

Employment Law Update October 2024

Emma Game

Thompsons Solicitors

**CHANGING
LIVES FOR
THE BETTER
STANDING
UP** *for you*

Overview

- End of supremacy of EU Law and impact on legislation at the beginning of the year
- Legislation in force April 2024
- Legislation in force October 2024
- Key cases
- A change of direction - an overview of the Employment Rights Bill

Legislation 2024 in force 6 April 2024

The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024

Extends the requirement on employers to offer available suitable alternative employment where there is a redundancy situation to;

- Pregnant workers who inform employers of their redundancy on or after 6 April 2024
- Employees who have returned from statutory maternity or adoption leave which ends on or after 6 April 2024
- Employees who have returned from at least 6 consecutive weeks of statutory shared parental leave which starts on or after 6 April 2024
- The period of extension is 18 months from EWB/date of birth /date of placement or entry into GB

Legislation 2024 effective from 6 April 2024

The Paternity Leave (Amendment) Regulations 2024 and the Statutory Paternity Pay (Amendment) Regulations 2024

Paternity leave

allow fathers and partners to take paternity leave in two separate one week blocks (instead of only one block of either one or two weeks.)

allow fathers and partners to take their leave at any point in the first year after the birth or adoption of their child, (instead of only within the first 8 wks after adoption or birth).

Shorten the notice period required for each period of leave.

allow a father or partner who has given an initial notice to vary any dates given if they give 28 days' notice of the variation.

SPP

Can be claimed at any time in the 52 weeks after the birth or placement

Legislation 2024 in force 6 April 2024

The Flexible Working (Amendment) Regulations 2023 and the Employment Relations (Flexible Working) Act 2023 (amends S. 80F of the ERA 1996)

the right to make a flexible working request applies to employees from day one and applies to requests made on or after 6 April 2024

the employee can make two requests in a 12 month period S. 80F (4)

the requirement to set out the effects of the flexible working requested on the employer is removed

the employer must notify the employee of the decision (incl on any appeal) within two months of the flexible working request (the decision period) S. 80G(1)(aa) and 80G(1A)

the employer must not reject the request unless it has first consulted with the employee

ACAS Code of Practice on Flexible Working Requests has been updated

The Government has produced the right to request form

Legislation 2024 in force 6 April 2024

The Carers Leave Regulations 2024

Applies to employees from day one who has a dependant with long term care needs

One week's unpaid leave in any rolling 12 month period

Leave can be taken in one continuous block or separate days (min half a day)

Requirement to give notice specifying the ee is entitled to carers leave, the days carers leave is to be taken, notice is twice as many days as the leave requested or 3 days whichever is the greater (reg 7 (3))

Notice does not have to be in writing and no requirement to provide evidence (reg 7(4))

Employer cannot decline a request but may postpone it if certain criteria are met. (reg 8)

Right not to be subject to a detriment/dismissal

Legislation from 1 October

The *Employment (Allocation of Tips) Act 2023* came into force on 1 October 2024 and aims to ensure that tips gratuities and services charges are distributed fairly among all staff. The employer must

- distribute all “qualifying tips”, gratuities, and service charges to be passed on to workers without deductions
- make payment in full not later than the end of the month following the month in which the customer paid
- maintain a written policy detailing how tips are managed
- keep a detailed record of how tips are managed and distributed, which should be accessible to all workers.

Supplemented by a *Code of Practice on fair and transparent distribution of tips*

Workers can complain to an ET if the employer fails to fairly allocate and pay tips or to do so within the timeframes

Duty to prevent sexual harassment

The Worker Protection (Amendment of Equality Act 2010) Act 2023 comes into force on 26 October 2024 it:

requires employers to take reasonable steps to prevent sexual harassment in the workplace

sexual harassment occurs where a person is subject to unwanted conduct of a sexual nature that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person

Only EHRC can enforce the duty but...

If a worker brings a successful claim of sexual harassment in the workplace and the employment tribunal finds the employer breached the duty, compensation can be increased by up to 25%

EHRC [Technical guidance](#) which includes and [8 step guide](#) to preventing sexual harassment at work for employers

Case Law

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Employee Status and Agency Workers

HMRC v Professional Game Match Officials Ltd [2024] UKSC 29 - contracts between part-time football referees and their administrative body, met the minimum requirements for there to be a common law contract of employment.

Groom v Maritime and Coastguard Agency [2024] IRLR. 618 - a volunteer was held to be a worker when attending activities for which they were entitled to remuneration.

Donkor-Baah v University Hospitals Birmingham NHS Trust [2024] EAT 23 – the EAT held that the right to the same basic terms and conditions had under reg 5 of the Agency Worker Regulations 2010 did not apply to periods when an agency worker was between assignments

Changes to contracts

Humby v Barts Health NHS Trust EAT [2024] EAT 17 - whether an employee had been constructively dismissed when they resigned when they were reassigned from a band 6 to a band 5 position

Jackson (appellant) v University Hospitals of North Midlands NHS Trust (respondent) [2023] IRLR 796 – whether an employee had been unfairly dismissed when they were slotted into a new band 5 post following a restructure

Tesco Stores Ltd v USDAW (the Union of Shop Distributive and Allied Workers) and others ([2024] UKSC 28 - the Supreme Court restores an injunction to prevent Tesco from terminating contracts that included an entitlement to and re-engage employee's on a new contract without it

Redundancy and Dismissal

Valimulla v Al Khair Foundation [2023] EAT 131 - whether an employee was fairly dismissed for redundancy when he was placed in a pool of one

Hilton Foods Solutions Ltd V Wright [2024] EAT 28 - whether an employee can claim automatic unfair dismissal where they sought to take parental leave but had not given formal notice

Parnell v Royal Mail Group Ltd [2024] EAT 130 – whether dismissal of an employee who had been on long term sick leave was fair

Holiday pay and Contractual Payments

British Airways plc v De Mello and ors, EAT[2024] EAT 53 – whether the worker was entitled to claim that a number of different allowances amounted to a series when bringing a claim for holiday pay

Adekoya and ors v Heathrow Express Operating Co Ltd [2024] EAT 72 - whether employees who had been made redundant were entitled to a lifelong discount on rail travel

Discrimination and Equal Pay

Thomas v Surrey and Borders Partnership NHS Foundation Trust and anor [2024] EAT141 - an agency worker's belief in English nationalism was not a protected belief

Boohene V The Royal Parks Ltd [2024] ICR 1036 – whether contract workers supplied by a third party to work for a principal could claim indirect race discrimination against the principal when they were paid less than its directly employed workforce

Thandi and ors v Next Retail Ltd and anor ET Case No.1302019/18 – whether a difference in pay between the majority women sale staff who were paid less than mostly men warehouse staff could be objectively justified

Rentokil Initial UK v Mr M Miller [2024] 37 - the EAT has held that a trial period can be a reasonable adjustment

Trade union rights – are workers protected from being subject to a detriment for taking part in IA?

Mercer v Alternative Future Group Ltd and anor - the Supreme Court has held that the lack of statutory protection for workers who are subject to a detriment for taking part in the activities of a trade union is incompatible with the right to strike under Article 11 of the ECHR. In particular, the Court finds that by allowing an employer to impose a sanction short of dismissal for participating in lawful strike action effectively undermines the right to strike. However, as the Court could not read the statutory wording in such a way as to provide that protection, it is therefore left to Parliament to decide whether to amend the legislation to do so.

Cases to watch out for

Cases on appeal

ADP RPO Ltd v Haycocks – An appeal to the CA against a finding of the EAT that a dismissal for redundancy was unfair when there had been no meaningful workforce consultation when the redundancy proposals were at a formative stage. The appeal was heard on 5 July 2024 and judgment is awaited.

Hewston v Ofsted [2023] EAT 109 – the CA is to consider an appeal where the EAT overturned a finding that the employer's decision to dismiss an employee for gross misconduct fell within the band of reasonable responses. The case is to be heard on 17 October 2024

Bicknell v NHS Nottingham and Nottinghamshire Integrated Commissioning Board – whether the purchasing or commissioning of goods and services amounts to an economic activity for the purposes of a TUPE transfer. A decision as to whether an appeal is to be allowed is awaited.

Legislation and other developments on the horizon

The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

TUPE amendments applies to transfers which take place on or after 1 July 2024:

- Employers with fewer than 50 employees can be able to consult directly with employees where no existing employee representatives are in place
- Extending the right for employers of any size to consult directly with employees when less than 10 employees are proposed to be transferred where there are no elected reps already in place

Fire and Rehire

ACAS Code of Practice on Dismissal and R-engagement – came into force on 18 July 2024

Employment Rights Bill

A right to claim unfair dismissal from day one in employment

A right to claim automatic unfair dismissal where an employee is dismissed by their employer for not agreeing to vary their contract or if the employer dismisses the employee to replace or to re-engage them on varied contractual terms.

Workers on zero-hour contracts or 'low-hours' contracts have the right to be offered a 'guaranteed hours' contract which must be on no less favourable terms than the previous working arrangement

The guaranteed hours contract can be for a fixed term if this is reasonable if it relates to a specific event or task, or the employer can show a genuine temporary need for workers.

A right for zero hours workers to be given reasonable notice of their shifts and of the cancellation of work in specified circumstances.

Zero hours workers will have a right to bring employment tribunal claims in relation to breaches of the legislation.

Employment Rights Bill – 2

Removing some of the burdens on trade unions introduced by the Trade Union Act 2016 (additional Certification Officer powers, industrial action notice and voting paper requirements, ballot thresholds and restrictions on collecting subscriptions by check-off in the public sector) and reversing the 'opt-in' for contributions to political funds;

Repealing Strikes (Minimum Service Levels) Act 2023; Introduction of a new right not to be subjected to a detriment for taking part in balloted industrial action; • Re-establishment of a School Support Staff Negotiating Body and power to establish an Adult Social Care Negotiating Body;

Statutory recognition: power to relax the 10% admissibility test, and requiring the CAC to issue a declaration of recognition where a majority vote in favour in the ballot; and

New procedure for negotiating access agreement to workplaces.

Employment Rights Bill - 3

Establishes the power to introduce secondary legislation to protect public sector workers from less favourable treatment after being outsourced. The same power allows for the levelling-up of the supplier's existing staff (where appropriate), thereby addressing the issue of the 2-tier workforce.

Requires new starters to be given a written statement saying that they can join a trade union.

There will be a single enforcement body for various workplace obligations such as those relating to employment agencies, working time regulations, national minimum wage, modern slavery and gangmasters.

Employment Rights Bill - 4

Flexible working - the burden shifts to the employers to justify the reason for refusing a flexible working request. Employers will be required to set out which reason they are relying on and explain why the refusal is reasonable

Rights to unpaid parental leave and paternity leave from day one as well as a new right to bereavement leave to grieve for the loss of a loved one.

A right for pregnant employees not to be dismissed during pregnancy and for a six-month period following their return from maternity leave.

The right to protection from dismissal will also apply to employees returning from a period of family leave (maternity, paternity adoption and shared parental leave).

Employment Rights Bill - 5

Harassment - duty on employers is to take all reasonable steps to prevent harassment in the workplace.

Protection from third party harassment (e.g. by clients or customers)

Employers with 250 or more employees will be required to publish equality action plans along with gender pay gap information.

Conclusion

Set to be a busy year for employment law

Thompsons briefing on the Employment Bill is available [here](#)

Any questions?

ELR

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