

Law News

Newsletter for commercial clients

Summer 2015

General election results and their employment law implications

Who would have thought that the pollsters would get it wrong? Now that the dust has settled on the result of the general election we can consider some of the Conservative party's key pre-election pledges in relation to employment law.

Whilst there is no guarantee that these promises will result in changes to the law (even if they were carved in stone), they give a good indication of the direction of reform of the new government and likely implications for employers.

You will probably recall that all the main political parties made pre-election promises relating to the protection of workers under zero-hour contracts. The Conservatives made it clear that the contracts themselves are not inherently bad, but there was scope for them to be misused – in particular through exclusivity clauses. The ban on the use of exclusivity clauses was introduced at the end of May 2015, no doubt due to the extensive media attention the issue attracted.

On the controversial question of tribunal fees, the government recently announced the start of the post implementation review. The review will

consider how effective the introduction of fees has been in meeting the original financial and behavioural objectives, while maintaining access to justice. The review is expected to be completed later this year.

The pledge to hold an in-out referendum on EU membership by the end of 2017 will be a dominant issue for the new government. For employers, the outcome of the referendum will have a significant impact in light of the number of employment rights derived from or impacted by EU law – working time, transfer of undertakings and collective redundancies to name but a few. It will certainly be a question of 'watch this space' alongside the proposed plans to introduce a British Bill of Rights.

Matthew Clayton
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Matthew Clayton – Chambers UK say: "is responsive, commercial, understands where employers are coming from and gets right to the point."

Charities & not-for-profit



Kate Hickey – a corporate lawyer with a charities & not-for-profit sector focus.

Strategic review

Trustees should regularly review their charity's effectiveness and how the charity operates in changing or uncertain economic climates. The Charity Commission has recently published a 15 question checklist which provides a useful tool to help trustees respond appropriately to change by developing plans and timetables for action.

Changes to charity audit thresholds

Changes to charity audit thresholds came into force on 31 March 2015. These include increasing the basic audit threshold from £500,000 to £1 million. Trustees are encouraged to look at the changes to see if their charity can benefit from them. Updated guidance can be found on the Charity Commission's website.

Grants by charities

A reminder that trustees must undertake reasonable due diligence when making grants to non-charitable organisations. They must ensure that the funds are used only for charitable activities which further the purposes of their charity and that do not expose it to reputational or other risks, which might impact on public trust and confidence in it.

Kate Hickey
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Don't delay on mobile phone mast lease renewals



Partner Susie Wynne handles a wide range of commercial property matters. Her experience includes portfolio management and investment work for major high street names, telecommunications sites, large scale property finance and renewables.

Recent reports in the press have confirmed that Britain's mobile phone operators are lobbying the government to intervene with landlords to reduce the rents payable for mobile phone masts.

They want the government to give them the same powers as the energy and water companies to build up their networks. Some commentators have speculated that this could mean the average annual rent for a rural mobile phone mast dropping from around £7,500 a year to less than £250 a year. This would be a significant decrease in income for landowners (both rural and urban).

The operators are arguing that the charges that they face are unfair when compared with other utility companies. This is particularly sensitive in light of the government's requirements for mobile phone operators to increase network coverage in rural areas.

A consultation is currently underway to consider reforming the 1984 regulations that deal with relationships between mobile operators and landlords. A report is expected after the election.

It would be sensible for landowners who currently have mobile phone masts on their property, the leases of which have expired or which are due for renewal, to ensure that renewal negotiations are settled as quickly as possible in case the government does decide to alter the regulations in favour of the operators.

Susie Wynne
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How are your energy levels?



Alasdair Garbutt – a commercial property specialist who is experienced in sales & acquisitions, development transactions, landlord and tenant and property management matters.

The Energy Act 2011 placed the Secretary of State under a duty to bring into force regulations to improve the energy efficiency of buildings in the domestic and non-domestic private rented sector in England and Wales.

The regulations will affect buildings which have an energy performance certificate rating of F or G. From 1 April 2018, it will be unlawful for landlords to use non-compliant buildings for new lettings and after 1 April 2023 all lettings, including existing leases, will be caught unless an exemption applies.

For some landlords, this may require you to make energy efficient improvements to your buildings sooner rather than later.

Alasdair Garbutt
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The Gloucestershire Business Show

We enjoyed seeing many of you at the business show recently where we took a stand alongside 130 other exhibitors. Our employment team had a good response to their new product HR Legal Toolkit which was launched at the show.



Client news

Commercial property partner Susie Wynne acted for outdoor clothing brand **Weird Fish** in connection with its new shop in York. The company's garments are stocked in stores such as Debenhams, Blacks

Leisure and Cotswold Outdoor as well as twelve of its own outlets.



Agriculture & estates partner Frank Smith has been instructed to sell a **sporting estate** in South Gloucestershire which is anticipated to fetch offers in the region of £20 million.

Popstar Rhianna says no to passing off



Litigation partner Paul Gordon is an expert in different types of intellectual property disputes. This past year he handled claims in the High Court and IPEC dealing with trade mark, copyright, design right and patent infringement as well as other commercial disputes.

A passing off claim is a way of enforcing an intellectual property right. It can be used to try and prevent one trader from misrepresenting goods or services as being those of another, and to stop a trader from suggesting that his goods or services have some association or connection with another when it is not true.

Misrepresentation is not confined to trade names and trademarks, and can include such things as slogans and visual images where they have become part of someone's goodwill or reputation.

A recent example is the case of *Robyn Rhianna Fenty and others v Arcadia Group Brands Ltd (trading as Topshop) and another 2015*. Topshop sold t-shirts showing an image of well-known pop star Rhianna. Rhianna's case was that these were sold without her consent and amounted to passing off. She argued that the sales were damaging to her goodwill, particularly as she had associations with the fashion industry.

The court agreed that Rhianna was a style icon and that she had an association with fashionable clothing, acknowledging the connection and overlap between music and fashion, recognising that she

had entered into contracts with other fashion businesses, and so accepting that she had goodwill in the industry. The judge also found that there was a misrepresentation as buyers would have believed that Rihanna authorised the t-shirts when that was not the case.

The court stated that if a substantial number of purchasers were likely to buy the t-shirt under that false impression, then this would be damaging to Rhianna's goodwill and would lead to a decline in sales in her merchandising business, and a loss of control over her reputation in the fashion industry.

There is no separate right which can be applied to protect against the reproduction of a persons' image. However, this case shows that, where circumstances allow, there may be other ways to protect against the reproduction of an image through the law of passing off.

Paul Gordon
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Record fundraising result for our charity of the year

We raised a whopping £10,949.75 by organising a full programme of events for our chosen charity of the year, National Star.

James Grigg, partner and head of our charity committee, said everyone at the firm was delighted to smash their £10,000 target.

National Star will use the money raised to enhance young people's lives and help them meet their full potential.

"On behalf of the young people that we support, National Star says a huge thank you to Willans," said David Ellis, Chief Executive of National Star.



Commercial property associate Alasdair Garbutt acted for well-known national charity **Shelter** in connection with the lease of substantial new regional offices in Sheffield of around 19,000 sq ft.



Commercial property partner Nigel Whittaker acted for **Ramec Properties Limited** in its purchase of a substantial office building at Welland House, Gloucester built on three floors. One floor of the premises is

already sublet to a third party. The property will be the new headquarters for Ramec as well as Client Managers Toolkit Limited, a rapidly growing software company. Both companies are owned and operated by the

same shareholders who have engaged Willans for many years over a broad range of legal services.

Fit for purpose? The new Fit for Work scheme

It is estimated that annually more than 130 million days are lost to sickness absence at a cost to the economy of around £15 billion. Employers face an estimated annual bill of around £9 billion for loss of production and sick pay costs.

Following a consultation, the government's Fit for Work service began its national rollout in March this year. Initially it was expected to be completed by late May 2015 but it is now more likely to be towards the end of 2015.

The scheme has two key elements:

Assessment service

Once the employee has reached, or is expected to reach, four weeks of sickness absence, their GP will refer them for an assessment by an occupational health professional. Employers will also be able to make a referral after four weeks of absence.

The assessment will identify issues preventing the employee from returning to work and provide recommendations for treatment and advice on graduated return to work programmes. In most cases the result will be a Return to Work plan which will contain advice and recommendations to help bring the employee back into the workplace. These plans will replace the GP fit note currently used to certify an employee's absence from work.

Advice service

This element connects employers, employees and GPs via a phone line and an interactive website. The advice service is already up and running – it was launched in December last year when the Fit for Work website went live. Trials of this service have already taken place with relatively positive feedback.

The process sounds straightforward, but several experts have expressed reservations about the scheme, predicting a number of issues that could arise once the service is rolled out more widely.

For now, the Fit for Work scheme is merely a source of information and a means of quickly and easily obtaining free advice from occupational health professionals. Managing sickness absence is a sensitive and difficult issue and certainly a 'one size fits all' approach will not work. The real test will come when the referral service is rolled out nationwide. Will employers actually make use of the service? Will it be able to cope, or will it buckle under the weight of enquiries? Will the quality of Return to Work plans make them more of a hindrance than a help?

The Fit for Work scheme will be something employers have to welcome and embrace. Employers should consider whether their absence policies need to be updated and whether their sick pay terms should be amended to reflect the new scheme.

Matthew Clayton
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Exclusive interview with our managing partner

Have you watched the Cheltenham Chamber of Commerce's member's profile? Our managing partner, Bridget Redmond was interviewed about her career and what working at Willans means to her.

You can watch this interview by linking to <http://bit.ly/Chamberofcommerce>



Award nominations close 5pm, 7 August



We are delighted to be sponsoring the Taste of Gloucestershire Food & Farming Awards for a third year. It celebrates farmers, producers, retailers and those pubs and restaurants that we enjoy visiting so much.

You can show your support and vote for your local favourites on the award website online at www.digital-thisis.co.uk/gloucestershire/taste Applications close 7 August.

Since our last publication, the wills, probate & trusts team supported local medical charity Cobalt through its make-a-will month campaign. We raised in excess of £3,000 and are pleased to have supported such a worthy cause.

Client news



Company commercial solicitor Peter Raybould acted for **Honeybee Holdings Limited** in connection with the share sale of West End Events Limited, an event management business which organises

corporate and social events and parties at well-known hotels in London.

Creating company marketing material? Don't be Innocent

When a company commissions a third party such as a designer to create material, the third party owns the copyright in it, unless there are contractual provisions to the contrary. Often when design agencies undertake work a formal assignment of the copyright is overlooked.

One such case, *Fresh Trading Ltd v Deepend Fresh Recovery Ltd*, involved the copyright of the logo of the well-known smoothie business Innocent. The design agency, from whom Fresh Trading (the owner of Innocent) commissioned the logo under a consultancy agreement, went into liquidation.

The agency's purported interest in the logo under the agreement was bought by a third party who subsequently assigned the interest to a holding company. The holding company then obtained from the OHIM a declaration of invalidity of the registration of Innocent's community trade mark of the logo, based on the holding company's alleged ownership of the copyright in it.

Fresh Trading started proceedings in the High Court. As neither party was able to produce a signed copy of the original agreement and there was no mention of any such copy in emails, the judge decided there had not been an effective legal assignment of the copyright to Fresh Trading. However, he found that there had been an equitable assignment, as the agreement provided that copyright ownership would pass on approval of any designs by Innocent. Such approval had occurred and the fact that the design agency had not received the remuneration provided for in the agreement did not negate the assignment.

The judge added that even if he had not found an express assignment on the facts, there was an implied assignment of the copyright as this was the only arrangement that made commercial sense. Furthermore, even if Innocent had not owned the copyright, the holding company would have been stopped from enforcing its copyright at this late stage after Innocent had built up such a substantial business based upon this logo.

The case is a useful reminder to a company using design agencies that the contract should provide for a legal assignment to the commissioning company of the IP rights created by the agency. Such matters are often overlooked, but until this is done, the company may only have an argument as to equitable title to the IP rights.

Theresa Grech
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Theresa Grech – wide experience of corporate and company matters, and a specialist in data protection and IP.

Law News is now available electronically. If you would prefer to receive it in this format then please let us know, email us at: law@willans.co.uk

Rural news



Can HMRC take an axe to your woodland business?

There are signs that HMRC is taking a closer look at tax reliefs for commercial woodland. Issues may arise where woodlands are sold and capital gains tax needs to be considered, or where woods are passed on after death and inheritance tax relief is claimed.

Inheritance tax and solar development

Where land is leased to a solar power operator, it no longer qualifies for agricultural property relief so could be subject to inheritance tax of up to 40%.

To read Frank Smith's articles in full, visit www.willans.co.uk/news

We handled the multi-million pound sale of two Gloucestershire businesses, **Window Widgets** and **Eclectic Systems**, to investment group DW3 Products Group Limited. Paul Symes-Thompson

and Theresa Grech led the team, which included corporate associate Peter Raybould, property partner Laurence Lucas, employment partner Matthew Clayton and employment solicitor Asim Khan.

Commercial property partner Laurence Lucas acted for motion control firm **Moog Controls Limited** in the move to its new facility. It comprises 23,842 sq ft of manufacturing space, 20,053 sq ft of offices

and 11 car parking spaces.

Clarification of share buyback rules

The share buyback regulations introduced in 2013 relaxed certain Companies Act 2006 requirements that would otherwise apply when a company undertakes a buyback of its shares.

One of the main changes gave a private company the ability to effect a buyback of shares from cash without the need to be holding distributable reserves. The maximum purchase price for the shares acquired under this relaxed provision in any financial year is however currently limited to the lower of £15,000 and the 'value of 5% of its share capital' (the de minimis exemption).

Unfortunately, the 2013 regulations created both legal and accounting uncertainties. On 6 April 2015, new regulations were brought into force to clarify these uncertainties although the use of the de minimis exemption continues to be limited given the financial constraints (2015 regulations).

The 2015 regulations:

- clarify that the annual limit for the de minimis exemption is the lower of £15,000 and 5% of the company's paid up nominal capital as at the beginning of the relevant year;

- align the treatment of a purchase under the de minimis exemption with the purchase made out of capital; and
- provide that the shares purchased under the de minimis exemption may not be held in treasury.

The Department for Business Innovation and Skills has published a revised version of its guidance explaining the changes now made to the share buyback regime.

This makes clear that as a result of the changes made by the 2015 regulations, the purchase price for a buyback made under the de minimis exemption does not have to be the nominal value of the shares.

The new guidance states that it remains the government's intention to carry out a full review of the share buyback provisions in 2016, which will include the amendments made by the 2015 regulations. We will keep you informed of developments.

Theresa Grech
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Pension advice autumn session planned

Our wills, probate & trusts lawyers and pension advisors Prosser Knowles are running a free autumn event on the new pension reforms which came into place earlier this year. They will be explaining how this affects you and your loved ones and will provide you with a checklist to ensure your personal affairs are in the best possible order to protect you against these changes.

To register your interest please contact
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The Deregulation Act 2015 – changes for residential landlords



Amy Gates – handles disputes arising out of commercial contracts, property and landlord and tenant matters.

The Deregulation Act 2015 was passed earlier this year and covers various issues which will be of interest to landlords, tenants and those appointed to deal with residential properties. One of those relates to section 21 notices, which are the two month notices used by landlords to terminate an assured shorthold tenancy after the fixed term has expired.

From 1 July this year, there is a new prescribed form of notice which needs to be used when giving notice to tenants.

Section 21 timing

For new tenancies commencing after 1 October 2015 it will not be permissible to serve a section 21 notice during the first four months of the tenancy period. In addition, where a section 21 notice has been served, it will not be possible to apply to the court to enforce it more than 6 months after the date it was first given to the tenant.

Retaliatory eviction

For new tenancies commencing after 1 October 2015, section 21 notices will not be validly served if:

- the tenant has made a written complaint to the landlord about the condition of the property prior to it being served; and
- the landlord has not provided an adequate written response within 14 days; and
- the tenant has then complained to the relevant local authority who have decided to serve an improvement notice for the property or have carried out emergency remedial action themselves using powers under the housing health and safety rating system.

Whilst the Deregulation Act has clarified procedure in a number of areas where anomalies existed, we still advise landlords to tread carefully and take advice.

Amy Gates
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Starting a new business? Free start-up guide filled with legal tips now available

Starting a business can be both challenging and rewarding and requires careful planning, research and preparation.

It is estimated that each year over 500,000 new small businesses are created in the UK and research suggests that this figure is on the rise.

There are a number of legal considerations to be taken into account from the outset, not least deciding the name and right legal structure for your business.

Our lawyers regularly advise companies at all stages in the corporate life cycle. We have drawn on the expertise of their specialisms in corporate, intellectual property, employment and property law to put together a free guide to help new companies consider the legal implications of starting a business.

The free guide includes advice on:

- incorporating a company
- managing a company
- intellectual property law

- non-disclosure / confidentiality agreements
- standard terms and conditions
- employment law
- commercial property and leases
- buying a business

We are of course only a phone call away should you wish us to help you with your business planning, no matter at what stage. We cannot stress enough the importance of seeking professional advice to understand business codes of practice, laws and regulations to ensure you start off on the correct footing and avoid any legal trouble in the future.

Our 'start-up' guide can be downloaded for free by visiting the download section of our website. It aims to educate and provide assistance to start-up companies to help them reach their full potential.

Consumer Rights Act 2015

The Consumer Rights Act 2015 has received royal assent and will come into force on 1 October 2015.

To read the article in full, please visit the news section of our website.

New faces at Willans

In recent months we have welcomed two new lawyers to our private client departments.



Carrie James

Carrie James, conveyancer in our residential property department, helps a wide range of people with the sale or purchase of their homes or investment properties. One of her specialist areas is advising clients on the purchase of new build properties. Before joining us in 2015, Carrie was a lead plot conveyancer for property developer Bovis Homes, where she worked for seven years.

Rachel Taylor, solicitor in our wills, probate & trusts team, handles all private client matters but has a particular interest in mental capacity issues and is used to making deputyship and other applications to the Court of Protection (including statutory wills).

She also helps vulnerable clients in drafting wills and LPAs and is used to advising on the protection and management of high-value compensation awards, such as the creation of personal injury trusts or the appointment of a deputy.

Small Business, Enterprise and Employment Act 2015

Companies must get ready to comply with the forthcoming changes which were brought into effect by the Small Business, Enterprise and Employment Act 2015 that received royal assent on 26 March 2015.

It is anticipated that the corporate aspects of the 2015 Act will be implemented over the next 12 months. To read the article in full, please visit the news section of our website.



Rachel Taylor

Stay informed: 2015 employment law seminars

Our employment lawyers are running another series of their popular breakfast briefings aimed at providing directors, HR managers/advisors and in-house lawyers with the top-line facts.

These seminars give you a synopsis of the constant changes in employment law to enable you to plan, and to keep your business ahead of latest developments and in line with the law.

Dates and topics:

Tuesday 22 September 2015: 'Ask the expert' - put your questions to the speakers (Cheltenham)

Thursday 19 November 2015: Employment law changes this year and next (Gloucester)

Thursday 26 November 2015: Employment law changes this year and next (Cheltenham)

Venue

Cheltenham - National Star College, Ullenwood, Cheltenham, Gloucestershire GL53 9QU

Gloucester - Holiday Inn Express South Gloucester, Waterwells Business Park, Quedgeley, Gloucester GL2 2AB

Timings

7.30am - Registration, breakfast, networking and meet the speakers

8.00am - Seminar

9.00am - Close; further networking opportunity

Cost

£15 per seminar (incl VAT).

To book

Register for these briefings at events@willans.co.uk, supplying the name of attendee(s) and seminar dates you wish to book, as well as your company details and telephone number. Alternatively, please call us on 01242 542916.



More news on our website www.willans.co.uk

Contact

For advice on any of the issues covered in *Law News* or any other area of law, these are the people to contact in the first instance.

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