

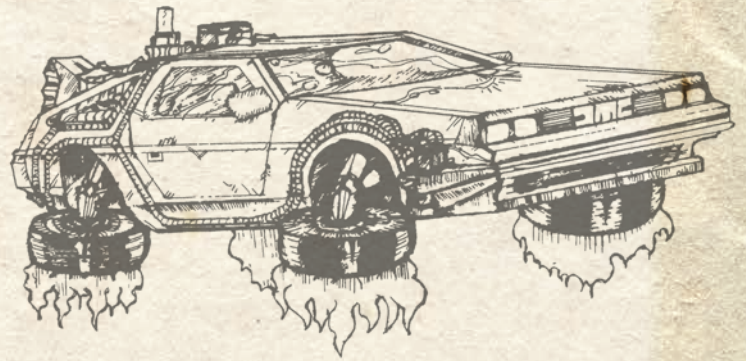


muckle^{LLP}

A Muckle
Christmas
Carol

A Muckle Christmas Carol

2015 for employment lawyers has been a year of anniversaries – 40 years since the Sex Discrimination Act and Equal Pay Act, 20 years since the Disability Discrimination Act. Momentously 21 October 2015 also saw "Back to the Future Day", the day that Marty McFly travelled to in Back to the Future II.



Employment changes in 2015 have been reasonably steady after the maelstrom of the holiday pay cases at the end of 2014. The main change has been shared parental leave, ironically probably the most detailed piece of employment legislation to try and provide as much flexibility as possible. This was much heralded in early 2015 but in practice appears to have had little take up so far. It does though sum up where we are in our view – the traditional legislative approach trying to adapt to increasing demands for flexibility and the uncertainty that for many employers and employees that provides.

Rather than an annual review of cases we thought that we'd therefore do something different this year. Our inspiration for this Christmas newsletter is taken partly from Marty McFly and partly from Charles Dickens (like his work our future assessments are from our imagination).



We thought that to look at how far employment law has come within a working lifetime helps inform where employment law is today. It also helps us to consider the issues that we are now facing and likely to face in the near future. This may help employers think about what it might look like if we could borrow Doc's DeLorean time machine and travel 40 years into the future to see the working world in 2055..... so please sit back, crack open the port and have another stilton cracker!

The Ghost of Employment Past

First stop 1975

The Ghost of Employment Past would be the Ford Granada Mark II driving DCI Gene Hunt from BBC's "Life on Mars". For many employees today it's hard to recognise the working environment of the 1970s:

- The shadow of the oil crisis in 1973 which led to the "three day working week" and huge industrial unrest in 1974 still loomed large for many employers and employees alike;
- Many of the working environments were a fug of cigarette smoke with all the inherent dangers of passive smoking (not that anybody recognised that as a risk then particularly!);
- Industrial Tribunals had been around for a little over 10 years and unfair dismissal for just under five years and claims were still at reasonably low levels;
- The Race Relations Act 1965 had started to address racial discrimination in public places, but excluded shops and boarding houses. Although employment was covered from 1968 the legislation did not fully address racial discrimination issues and introduce the provisions that we understand today until the Race Relations Act 1976;
- Sex discrimination and overt sexism in the work place and within decision making continued beyond the introduction of the Sex Discrimination Act 1975. Prior to its introduction, many female employees lost employment when they married or fell pregnant and had limited rights to return on a part time basis after maternity leave - those mindsets took years to change, particularly in male dominated engineering and construction environments;
- Race and sex were then the only two strands of anti discrimination legislation and age old prejudices, particularly against disabled candidates and employees, continued; and
- The world of work for many was a sea of paper - typewriters and dictation on tape or by shorthand still ruled, faxes and mobile phones were years away, computers were in their infancy and not yet used in many businesses and communication was by telephone and post (even within businesses - remember those orange envelopes where you'd cross out the last recipient and write in the next!). Many people still did not have telephones at home and therefore work for most was all about being on site, being seen to be working and there being a clearer differentiation between home and private life. This legacy may explain the conditioning of many managers views of their employees over the years and the struggles many now face of the immediacy of response to work matters.

The Ghost of Employment Present

Back to 2015

Our choice for the Ghost of Employment Present would have to be Richard Branson - an entrepreneurial builder of businesses who continually pushes the boundaries of the sectors that he focuses on. He has grown his business empire throughout the intervening 40 years and is willing to embrace substantial change and expects his employees to do the same. A strong culture and identity coupled with a simplicity of message, recognition and trust are substantial drivers in his businesses with initiatives like moving to having no set holiday entitlement being things that they are prepared to try and develop as they go. The changes he introduces have led to others following - who would have thought in 1975 that it would become acceptable for business leaders not to wear a tie or even a suit!

As we speed through time in our DeLorean from 1975 to 2015 and look out of the window it is amazing to see where we have come in the 40 years since 1975, but also where change has been much slower:

- The miners' strike in 1984 to 1985 saw a change in our industrial landscape and the nationwide unrest saw Governmental driven changes which sought to reduce the powers of trade unions and still inform political policy today. Over the next decade, the closure of the deep pits, car making, ship building and other heavy industry completely changed the profile of many of our communities - some of which are still trying to adjust today;
- Globalisation has changed us from a manufacturing led economy to a service driven economy - Gordon Gecko and the 1980s "yuppie" generation had meant many of today's managers have grown up in a long hours culture with work the centre of their life;
- Europe has taken the lead on the development of many employment law principles from working time, to holidays, to transfers of businesses - with the European Courts rulings on issues from other EU states often leading to uncertainty for employers in how we apply UK legislation;



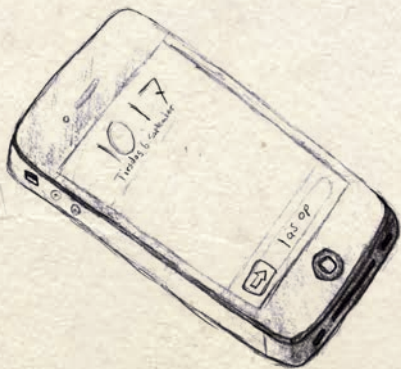
- 1995 saw the Disability Discrimination Act with its particular focus on the need for employers to make reasonable adjustments which is still not widely understood by many employers and still leaves work to be done;
- 1997 saw Tony Blair sweep to power and change the qualifying period for unfair dismissal from 2 years to 1 year together with a revision of the caps for awards - this led to tribunal claims providing more potential for substantial remedies and a steady growth of claims to their height in 2012/2013 with the resultant pressure on employers and the tribunal system;
- The worldwide financial crisis of 2008 and the need to respond saw a substantial change in the way employees and employers reacted to the pressures faced - many employees agreed to reductions in pay/hours in order to keep their jobs, large scale redundancies were not as common as in previous recessions - but in many areas those redundancies have followed as we have come out of the recession;
- Whilst the Equality Act 2010 has united all of the equality and diversity principles within one piece of legislation, there are still clear areas for progress. Outside of the public sector, equal pay claims have been historically rare. With legislation requiring employers of 250 or more employees to publish gender pay gap reporting from 16 March 2016 onwards, it appears we are on the cusp of a further significant development in protection. Equal pay legislation will be given more coverage than ever and with the introduction of the Living Wage it is likely that our traditional Anglo-Saxon reticence of talking to each other about what we each take home every week or month will disappear. David Cameron has shown his intent to focus on eliminating discrimination in this generation; and
- Employers are also struggling with their need for flexibility from their workforce against the increasing wishes of employees for flexibility and a work life balance that quite simply was not a demand of the workforce during the 1980s and 90s. Zero hours contracts have been politically vilified but remain with us as a means many employers use to try and manage peaks and troughs in demand. Whilst new pieces of employment legislation have largely settled down and there are reduced numbers of employment tribunal claims with them currently at 20% of their height, being clear about how to make the competing demands from employers and employees for flexibility can intersect is likely to be the biggest challenge for the future.

The Ghost of Employment Present

In the near future, the blurring of private and work life looks set to continue - current employment law does not work well with flexibility (it, like many of us has its roots in the 1970s) - some employers feel that they are having to indirectly finance social policy aims of recent changes: funding the Living Wage, the ability to request flexible working for all, shared parental leave (which will be open to grandparents from 2018) are all issues that employers tell us that they are concerned about.



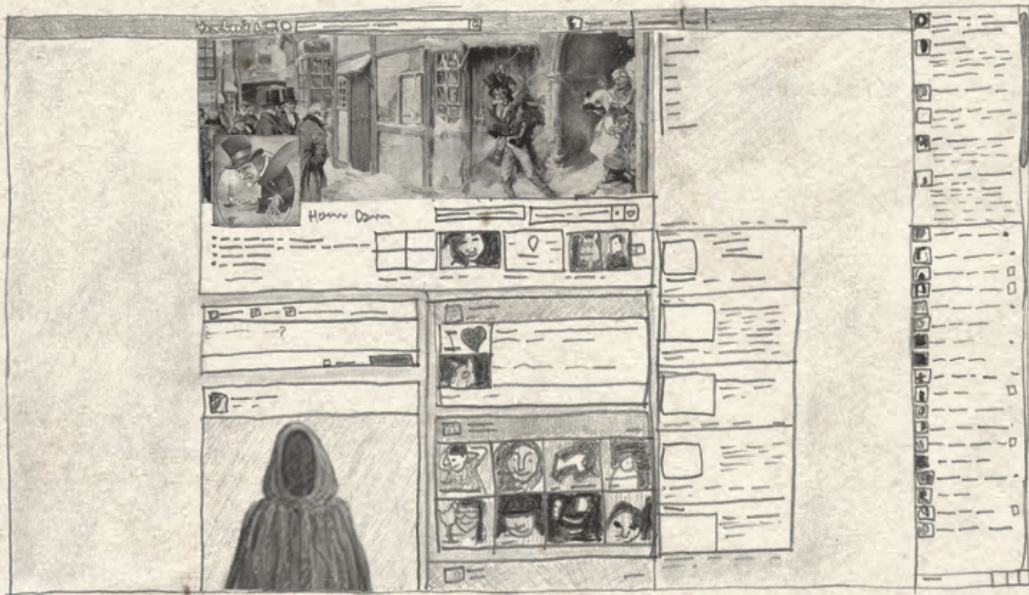
Many employers have concerns about protecting customer and client relationships and confidential information - but with the information publically available on LinkedIn, Twitter, Facebook and other formats (which lots of employers actively push employees to use for business development) for many the genie is already out of the bottle. Increasingly employees want to use the same device for work and home with BYOD ("Bring Your Own Device") policies being introduced by some employers - with the primary focus becoming on managing the security of information.



Where we will go from here seems to us to be likely to be as big a journey as the last 40 years

The Ghost of Employment Future

When the DeLorean stops in 2055, we could be anywhere from Silicon Valley to Milton Keynes. Our Ghost of Employment Future is at first difficult to recognise. A tanned and relaxed looking 71 year old American with a New York state accent - he explains how in late 2015 he decided to gift his billions over the coming years for "human advancement and promoting equality for all children in the next generation" - which is now this working generation. Gosh, it's Mark Zuckerberg!



We've arrived at a "Hub" - for many, the work place of the future. The rise in property prices and office costs, coupled with the wish for many people to reduce their environmental footprint and not take unnecessary journeys or spend increasingly long periods commuting have meant the death of the traditional office environment. The work place of the future for many will be wherever they or their wearable tech are. For many that is home, but working from home all of the time does not suit all and they want the interaction which comes from being with others.

A "hub" looks like somewhere between a giant Starbucks and a motorway service area with a large open working environment broken up with pods and breakout spaces surrounded by creches, gyms, day care centres for aging relatives, cafes and restaurants (with the best coffee of course - although levels of consumption now mean that caffeine addiction is of real concern to health practitioners) and other ancillary services. People working in all types of sectors come together at the "hubs", 24 hours a day. Many come here 6 or 7 days a week, as the social networking aspect coupled with how they can manage their work needs mean they can dip into whatever services they need with others who are there.

The Ghost of Employment Future

By 2055, our Mark also explains that:

- Many traditional jobs have disappeared, including many traditional service related roles such as administrators, secretaries, accountants and lawyers. Keyboards are no longer necessary for many tasks, the increasing availability of algorithms to manage accounts and assist decision making (including where disputes arise) means that the focus is now more than ever on creative and co-operative working;
- The increasing expense of traditional employees, with a living wage now at £50 per hour, means employers have automated as many tasks as are possible and manual engineering roles exist only for the highly skilled;
- Unfair dismissal law disappeared in 2030 as a result of the increasing wish of employees to move roles and to be flexible in their work making it less and less relevant - protection is in the contracts around the work arrangements that they agree;
- People tend to work now into their 70s or 80s and many never completely retire as they are healthier and frankly cannot afford to retire - they just draw down on their pensions savings over time and change what they do and how they work;
- There are more self-employed people than employees in the workforce. People are used to being able to pick what hours they work to fit in with their personal wishes;
- Social networking is the norm since birth and it has become increasingly common for individuals to form alliances with any number of people and to effectively bid for work and tasks and agree a rate per job as a result of the obligation since 2025 for all employers to publish rates of pay for all roles and any outsourced worker type tasks on their website; and

- Wearable tech has been taken to a further stage by many who have had an implant in their left hand which replaces many aspects of what was done previously using phones and laptops.



For many, a chip the size of a grain of rice holds their bank, work and personal details. They use this to start their hydrogen powered cars, gain access to their office/the "hub", home and the gym, to swipe for payment in shops and restaurants, to clock in and out from work to provide their ID when they travel. Voice commands replace most typing and other data entry and meeting technology is now so advanced that people from all over the world can effectively sit in hologram form in the same room to take part in a presentation or meeting. Routine business travel is a thing of the past for senior executives who realise that such time is dead time better put in to managing their businesses and growing their networks.

The "hub" is a hive of activity replicated millions of times across the world and allows small businesses and individuals greater ability to compete together with the global brands (who have been forced to operate on a similar basis but within their own structures).

With so many questions of key importance to ask, like "Who was relegated from the FA Premier League in 2016?" and "Did the UK ever win the Eurovision Song Contest again after the Brexit of 2018?" it's a wrench to leave. However, the DeLorean is at risk of being towed given it doesn't meet the extremely tough 2055 emissions laws introduced after the 2015 scandals - we need to run

Back in 2015, as Ebenezer Scrooge woke on Christmas morning to find that the world was the same but different to the night before, we open our eyes to the future and the need for change. The great thing about "Employment Future" is that (as Scrooge realised) "the future is what we make it". It looks like those working in 2055, which scarily is likely to include a large number of us, will look back on 2015 in the same way that we view 1975.

Happy Christmas from the Muckle employment team!



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