



*This Week in Employment Law*

**23-08-2021**

## Official legal challenge to mandatory Covid vaccine law expected

**Following reports last week of a number of care homes in England facing resistance over their efforts to comply with the law on mandatory Covid vaccines, an official legal challenge against the Government is now expected. We explore the potential implications for employers.**

- In recent weeks the Secretary of State for Health and Social Care, Sajid Javid, has been asked to explain the legal standing of the new regulations requiring care home workers in England to be fully vaccinated by 11 November 2021.
- The new regulations are being challenged on the basis that they contravene the Public Health (Control of Disease) Act 1984 which prohibits a requirement for people to undergo medical treatment, including vaccinations.
- This now seems to be progressing to formal judicial review proceedings. Although the judicial review proceedings would be against the Government, not employers, any official legal challenge to the new regulations will cause more uncertainty for employers.
- Judicial review proceedings would take time, with no guarantee that the new regulations would be overturned.
- Employers will need to keep a close eye on developments, while continuing to prepare for the 11 November 2021 deadline.
- Employers who put their preparations on hold risk running out of time to comply with the regulations, not being able to plan staff resourcing for November and may face action from the CQC for non-compliance.

### Decline in take-up of paternity leave

There has been a decline in the number of fathers taking paternity leave during the pandemic. According to data released by HM Revenue & Customs only 27% took paternity leave last year. It seems the low rate of statutory paternity pay has deterred some fathers who are already struggling financially from taking the time off, together with the impact of furlough and home-working.

#### Did you know?

John Lewis Partnership has announced plans to offer all eligible new parents 26 weeks paid leave. Enhancing paid family friendly leave can be a great way to improve gender equality, boost retention and attract new talent to your business.

### Google considers cutting pay for its US home-workers

Following reports that an unnamed MP recently suggested that civil servants working from home don't deserve the terms and conditions they get if they go into work, tech giant Google has indicated it may be cutting pay for its employees in the US permanently working from home. With the rise in home-working following the pandemic, it remains to be seen whether any UK companies will follow suit.

#### Did you know?

Employers would need to carry out a fair consultation process to gain the employee's agreement to a pay cut. In the absence of agreement, the controversial route of 'fire and rehire' may be an option.

### Dismissal fair despite no right of appeal

The inventor of a water efficient toilet who stepped down as CEO of his company but stayed on as a director and employee, was dismissed due to an irretrievable breakdown in relationships. The EAT upheld the tribunal's decision that he was fairly dismissed despite not being given any right to appeal, as an appeal would have been futile in these circumstances.

#### Did you know?

Dismissal for 'some other substantial reason' (SOSR) is a fair reason for dismissal, provided the employer follows a fair procedure. An appeal will usually form part of a fair procedure, except in limited circumstances.

Care home employers should start consulting with their staff regarding their vaccination status and put measures in place to comply with the new regulations to avoid being on the back foot if the regulations remain current law. Contact our 24-hour Advisory Service for up-to-date guidance on this and more.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.