individual basis to strike deals, and then to seek to show its commitment to collective bargaining by securing a collective agreement having effectively destroyed the union's mandate in the process.

It's worth noting that if section 145B is breached, each affected employee can claim a mandatory award from the employment tribunal which is currently set at £3,830.

### **How we can help**

We can help you undertake a review of your contracts and suggest changes to ensure that they reflect the current state of the law.

We can do this for a fixed fee of £450 +VAT for a standard contract and £950 +VAT for an executive contract.

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[For more information please contact](#)

Emma Burrows  
Partner  
t +44 (0)20 7423 8347  
e eburrows@trowers.com

Nicola Ichnatowicz  
Partner  
t +44 (0)20 7423 8565  
e nihnatowicz@trowers.com

Rebecca McGuirk  
Partner  
t +44 (0)121 214 8821  
e rmcguirk@trowers.com

John Turnbull  
Partner  
t +44 (0)1392 612370  
e jturnbull@trowers.com

Helen Cookson  
Senior Associate  
t +44 (0)161 838 2081  
e hcookson@trowers.com