

5 THINGS YOU NEED TO KNOW ABOUT HR IN 2021

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WHAT ARE WE GOING TO COVER?

1. Worker status

2. April 2021 changes

3. Covid-19 challenges

4. Discrimination developments

5. More change ahead?



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1) WORKER STATUS: A NEW APPROACH?

Employment status

Employees – full rights

Workers - some rights

Self-employed contractors – limited rights (in business on own a/c)

Uber v Aslam

Were drivers entitled to worker rights?

Were drivers working when they had the app switched on?

Supreme Court

Uber drivers were workers

Drivers were working when the Uber app was switched on

→ **A new approach to worker status?**

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Worker status

WORKER STATUS IN 3 STEPS

1: Start by considering who the legislation intends to protect as workers (not the written contract)

2: Look at all the facts, including the contract but also the conduct of the parties

3: Is the person “subordinate and dependent” on a business? If they are, then they are a worker, ***regardless of how their contract classifies them.***

FINAL THOUGHTS

What's the cost?

- NLW/NMW arrears
-penalty?
- Holiday pay
- Auto-enrolment contributions?
-interest?
-employee contributions?
-penalty?

Other litigation

- *Addison Lee v Lange*
- *O'Eachtiana v CitySprint*
- *B v Yodel*
- *Stojsavelievic v DPD*
- Litigation elsewhere in the world?

Unanswered questions

- What happens where drivers have more than one app switched on at the same time?
- Substitution?
- New legislation?

What should you do now?

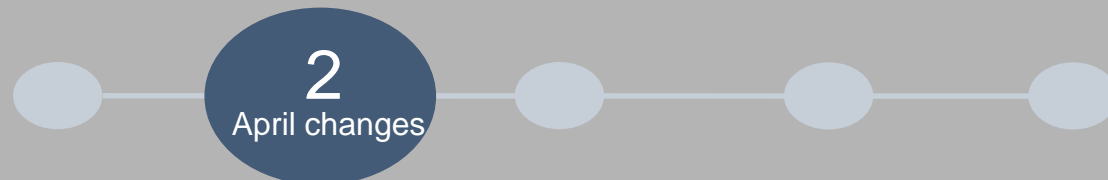
- **Audit your arrangements:**
 - Look beyond the written contract
 - Consider the purpose of the legislation
 - Control is still a key factor

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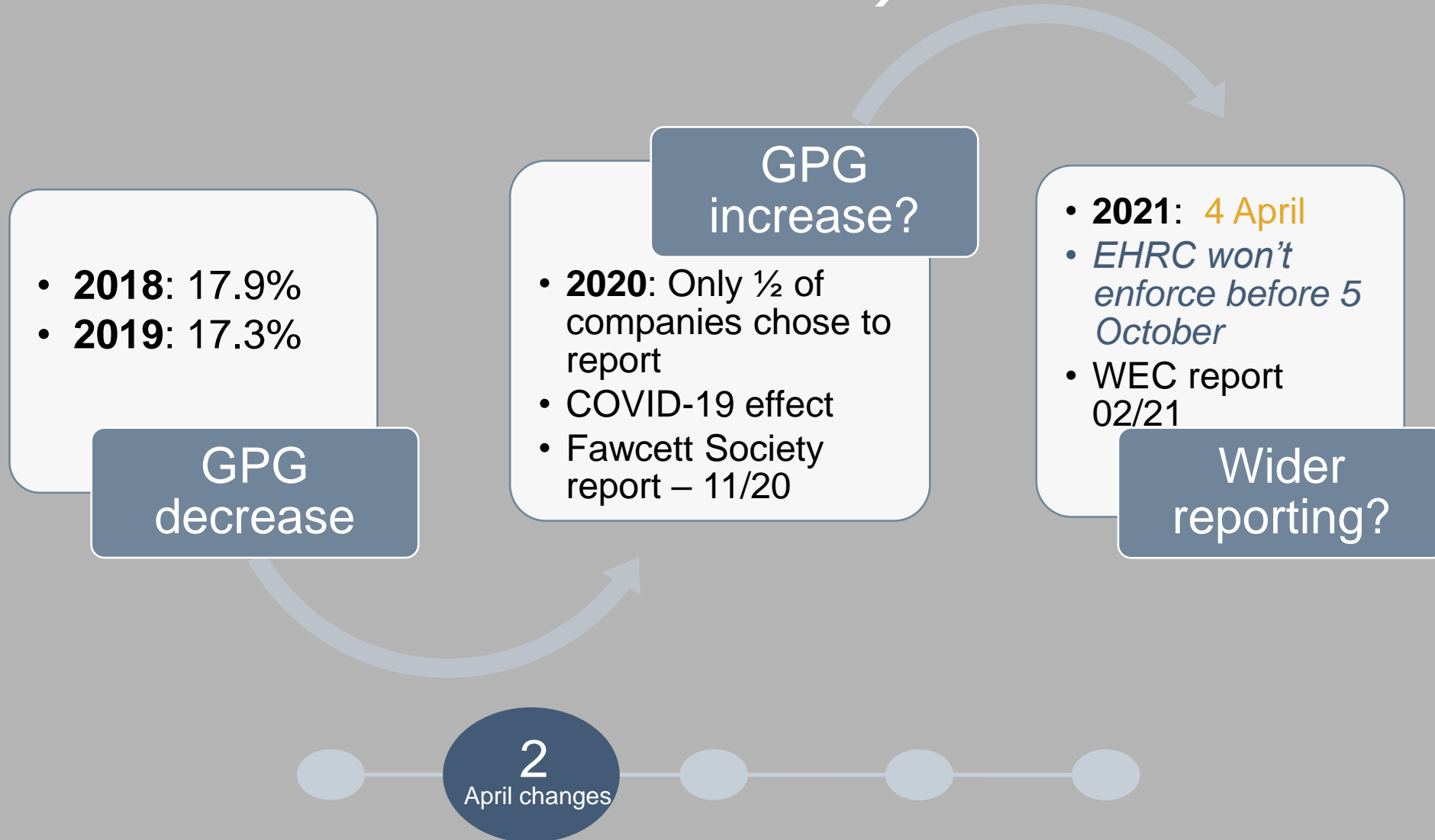
Worker status

2) APRIL 2021 IS A CHANGEABLE MONTH

DATE	LEGISLATION
1 April 2021	Increase to National Living / Minimum Wage rates and statutory payments NLW will increase to £8.91/hour - and will extend to 23 year olds for the first time
4 April 2021	Gender pay gap reporting deadline – although EHRC will not take enforcement action before 5 October 2021
6 April 2021	Changes to IR35 in the private sector
6 April 2021	Changes to the treatment of termination payments and Post Employment Notice Pay - to avoid unfair outcomes if an employee's pay period is defined in months, but the contractual notice period is expressed in weeks
12 April 2021	Increases to statutory rates of pay SSP will increase to £96.35/week SMP, SAP, SPP, SSPP, SPBP and MA will increase to £151.97/week



4 APRIL: GENDER PAY GAP REPORTING (*BUT WITH 6 MONTHS GRACE*)



6 APRIL 2021: CHANGES TO IR35 IN THE PRIVATE SECTOR

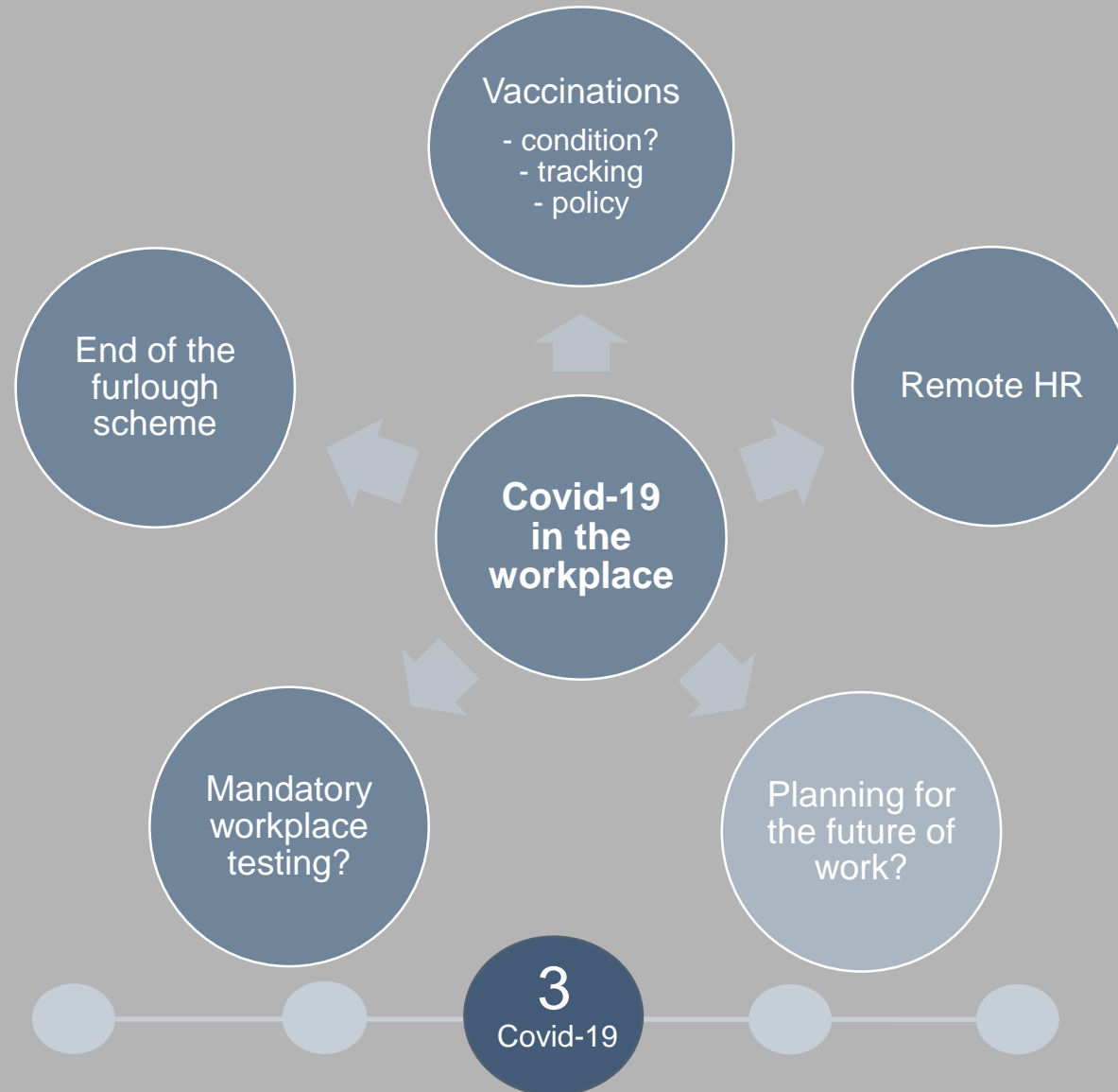
Current position

- Intermediary responsible for deciding whether IR35 applies
 - In reality this means the worker where the services are supplied through their own intermediary
- Consequences of IR35 applying?
 - Intermediary liable to withhold PAYE income tax and NICs on deemed employment payments, not the “client”

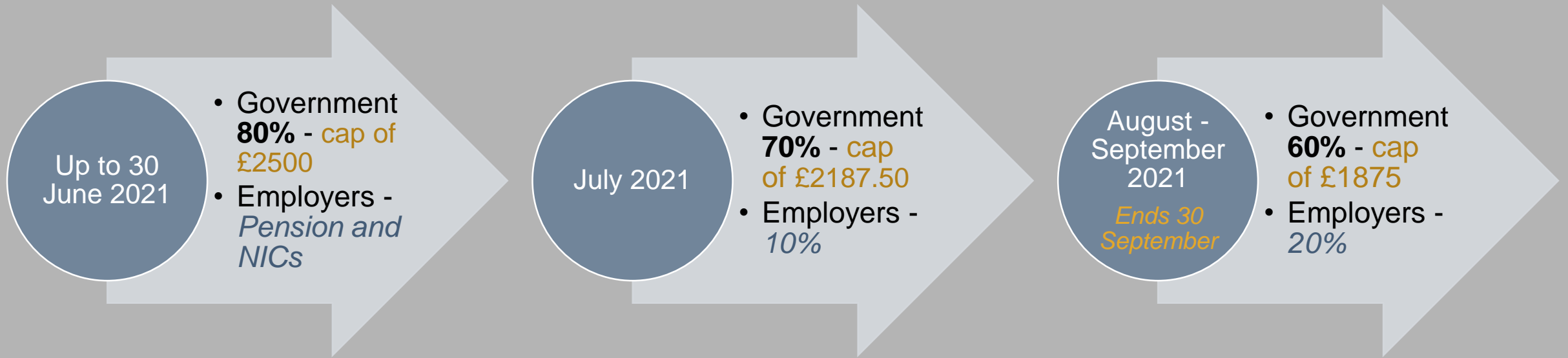
From 6 April 2021

- End user of the services (**Client**) will be required to make a determination of an individual's (**Worker**) employment status and communicate that determination to the party that the Client directly contracts with - and to the Worker
- If the Client determines that the Worker is an employee for tax purposes, the organisation paying the Worker's PSC (**Fee-payer**) will need to account for income tax and NICs (both employers and employees)

3) COVID-19 IS A CONTINUING CHALLENGE



END OF FURLOUGH: KEY DATES



4) DISCRIMINATION IS ALWAYS DEVELOPING

Can budget constraints be a legitimate aim?

Heskett v SoS for Justice (CA)

- Is the employer's aim no more than a desire to save costs - or are they **compelled** to save costs? Fairly characterise the aim **taken as a whole**

Will interim relief extend to all discrimination

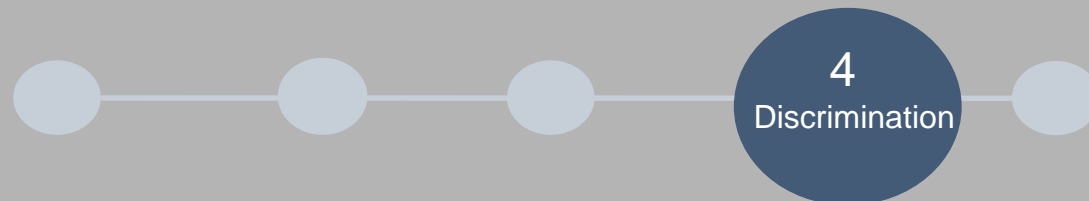
cases? *Steer v Stormshore (EAT) – on appeal*

- If the Court of Appeal declares that a lack of interim relief as a remedy for discrimination is incompatible with the ECHR, the UK government will have to extend interim relief to all discrimination claims

- ALTHOUGH SOME PRINCIPLES REMAIN THE SAME

When will equality training provide a defence to discrimination claims? *Allay (UK) Ltd v Gehlen (EAT)*

- To succeed with the reasonable steps defence, workplace equality training should be substantial and conducted regularly to avoid it becoming "stale"



5) MORE CHANGE IS INEVITABLE

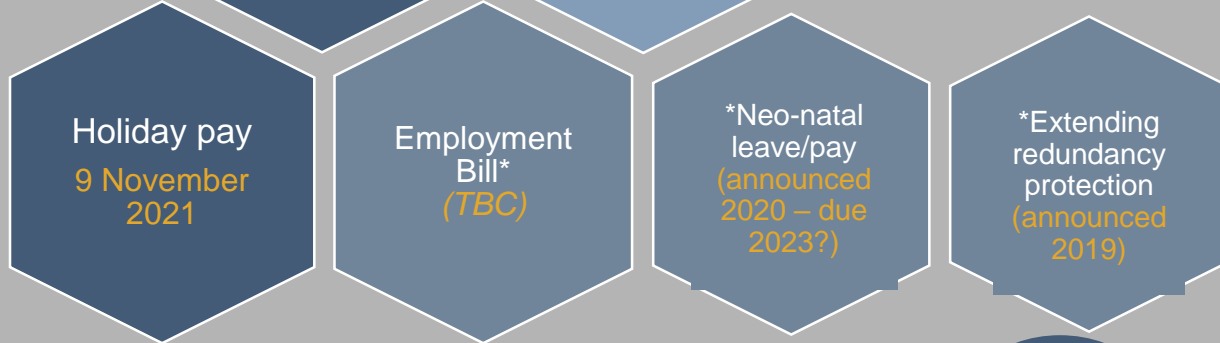
Contract changes



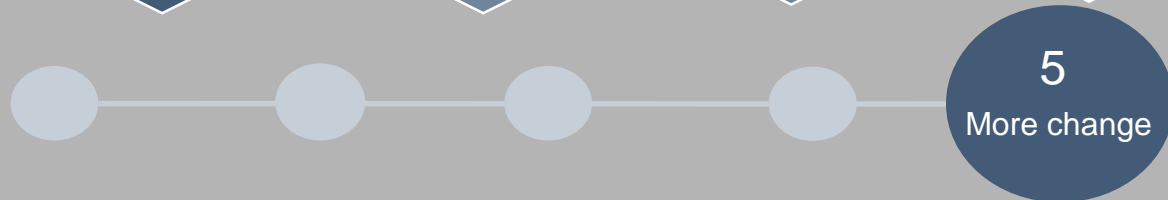
Holiday pay



Other legislative review



Employment Bill



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Please send any follow up questions to renee.lofthouse@addleshawgoddard.com

The next session (*What does Brexit mean for HR and Employment law?*) starts at 10.50am