

Linklaters

At a glance:

EMPLOYMENT & INCENTIVES

developments
this month



Worker status

Supreme Court decision in *Uber v Aslam*

More than five years since a group of Uber drivers brought claims in the employment tribunal against the ride-hailing app Uber, on 19 February the Supreme Court unanimously decided that those drivers were Uber's workers. Please see our [client publication](#) for more information on the decision and its potential implications for businesses in the gig economy and beyond.



Coronavirus Job Retention Scheme

Extension of furlough scheme

A further extension to the furlough scheme until September 2021 was announced as part of the Spring Budget. The government will continue paying 80% of employees' wages for hours they cannot work, but employers will be asked to contribute 10% of the cost of unworked hours in July and 20% in August and September.

Regulations on calculating week's pay for furloughed employees extended

The government has introduced regulations amending the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020 (SI 2020/814) ("**Week's Pay Regulations**"), which require employers to calculate various statutory payments, including redundancy and notice pay, with reference to a furloughed employee's normal week's pay. The amendment regulations extend the operation of the Week's Pay Regulations until 30 April 2021.



Gender pay gap reporting

Government extends gender pay gap reporting deadline

In light of the continuing effects of the Covid-19 pandemic, the Equality and Human Rights Commission (EHRC) has confirmed that gender pay gap enforcement action for the reporting year 2020/21 will be suspended until 5 October 2021. Public sector bodies and private sector employers would have been required to submit their gender pay gap reports by 30 March and 4 April respectively. The suspension of enforcement action effectively means that employers have an additional six months to meet their reporting obligations for reports with a snapshot date of 31 March or 5 April 2020.



Gender board diversity

Hampton-Alexander report on gender balance in FTSE leadership

Last month, the Hampton-Alexander Review published its fifth and final annual report on improving gender balance in FTSE leadership.

The report states that, as at 11 January 2021:

- > Women held 36.2% of FTSE 100 board positions (up from 32.4% in 2019), but 32 FTSE 100 companies had not yet achieved the 33% target.
- > Women held 33.2% of FTSE 250 board positions (up from 29.6%), but 139 FTSE 250 companies had not yet achieved the 33% target.
- > Across the FTSE 350 there were only 39 female chairs (11 in the FTSE 100), 89 female SIDs (23 in the FTSE 100) and 17 female CEOs (8 in the FTSE 100). There were only 76 female executive directors (31 in the FTSE 100), being 12.1% of executive directors in the FTSE 350.

As of 28 January, the FTSE 350 no longer had any all-male boards, but still had 16 companies with only one woman on the board.



TUPE

EAT applies CJEU ruling that employment contracts may transfer to multiple transferees under TUPE

In *McTear Contracts v Bennett*, the EAT held that an individual contract of employment may transfer to more than one transferee on a TUPE service provision change. Following a re-tender, the work of the outgoing contractor was split geographically between two incoming providers. The EAT applied the decision of the CJEU in *ISS Facilities v Govaerts* that the rights and obligations under an individual employment contract were transferred to each transferee in proportion to the tasks performed by the employee. The EAT held that this principle also applied to service provision changes under reg 3(1)(b) of TUPE.



Financial sector pay

New CRD V & IFD remuneration rules toolkit

The Investment Firms Directive and CRD V are making big changes to the way remuneration is regulated at banks and most investment firms and credit institutions across the EU and in the UK. We now know what the basic rules will look like but there are still a lot of moving parts as guidance, regulator discretions and technical standards are still coming together. The UK is now following its own path in some respects.

To help keep track, we have just launched our **CRD V & IFD remuneration rules toolkit**. It collects guidance and information on the new rules and how they are being implemented in the UK and EU.



Corporate governance

FRC guidance on improving the quality of corporate governance reporting

Last November the FRC reviewed the first year of reporting against the [Corporate Governance Code](#) (see our [previous publication](#) for details). The FRC have now issued detailed [guidance](#) on how companies can improve the quality of reporting.

There are pointers on how to assess and report compliance with certain Code provisions (including *pension contribution rates alignment, post-employment shareholding and engagement with workforce and shareholders*), and how to explain non-compliance. The FRC expect *every* element in the Code Provisions to be satisfied and a clear explanation of any non-compliance. The FRC reiterate that a full and meaningful explanation for non-compliance should show that an alternative arrangement is more appropriate and beneficial in upholding high standards of governance at the company.

Covid guidance: LTIP performance conditions

The Investment Association (IA) have published an **addendum** to their November 2020 Covid guidance. (See our **previous publication** on that guidance). They deal with the difficulty of setting performance conditions for new LTIP grants in the current market environment. If a company has been significantly affected by the pandemic, the IA will accept remuneration committees granting awards at the usual time but delaying setting the conditions by up to six months. The IA still want a three-year performance period, but if that's not possible, it can be shortened by up to six months, so long as there's a post-vesting holding period. There should be a proper explanation of the position and a reduced grant size.

Updated PLSA stewardship and voting guidance

The PLSA have published their **2021 Voting Guidance**. On executive pay, they emphasise that maximum payouts must take into account the Covid impact on the company, any government support received and workforce treatment. Companies should also consider how these might impact the perception of remuneration among stakeholders.



Enterprise Management Incentives (EMI)

Budget call for evidence

As part of the Budget, The government published a **call for evidence** on how enterprise management incentives (EMI) tax-qualified options are working out in practice. The aim is to ascertain whether EMI effectively support high-growth companies which need to recruit and retain the best talent so they can scale up effectively. The call for evidence also asks whether more companies should be able to offer EMI options. Responses are required by 26 May 2021.

Furloughing still not a “disqualifying event”

The government has **confirmed** that until 5 April 2022, anyone who is furloughed or working reduced hours due to Covid-19, will not breach the statutory “minimum working time” requirement for EMI options. (The requirement is generally 25 hours a week or, if less, at least 75% of working time.) This extends the previously announced expiry date for this concession, of 5 April 2021 (see **October HMRC Bulletin** and our **previous publication**).



Issues for Boards 2021

Please see our [annual publication](#) for discussion of topical issues for the year ahead, including the future workplace and the impact of Covid-19 on executive pay.

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