TE LEGAL UPDATE

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REGULATORY

London's early ULEZ

The mayor of London has confirmed that London's ultra low emission zone (ULEZ), pictured, will be introduced on 8 April 2019, 17 months earlier than originally anticipated. From that date most vehicles will need to meet exhaust emission standards, or pay a daily charge, when travelling in the central London congestion charging zone. The ULEZ standard is Euro VI for lorries, buses, coaches and other specialist heavy vehicles. The daily charge for a vehicle which does not meet these standards will be £100. If this charge is not paid, the registered keeper will receive a £1,000 penalty charge.

First low emission zone for Glasgow

Glasgow will be the first Scottish city to put in place a low emission zone (LEZ), by the end of 2018; a total of four LEZ areas are planned in Scotland by 2020. The Glasgow LEZ is likely to initially focus on reducing emissions from buses operating in the centre of the city, with a focus on retrofitting older ones to improve emissions or to replace them with Euro VI models, where possible. Later phases will focus on commercial vehicles and passenger cars.

Shipper statement of weight

New regulations came into force on 1 October 2017 that require shippers and consignors to provide hauliers, prior to the vehicle leaving the depot, with a statement of weight to prevent them from carrying heavier loads than are legally permitted. The aim of this is to reassure hauliers that the container or swap body does not exceed the maximum legal weight capacity. It also clarifies legal responsibilities in the event of a roadside inspection.

The verified gross mass (VGM) for an import container under the International Convention for the Safety of Life at Sea (SOLAS) rules will be accepted as a shipper statement of weight. The shipper or consignor is free to decide what format the statement of weight will take. A statement of weight is not needed for empty containers. Operators must ensure that they are able to provide the required shipper statement of weight to DVSA enforcement officers during a roadside check. Failure to do so may result in the vehicle being deemed non-compliant and subject to a prohibition until the statement is provided.

EMPLOYMENT LAW

Backdated holiday pay ruling

The European Court of Justice has held that anyone deemed to be a worker is entitled to claim holiday pay for the whole of their employment if they had not been allowed to exercise their right to take it.

The ruling was made in the case of The Sash Window Workshop v King, in which Mr King worked as a self-employed salesperson for over a decade on a commission-only basis. He did not receive any pay when he was on holiday or sick leave. When he left in 2012, he brought claims in the Employment Tribunal for unlawful deduction of wages relating to holiday pay.

The ET deemed that he was a full-time worker and found that he was entitled to paid annual leave under the Working Time Regulations. However, under the UK regulations, workers have to give notice to take holiday, and if they don't use it in the current holiday year, they lose it, except in cases such as long-term sickness. The Employment Appeal Tribunal found that there was no evidence that King had actually requested, and been refused, paid holiday, and so therefore he had lost the entitlement.

King appealed the decision; the Court of Appeal referred it to the European Court of Justice. The ECJ ruled: "A worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave." It made no difference that Sash Windows had not considered the status of King as a worker, and therefore entitled to paid holiday, it determined.

Although there is a two-year back stop on claims for holiday pay, the ECJ determined that in this case leave may be carried over and a claim brought on termination. As a result, King is entitled to claim £27,000 of back pay.

The case will now be referred back to the UK Court of Appeal, where agreement is thought to be highly likely.

This is a significant ruling that could open the floodgates to huge claims for untaken holiday from self-employed contractors who are deemed to be workers. Employers who continue to use self-employed contractors should seek advice on the real status of their workforce.