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REGULATORY

Lorry emissions crackdown

Last month, DVSA officers started carrying out roadside emissions checks on commercial vehicles. They are making sure that emission 'defeat devices' are not being used, and that diesel particulate filters have not been removed. If tampered emission readings are found, drivers will be given 10 days to fix the emissions system before fines and prohibition notices are imposed.

Central London ULEZ plans may be brought forward

The Mayor of London has proposed to introduce the ULEZ (ultra low emission zone) in central London in April 2019 - 16 months earlier than originally planned. The ULEZ will cover the same area as the existing congestion charging zone, and apply 24 hours a day, 365 days a year. Vehicles that do not meet Euro 6/VI emission standards must pay a daily charge to drive within the zone.

European mobility: all change!

The European Commission has recently published its European Mobility and Transport Package that will result in important changes

to EU law regulating road transport. Proposals include clearer rules on driving and rest times, measures to reduce CO₂ emissions, air pollution and congestion. The Commission is also looking to make changes to allow unlimited cabotage operations within five days of the international delivery. Vehicles under 3.5 tonnes are also likely to be made subject to some EU transport rules.

Driver digital tachograph cards - Error 48

A batch of some 4,000 digital tachograph cards produced between 3 March 2012 and 14 May 2012 may be prone to generate an Error 48 (indicating the card had expired), even though the card date is actually valid. Those cards should have either been replaced or renewed via the normal process, but any others affected should be returned for replacement. Anyone experiencing problems is advised to contact the DVLA on 0300 790 6801.

Direct Vision consultation

To reduce the number of HGV collisions with cyclists and pedestrians, Transport for London proposed the Direct Vision Standard (DVS) last year. Phase one of the consultation closed in April; its results had

not been published by early August. Further consultations are anticipated in autumn 2017 and spring 2018. Although its impact is not entirely clear, at a stakeholder forum held recently, TfL estimated that current DVS proposals would ban more than half of the N3 off-road HGV chassis type by 2020, it was reported. If true, this would have a particular effect on construction trucks.

EMPLOYMENT LAW

Holiday pay claims

After an appeal to the Employment Appeal Tribunal was denied several months ago, it appears settled that in respect of holiday pay claims, a three-month gap between underpayments will limit the scope of back pay for previously underpaid holiday.

Tribunal fees

On 26 July 2017 the Supreme Court issued a judgment stating that the Employment Tribunals and Employment Appeals Tribunals Fees Order 2013 has prevented access to justice and is unlawful.

That law had originally ordered that a fee had to be paid to bring a claim in the Employment Tribunal. Perhaps unsurprisingly, once it took effect, claims fell by 70%.

Then, trade union Unison challenged its legality, arguing that the level of fees in the Employment Tribunal

(reported to be £400-£1,200) compared to those in the Small Claims Court (£80-£455 or more, depending on the claim amount) prevented access to justice for employees.

Since it is more expensive to bring the more complex claims to the Employment Tribunal, the Supreme Court argued that the order was indirectly discriminatory.

So the order has been quashed, and there are already reports that those Employment Tribunals that accept hard copy claims are no longer taking a fee for them.

Furthermore, the Supreme Court ordered that fees already paid by claimants shall be refunded. This could mean an overall reimbursement in the region of £32 million from the Lord Chancellor's department.

There is now a legal question regarding those who did not bring a claim because it was too expensive to do so. Should the usual three-month time limit to bring a claim (excluding the Acas conciliation period) be extended, given the circumstances? It remains to be seen.

Finally, some say that this judgment is unlikely to mean the end of Employment Tribunal fees and that there is likely to be a consultation soon on a new, lower, fee regime which may even include a transfer of the fee burden from the employee claimant to the employer defendant.