

AGENDA Staffing Committee 20th May 2024- FIN _____ 2
Guide_to_Employment_Law_Changes_260424 _____ 4



MELKSHAM WITHOUT PARISH COUNCIL

Clerk: Mrs Teresa Strange

First Floor
Melksham Community Campus,
Market Place, Melksham,
Wiltshire, SN12 6ES
Tel: 01225 705700

Email: clerk@melkshamwithout-pc.gov.uk

Web: www.melkshamwithout-pc.gov.uk

Web: www.melkshamwithout.co.uk

Tuesday 14th May 2024

To all members of the Council **Staffing Committee**: Councillors: Alan Baines, John Glover (Chair of Council), David Pafford (Vice-Chair of Council), Robert Shea-Simonds and Shona Holt

You are summoned to attend the Staffing Committee Meeting which will be held on **Monday 20th May 2024 at 9.00pm** at **Melksham Without Parish Council Offices (First Floor), Melksham Community Campus, Market Place, SN12 6ES** to consider the agenda below.

TO ACCESS THE MEETING REMOTELY, PLEASE FOLLOW THE ZOOM LINK BELOW. THE LINK WILL ALSO BE POSTED ON THE PARISH COUNCIL WEBSITE WHEN IT GOES LIVE SHORTLY BEFORE 7PM.

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Passcode: 070920. Instructions on how to access Zoom are on the parish council website www.melkshamwithout.co.uk. If you have difficulties accessing the meeting please call (do not text) the out of hours mobile: 07341 474234

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Yours sincerely

Teresa Strange, Clerk



AGENDA

Serving rural communities around Melksham

1. **Welcome, Announcements and Housekeeping**
2. **To receive Apologies and approval of reasons given**
3. To receive **Declarations of Interest**
4. **Chairman & Vice Chair of Finance Committee for 2024/25**
 - a) To elect **Chair** of Staffing Committee for 2024/25
 - b) To elect **Vice-Chair** of Staffing Committee for 2024/25
5. **To consider holding items in Closed Session to confidential nature** Under the Public Bodies (Admission to Meetings) Act 1960, the public and representatives of the press and broadcast media be excluded from the meeting during the consideration of the following items of business (**Agenda items 9 & 10**) as publicity would be prejudicial to the public interest because of the confidential nature of the business to be transacted
6. **Public Participation**
7. **Health and Safety:** To note any Health and Safety matters occurring since the last meeting (standing item as per the health and safety policy).
8. **Employment Law Changes:** To note recent Employment Law changes
9. **Staffing Matters:** To update members on staffing matters
10. **HR Resource:** To consider options for providing HR resources to the council and agree way forward

Copy to: All Councillors

Guide to Employment Law Changes 2024

Reviewed April 2024



worknest

Following a long period of inactivity, the UK has introduced several significant changes to employment law this year. These changes will impact organisations across the country, making it essential for employers to stay up-to-date and prepared.

This guide aims to provide you with a clear understanding of what's been introduced, what's to come, and how the government's proposals, if and when implemented, will affect your people, processes and practices.

Understanding these changes is essential for employers to ensure they remain compliant with the law and support their employees in the best possible way.

If you have any questions or concerns about any of the changes included in this guide or would like help with your preparations, don't hesitate to contact our team on **0345 226 8393**.

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Quick summary

There have been several Acts of Parliament passed in 2023 that introduce various new rights and protections. A number of them have now taken effect, while some still need further Regulations to implement.

In addition, the Retained EU Law (Revocation and Reform) Act 2023 would have the effect of removing the influence of various European-derived rights and decisions in 2024 unless steps were taken to preserve those. This has led to Regulations being passed to deal with some aspects of this.

Finally, there are important changes to holiday rights to address the issues raised in *Harpur Trust v Brazel* and the Supreme Court's decision in 2022.

While a number of these changes are now in force, there are no guarantees in terms of introduction dates for some of these, here are the key proposals that all employers should keep on their radar in the coming year.

1. Making flexible working the default: The Employment Relations (Flexible Working) Act 2023

The background:

Back in July 2019, the government launched a consultation which looked at, amongst other things, the transparency of flexible working. Then, as part of the Conservative Party manifesto published in advance of the 2019 general election, it stated that the party encouraged flexible working and would consult on making it an employer's default position, unless the employer had good reason not to allow it.

The government had since repeated these intentions several times, including through the pandemic, which reignited the conversation around flexible working and prompted organisations and employees to embrace flexible working arrangements.

In December 2022, the government published its much anticipated response to its [consultation on making flexible working the default](#), confirming its intention to introduce changes to the right to request flexible working legislation.

The proposal:

Within the consultation response, the government set out its intention to overhaul flexible working rules by:

- **Making flexible working a day one right.** This would mean that employees won't need to have completed 26 weeks' service before making a request, as they currently do.
- **Requiring employers to consult with the employee if they may reject the request.** Note that this is already considered best practice, so may not change much.
- **Allowing employees to make two requests in any 12-month period,** rather than one.
- **Reducing the timeframe for dealing with a request** from three months to two months.
- **Removing the current requirement for employees to explain** what effect, if any, the change they are requesting would have on the employer and how this might be dealt with.

Some of these changes were included in the Employment Relations (Flexible Working) Bill, which received Royal Assent on 20 July 2023.

The impact:

Despite the hype around these proposals, making flexible working a day one right – the most significant change being proposed – isn't included in the Act. However, on 11 December 2023, separate Regulations were introduced, which made the right to request flexible working a day one right from 6 April 2024, with further changes also brought into force by Regulations on that date.

Acas was also consulting on an updated Code of Practice, which closed in September 2023. Following this, an updated Code was approved by Parliament and came into force on 6 April 2024, details of which can be found [here](#).

Understandably, this Act received a lot of media interest. However, expanding the right to request flexible working (rather than providing a right to flexible working) may make little practical difference. Indeed, the eight statutory grounds for rejecting a flexible working application remain unchanged. Whilst the government is encouraging conversations between the employer and employee to see if arrangements can be agreed, particularly before a decision to refuse an application is made, the final decision remains with the employer.

No employee will have the right to demand a change to their hours or place of work.



2. Extended redundancy protection for new parents: The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

The background:

Previously, under Regulation 10 of the Maternity and Paternity Leave Regulations 1999, a woman on maternity leave whose job is being made redundant "is entitled to be offered (before the end of her employment under her existing contract) alternative employment" with her employer or an associated employer, in any suitable vacancy available that offers work appropriate for her and terms not substantially worse than her previous job. Where such a role exists, they should be given first refusal above other at-risk colleagues. Similar protections apply to those on adoption leave and shared parental leave.

If the employer fails to comply with these requirements, the employee may have grounds for an unfair dismissal or pregnancy discrimination claim.

Despite these protections, the [Equality and Human Rights Commission](#) estimates that around 54,000 new mothers are forced out of their jobs in Britain each year. Similarly, [a poll conducted by the Trades Union Congress](#) during the pandemic found that one in four women who were pregnant or on maternity leave had experienced unfair treatment at work, including being singled out for redundancy or furlough.

The proposal:

In 2019, the UK government announced its intention to extend redundancy protection for pregnant employees until six months after the end of their maternity leave (currently, protection only covers the maternity period).

Similar extensions were also planned for the end of adoption leave and shared parental leave, albeit in a modified form.

The Bill received Royal Assent in May 2023. Regulations implementing these changes were approved by Parliament on 28 February 2024.

The Regulations came into effect on 6 April 2024, and provide the following:

- **For pregnancy cases,** the protected period runs from the point the employee tells their employer of the pregnancy and either ends when statutory maternity leave starts or, if they are not entitled to maternity leave, two weeks after the end of the pregnancy. This applies where employees have notified the employer of pregnancy on or after 6 April 2024.
- **For maternity leave,** the protected period starts when statutory maternity leave starts and ends 18 months after the expected week of childbirth, unless the employee informed the employer of the date of the child's birth, in which case the period will end 18 months after that date. This applies where the statutory maternity leave ends on or after 6 April 2024.
- **For adoption leave,** the protected period ends 18 months after the child's placement or the date they enter Great Britain (in overseas adoption cases). This applies where the statutory adoption leave ends on or after 6 April 2024.

- For shared parental leave, where the employee is taking six or more consecutive weeks of shared parental leave but has not taken maternity or adoption leave, the protected period ends 18 months after the date of birth or child's placement. This will apply to a period of six consecutive weeks of shared parental leave that starts on or after 6 April 2024.

The impact:

The prevalence of pregnancy or maternity discrimination leading to women leaving their jobs is concerning. The Act offers hope and reassurance for expectant and new parents and would give them more time to adjust to their new family life without the added stress of potential job loss. It would also send a message to employers that pregnancy and maternity discrimination will not be tolerated.



3. Changes to the right to paternity leave: The Paternity Leave (Amendment) Regulations 2024

The background:

Under the current law, eligible employees can take either one or two consecutive weeks of paid paternity leave within the first eight weeks of their child's life or adoption placement. Paternity leave must be taken in a single block and cannot be split.

To improve flexibility, the government consulted on reforming the parental leave and pay system in 2019 as part of the Good Work Plan. This was one of a number of proposals aimed at supporting families. Four years following the consultation, the government published a response in August 2023, outlining several modifications to paternity leave that would be implemented in due course.

The proposal:

On 7 March 2024, draft Regulations were approved by Parliament in order to make a number of changes to the right to paternity leave.

The changes include:

- Allowing fathers and partners to take leave and pay in two non-consecutive blocks of one week rather than only one block of either one or two weeks.
- Allowing fathers and partners to take that leave within the first year of birth or placement, rather than within the first eight weeks.

- Shortening, in most cases, the length of notice required to take the leave to 28 days. The notice required in domestic adoption cases will remain at seven days of receiving notice of being matched for adoption.
- Allowing fathers and partners the right to vary the leave on giving 28 days' notice.

These new provisions came into force on 8 March 2024. They take effect in relation to children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption, or expected date of entry into Great Britain for adoption, is on or after 6 April 2024.

The impact:

Despite the amendments outlined in the Regulations, critics argue that these changes do not go far enough in improving paternity leave in Great Britain, which remains one of the least generous systems in Europe.

Indeed, research indicates a desire among fathers and partners to take paternity leave, but various barriers – namely inadequate pay and a negative stance from managers and colleagues – persist.

Of course, employers have the flexibility to provide enhanced paternity leave packages if they wish. This often involves offering full pay for the two weeks of paternity leave once the employee has reached a minimum length of service. Some companies, like Aviva, are even more generous, implementing equal parental leave policies to further support new parents.

4. A week's unpaid leave for carers: The Carer's Leave Act 2023

The background:

Unpaid carers often face significant financial, emotional, and physical challenges in caring for their loved ones and may occasionally need time off work to attend to their care responsibilities.

Recognising this, the Queen's Speech in December 2019 announced that measures would be introduced to provide unpaid carers with a new entitlement to one week's leave. This was followed by a full consultation and, in September 2021, the government confirmed plans to introduce carer's leave in England, Wales and Scotland "when Parliamentary time allows".

Things fell quiet until October 2022, when the government announced that it was backing a Private Members' Bill named the Carer's Leave Bill. The Bill received Royal Assent in May 2023, and is now the Carer's Leave Act 2023. Regulations were passed bringing the Act into force, and we now have Regulations setting out how the right will work in practice.

The proposal:

As mentioned, the Act introduces the possibility of a right to a week's unpaid leave for carers, as part of the government's wider efforts to improve support for carers in the UK.

Regulations were approved by Parliament on 29 February 2024 and came into effect on 6 April 2024.

In short, the draft Regulations provide for the following:

- A right to one week's unpaid leave for an employee to take care of a dependant with long-term care needs. "Dependant" and "long-term care needs" are defined in the Act.
- The leave can be taken in non-consecutive blocks if the employee wishes, but no less than half a day at a time. The maximum period under the scheme is one continuous week.
- How you calculate what a week's leave would look like depends on the nature of the working arrangement.
- There are notice requirements that must be complied with, although some of these can be waived by the employer. The employer cannot require evidence before granting a request.
- An employer cannot reject a request, but they can postpone it by up to one month where the employer reasonably considers that the operation of their business would be unduly disrupted if the employee took carer's leave during the period identified in the notice.
- Crucially, employees taking their carer's leave entitlement will be subject to the same employment protections that are associated with other forms of family related leave, meaning they will be protected from dismissal or any detriment as a result of requesting or having taken time off.

The impact:

According to Carers UK, the introduction of carer's leave would have a significant impact on the lives of unpaid carers and improve their overall wellbeing by enabling them to stay in work while giving them the flexibility they need to attend appointments and arrange or provide care. However, given that in 2020, the number of people in paid work who were also providing unpaid care increased to over 7 million – and, on average, 600 people a day leave work due to care – the Bill arguably doesn't go far enough. It is, after all, unpaid leave. More generous employers may, of course, choose to provide paid leave for carers as part of their employment policies.

Another potential problem is that, without the need for employees to provide evidence, the right to carer's leave could be open to abuse and may become a source of frustration for employers.

In terms of timescales, the Act is now in force, and draft Regulations have been laid before Parliament. If and when these are approved, they are envisaged to take effect from 6 April 2024.



5. Additional leave and pay for employees with children receiving neonatal care: The Neonatal Care (Leave and Pay) Act 2023

The background:

Having a baby in neonatal care can be a very stressful and emotional experience for parents, and being able to take extra time off work to be with their baby and provide support can be hugely beneficial for their mental health and wellbeing. It can also be very expensive, in terms of lost income if parents need to take time off work.

To support families and make it easier for them to focus on their baby's health without worrying about their job security or income, the Chancellor announced in the 2020 Spring Budget that the government would create a new statutory entitlement to neonatal leave and pay for employees whose babies spend an extended period of time in neonatal care.

Following a delay, in July 2022, the government announced that it was backing a Private Members' Bill, the Neonatal Care (Leave and Pay) Bill. This received Royal Assent in May 2023 and is now known as the Neonatal Care (Leave and Pay) Act 2023. As with the maternity and carer's Bills mentioned above, though, Regulations are required to bring the provisions into force and provide more details as to how this will operate in practice.

The proposal:

Although the duration isn't specified in the Act, this new right is expected to provide both parents with up to 12 weeks' of paid leave and would be in addition to other leave entitlements, such as maternity and paternity leave. The leave will be available to employees from their first day of employment where neonatal care:

- Starts before the end of a period of 28 days, beginning with the day after the child's birth; and
- Continues uninterrupted for a period of at least seven days, beginning with the day after the day on which the care started.

Employees will be able to take the leave either when their child is receiving neonatal care or after that period, meaning parents will be able to add neonatal care leave to the end of other forms of statutory parental leave that they may be entitled to.

Statutory neonatal care pay will be available to employees who have at least 26 weeks' continuous service and earn at least the lower earnings limit of £123 per week.

The impact:

In our opinion, it's not a question of whether this right will be introduced but when. Questions have already been asked about how businesses can be provided with adequate guidance to prepare for the introduction of this new right.

There is some pressure for a faster turnaround, but given the changes that would need to be made to HMRC systems, as well as employers' and payroll providers' pay systems, plus the need to put in place extensive secondary legislation and guidance, it's estimated that introduction will be around 18 months following Royal Assent. As such, we may be looking at introduction in or around October 2024.



6. Handing over tips to workers: The Employment (Allocation of Tips) Act 2023

The background:

Many hospitality workers rely on tips to top up their pay and are often left powerless if businesses don't pass on service charges from customers to their staff. Indeed, about 7% of UK workers receive tips as part of their work, according to government figures, and research suggests that hospitality workers are often paid well below what they deserve.

To combat this, the government announced a change to tipping policy as part of its the Good Work Plan back in 2018, which would require employers to pass on tips to staff in full and establish rules for fair and transparent distribution. Progress through Parliament has been slow, though the changes should finally come into play in 2024.

Business and Trade Minister, Kevin Hollinrake, said: "Whether you are pulling pints or delivering a pizza, this new law will ensure that staff receive a fair day's pay for a fair day's work – and it means customers can be confident their money is going to those who deserve it."

The proposal:

The Employment (Allocation of Tips) Act received Royal Assent in May 2023 and is expected to come into force in July 2024. When the Act substantively comes into force, it will bolster the rights of workers and employees in the hospitality sector, requiring employers to correctly pass on tips, have in place a policy on fair allocation of tips, and to keep appropriate records.

A draft Code of Practice has been issued and is out for consultation until 22 February 2024. This addresses a number of points, including guidance on how to allocate tips fairly.

The draft Code and consultation details can be found [here](#). Non-statutory guidance is also expected at some point.

Tips received by the worker, under the employer's control, are covered. This means cash payments made directly to workers may be caught, unless the employer has a practice of not exercising control over such tips.

Failure to allocate tips fairly by the employer could result in a compensation payment of up to £5,000 being made in respect of each worker. The time limit for bringing a claim (starting from date of non-payment or incorrect allocation) is 12 months.

Additionally, the record-keeping requirements in relation to this Act will be onerous. It may be that many employers in relevant sectors will outsource their obligations to a 'troncmaster'. This can be a compliant scheme, already used by many, which is seen as a tax efficient and fair way of distributing tips.

The impact:

According to the government, "this overhaul of tipping practices is set to benefit more than 2 million UK workers across the hospitality, leisure and services sectors helping to ease cost of living pressures and give them peace of mind that they will keep their hard-earned money". It's estimated that workers will take home an estimated £200 million more as a result.

How this will work in practice will probably depend on the contents of any Code of Practice issued, particularly on the issue of what might amount to "fair distribution". As mentioned, a draft Code is currently being consulted upon. It will be important to keep an eye out for those and start to consider now how you currently distribute tips so that you are compliant with the current provisions in the Act. It is expected that this will come into force on 1 July 2024, although this is yet to be confirmed.

7. Right to request more predictable work schedules: The Workers (Predictable Terms and Conditions) Act 2023

The background:

The Workers (Predictable Terms and Conditions) Act 2023 has been in the works for a while, originally stemming from the government's Good Work Plan, which proposed several changes to the employment landscape, including a right for workers to request a more predictable and stable contract after 26 weeks' service.

This particular proposal emerged in response to the evolving nature of work patterns associated with the UK's burgeoning 'gig economy,' which has faced substantial criticism in recent years. One of the criticisms of 'gig work', according to the Good Work Plan, is its "one-sided flexibility", where "workers are on stand-by for work which never comes". These precarious work arrangements and the inconsistent income makes it difficult for workers to plan ahead or achieve financial stability.

Accordingly, the aim of the legislation was to level the playing field by giving workers in non-standard employment arrangements a degree of job security and income predictability similar to that enjoyed by those in more traditional work arrangements. This was seen as a crucial step in addressing the uncertainties that have become increasingly prevalent in today's work landscape.

The proposal:

The Act will give workers the right to request a more predictable working pattern. As with the Flexible Working Act, it's important to note that this is the right to request, not the right to demand. This will be available to employees, workers and agency workers.

Requests can be refused on any number of specified grounds, with the Act itself listing six grounds, including:

- The burden of additional costs;
- A detrimental effect on the ability to meet customer demand;
- A detrimental impact on the recruitment of staff;
- A detrimental impact on other aspects of the employer's business;
- Insufficiency of work during the periods the worker proposes to work;
- Planned structural changes;

Plus, such other grounds as may be specified in Regulations.

The grounds are broadly the same as those for rejecting a request for flexible working.

To be eligible, employees must:

- Have a minimum length of service of 26 weeks (but these do not need to be continuous); and
- Lack predictability in their working pattern, whether this be hours or days, or not have a guaranteed number of hours of work (fixed-term contracts with a term of less than 12 months are included in this).

Workers will be allowed to make two applications to their employer in any 12-month period. The application should set out the desired change (which may pertain to working hours, working days, or the duration of employment), the purpose of the request (to have a more predictable working pattern) and the proposed start date for this new arrangement.

A draft Acas Code of Practice has also been issued regarding this new right, details of which can be found [here](#).

The impact:

While the implementation of this Act isn't anticipated until September 2024, employers should start thinking about what steps may be needed to ensure policies and procedures are in place to deal with such requests. This may also include considering whether there are any changes you could make to contracts with unpredictable working patterns.

8. Preventing sexual harassment at work: The Worker Protection (Amendment of Equality Act 2010) Act 2023

The background:

In July 2021, in the wake of the #MeToo movement and campaigns by women's groups across the United Kingdom, the UK government committed to imposing a proactive duty on employers to prevent sexual harassment. Those commitments began to take shape when the Worker Protection (Amendment of Equality Act 2010) Bill (Worker Protection Bill) was introduced in 2022 as a Private Members' Bill in the House of Commons.

The Worker Protection Bill originally sought to strengthen protection for employees by requiring employers to take "all reasonable steps" to protect employees from harassment, including harassment from third parties such as clients or customers. However, as it moved through Parliament, these proposals were watered down, and the new Worker Protection (Amendment of Equality Act 2010)

Act 2023 (the Act) will now impose a less onerous, though still significant, new duty on employers.

The proposal:

This Act introduces a new duty on employers to take "reasonable steps" to prevent sexual harassment of their employees. Whilst previously it was advisable to take such steps, and is currently very relevant when looking to defend harassment claims, there was no actual requirement to do so.

This new law only applies to sexual harassment; it does not apply to harassment based on other protected characteristics such as race, age, sexual orientation, or belief.

The Act does not contain any definition of what reasonable steps actually are. However, the Equality and Human Rights Commission (EHRC) is working on a new statutory code which is likely to contain appropriate guidance. The EHRC can also take enforcement action if employers fail to comply with these obligations – this is the case even if no sexual harassment has occurred.

Additionally, the Act provides Employment Tribunals with the power to increase compensation by up to 25% if an employee succeeds in a claim for sexual harassment and an employer is found to have breached the duty to prevent sexual harassment. The uplift itself will apply to all of the compensation that has been awarded for any type of harassment.

The impact:

The Act received Royal Assent in October 2023, and the provisions will come into force a year later on 26 October 2024.

Although there is not presently any guidance on what would constitute reasonable steps, the Equality Act already contains a

defence from liability for employers who can demonstrate they took all reasonable steps to prevent sexual harassment. While the Act omits the word "all", it may be that the Employment Tribunal will interpret the new duty in a similar way to the existing defence.

Employers are advised to take proactive steps to ensure compliance. Relevant policies and procedures in relation to equal opportunities, harassment and bullying should be reviewed to ensure inclusion and explanation of the new rules. This could include providing examples within policies of harassment, as well as advice on how to assist employees complaining of harassment and how to intervene in the correct way.

Training will probably be required for both managers and employees to promote awareness of the change and on harassment itself. Staff should be trained on what sexual harassment in the workplace looks like, what to do if they experience it, either direct or as a "bystander", and, if appropriate, how to handle complaints.

Organisations should also ensure that they have in place a clear and secure process for employees to report harassment, and that those responsible for dealing with complaints are able to do so in a lawful and effective manner.

As a minimum, training and policy reviews will be required.

9. Scrapping certain EU-derived laws: The Retained EU Law (Revocation and Reform) Act 2023

The background:

When the UK left the European Union, it retained a significant portion of EU-derived domestic legislation, including certain employment laws. These laws became known as "retained EU law" (REUL).

The proposed Retained EU Law (Revocation and Reform) Bill sought to completely rewrite the rule book. If passed in its original form, it would have seen a large proportion of EU-derived laws fall away by 31 December 2023 – unless the government positively legislated to keep these laws before then.

The short-lived Truss government championed the introduction of the Bill in a bid to slash EU red tape, and boost innovation and investment.

The proposal and impact:

This Bill as originally proposed would automatically revoke most retained EU law at the end of 2023, as part of a "sunset clause".

However, on 10 May 2023, the government announced in a written statement to Parliament that it was abandoning the sunset clause, meaning that all retained EU laws will now remain in force, unless a decision is taken to revoke or change them. The Bill was amended to contain a list of the retained EU laws that the government still intends to revoke on 31 December 2023 – but anything not on that list will remain valid (for now). The Bill received Royal Assent on 29 June 2023.

In terms of impact, while there may be, on the surface, more certainty now as to which laws went at the end of 2023, there is still uncertainty around how other retained EU law and European Court of Justice decisions will be affected, given the removal of EU legal principles, which have been a significant influence on domestic court decision, and the removal of the supremacy of EU Law contained in the Act.

As a result of this Act, the government has implemented various Regulations in order to retain some of the previous effects of EU law, as well as make a number of important changes, particularly regarding holiday rights.



10. Reforms to holiday rights and TUPE: The Employment Rights (Amendment, Revocation and Transitional Provisions) Regulations 2023

These Regulations make changes to a couple of areas of employment law, with the main changes being set out below.

Holiday rights

These are the most significant changes. We have produced separate guidance on this, but here is a summary of the main changes:

- There will continue to be two separate categories of holiday entitlement with differing rights attached to each.
- The 4 weeks' leave under Regulation 13 of the Working Time Regulations 1998 (WTR) will continue to benefit from rights to carry over untaken leave into subsequent leave years if it could not be taken because of certain stipulated reasons. It is believed that this aims to simply reflect what previous EU decisions have required and have been applied by domestic courts for some time. One significant point, though, is that there is a right to carry over untaken leave where the employer has failed to give the worker the opportunity to take their leave, to encourage them to take it, or to remind them that if they don't take it in that leave year, they will lose their right to use it. As mentioned, this arguably just reflects the current position, but with it being placed on a statutory footing, it will be even more important that it is complied with. This came into force on 1 January 2024.

- Also, regarding the 4 weeks' leave, the Regulations explicitly set out what payments must be included when calculating holiday pay. This will include regular overtime, commission and performance-related payments. This came into force on 1 January 2024.
- The big change is the introduction of two new categories of worker in regard to holiday rights – irregular hours and part-year workers. This will not take effect until the first leave year starting on or after 1 April 2024 – until then, holiday entitlement and pay for such workers will continue to be governed by the ordinary provisions in the WTR.
- The Regulations will take these workers out of the current holiday entitlement provisions, with their entitlement accruing at a rate of 12.07% of hours worked in the previous pay period. Pay will be calculated in the same way as for Regulation 13 leave, mentioned above, albeit on an hourly rather than weekly basis.
- In addition, it will be possible for an employer to uplift an irregular hours or part-year worker's pay to include payment for the annual leave they have accrued in that pay period, rather than paying for the leave when it is taken – this is known as rolled-up holiday pay. In essence, their pay will be uplifted by 12.07% of the total pay they received in that pay period. If utilising rolled-up holiday pay, the worker will still be entitled to take their accrued leave, but this will be unpaid since they will have already received pay for it.
- The provisions around irregular hours and part-year workers are quite complicated, particularly on the issue of the definitions in the Regulations for each of those workers.

As mentioned, we have separate detailed guidance on this particular issue, but these changes are likely to be significant, particularly for employers who use a lot of workers who might fall into these new categories. We will also have to see whether the way in which the new provisions intended to reflect previous EU legal principles work in the same way as previously – we're unlikely to know this until we have Tribunal and court decisions, or further clarification is provided via official guidance.

TUPE

Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), where there is a relevant transfer, the transferor and transferee must consult with employee representatives. If there are no representatives in place, then in most circumstances, it is necessary for employee representatives to be elected. Currently, there is an exemption from having to elect representatives for micro businesses, namely those with fewer than 10 employees. Under these new Regulations, this exemption will be extended to:

- Employers with fewer than 50 employees; or
- Employers of any size involved in a transfer of fewer than 10 employees.

If either of these apply, it will be possible for the employer to consult directly with affected employees. However, if employee representatives are in place, they must be consulted with.

These new provisions will apply to transfers taking place on or after 1 July 2024.

11. Enshrining equality protections: The Equality Act 2010 (Amendment) Regulations 2023

Also in pursuance of the REUL Act, amendments are being made to the Equality Act 2010, in an apparent attempt to preserve certain EU-derived rights that, while they have been applied in domestic cases, are not expressly covered in the Equality Act. These include the following changes:

- Ensuring that **protection from discrimination for being on maternity or for breastfeeding** are covered.
- Providing **protection from indirect discrimination because of an individual's association** with someone who possesses a protected characteristic, even if they don't possess it themselves.
- Public statements made **preventing people with protected characteristics from being employed** by an employer will amount to direct discrimination – this follows on from an Italian case where a senior lawyer said on a local radio station that he would never hire a homosexual person to work in his law firm.
- In **equal pay claims**, it will be possible for employees to compare themselves to other employees whose terms and conditions are attributable to a single source, even if they are not with the same or an associated employer.
- The **definition of disability** will be clarified to make clear that a person's ability to carry out normal day-to-day activities includes a person's ability to participate fully and effectively in working life on an equal basis with other workers.

As mentioned, while a lot of these new provisions appear to seek to set into legislation previous EU rights and principles so that they continue to apply from January 2024, it may take some time to see whether the way in which they are drafted means there are any differences to how they have previously applied.

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