Are you ready for the April employment law changes?

A raft of employment law changes will come into force in April 2024, including simple increases to statutory rates of pay, tweaks to existing employment rights and the introduction of brand new employment rights and practices. Our at-a-glance guide tells you what you need to know.

DATE	AREA	CHANGE
1 April 2024	**National minimum wage**	The national minimum wage hourly rates will increase as follows: • National Living Wage (age 21): £11.44 (up from 10.42). • Age 18 – 20: £8.60 (up from £7.49). • Age 16 – 17 and Apprentices: £6.40 (up from £5.28).

DATE	AREA	CHANGE
Holiday years commencing on or after 1 April 2024	**Holiday accrual and pay** You can read more about these changes here.	The position on accrual of annual leave and holiday pay will change for“irregular hours workers” and “part-year workers” only. These workers will accrue their annual leave entitlement at the end of each “pay period” at a rate of 12.07% of the number of hours worked in that pay period, up to a maximum of 28 days per year. Employers will also have the option of introducing a system of“rolled-up holiday pay” for irregular hours and part-year workers, but not for other types of workers.

DATE	AREA	CHANGE
Notification of pregnancies or return dates on or after 6 April 2024	**Redundancies** You can read more about these changes here.	Pregnant employees who are at risk of redundancy will have priority for any suitable alternative vacancy that is available. Employees returning to work from a period of maternity, adoption or shared parental leave who are at risk of redundancy will have priority for any suitable alternative vacancy that is available. The additional protected period ends 18 months after the date of the child's birth or the day the child is placed with the employee for adoption. Only employees who have taken a period of shared parental leave of at least six consecutive weeks or more will qualify for protection.

DATE	AREA	CHANGE
Expected week of childbirth or adoption placement on or after 6 April 2024	**Paternity leave** You can read more about these changes here.	Eligible employees will have the option of taking their statutory paternity leave as either a single block of either one whole week or two consecutive whole weeks (as is currently the case), or as two separate blocks of one whole week. It remains the case that the leave must be taken as whole weeks and may not be split up into days. The period within which statutory paternity leave must be taken will increase from 56 days to 52 weeks from the birth or adoption placement. The notification requirements have also been relaxed, so that employees will only need give four weeks' notice of a proposed period of leave.

DATE	AREA	CHANGE
6 April 2024	**Flexible working** You can read more about these changes here.	The requirement for an employee to have 26 weeks' continuous service in order to make a flexible working request will be removed, making the right a Day 1 employment right. Later this year (on a date to be confirmed), the following changes will be made to the flexible working request process: • Employees will no longer have to explain what effect they think the requested change would have on their employer and how that effect might be dealt with. • Employees will be permitted to make two flexible working requests per year rather than one. • Employers will be required to consult with employees before refusing requests. • Employers will have two months to make a decision on a flexible working request (rather than three months as is currently the case) unless an extension is agreed.

DATE	AREA	CHANGE
6 April 2024	**Carer's leave** You can read more about these changes here.	Employees will have a new Day 1 right to take at least one week's unpaid carer's leave in any 12-month rolling period to provide or arrange care for a dependant who has a long-term care need. Employees may take carer's leave in discontinuous blocks of at least half a working day. The leave can be taken at different times and need not be taken on consecutive days. Alternatively, the leave may be taken as a continuous block of one week's leave. In order to qualify for carer's leave, employees must also comply with certain notice requirements.
6 April 2024	**Compensation limits**	The maximum limits on compensation for certain purposes will increase as follows: • Maximum week's pay: £700 (up from £643). • Maximum basic award for unfair dismissal: £21,000 (up from £19,290). • Maximum compensatory award for unfair dismissal: £115,115 (up from £105,707). • Maximum statutory redundancy payment: £21,000 (up from £19,290).

DATE	AREA	CHANGE
6 April 2024	**Statutory Sick Pay**	The rate of statutory sick pay will increase to £116.75 per week (up from £109.40 per week).
7 April 2024	**Statutory pay for family-related leave**	The rate of statutory maternity, paternity, adoption, shared parental and parental bereavement pay will increase to £184.03 per week (up from £172.48 per week).

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Employees who report bullying and harassment of other staff may qualify as whistleblowers

Two recent Employment Tribunal decisions have made it clear that employees who report the bullying or harassment of other members of staff may qualify as whistleblowers in law, meaning that they will have special protection from detriment and

dismissal from Day 1 of their employment.

What happened in these cases?

Case 1 – Cameron-Peck v Ethical Social Group Ltd and others

The claimant was employed by Ethical Social Group as the CEO of one of its two subsidiaries, Wndr Social. She was employed from 1 August 2021 until she resigned with immediate effect on 28 October 2021.

The claimant received complaints from staff members about bullying by Ms Alexander, the CEO of Fluttr, the other subsidiary company. On 3 September 2021, around one month into her employment, the claimant sent a WhatsApp message to Mr Pullam, the Founder and Group CEO, telling him about staff contacting her in tears about the bullying and rudeness they had experienced and the way they had been treated. On 4 September 2021, the claimant expanded on her concerns in a telephone call with Mr Pullam. On 6 September 2021, she sent an email to Mr Pullam explaining her concerns further, setting out 19 numbered examples of Ms Alexander's bullying behaviour. She did not receive any response or follow-up to the message, discussion or email.

On 15 October 2021, the claimant had a telephone conversation with Mr Pullam, which she secretly recorded. She asked Mr Pullam why there had been no follow-up to her complaints about the bullying. Mr Pullam said they had discussed it and asked her what further discussions she wanted. The claimant said nothing had been done and that the behaviour had carried on. Mr Pullam asserted that he did address the bully and he asked

others who all said they had not seen or experienced any bullying. After the phone call, the claimant was removed from certain meetings, ostensibly so she did not have to come into contact with Ms Alexander. However, this left her feeling isolated and vulnerable.

On 18 October 2021, the claimant attended a video meeting with the Chief People Officer and Chief Talent Officer of Ethical Social Group. In the course of that discussion, the claimant revealed she had recorded the telephone call with Mr Pullam. On 19 October 2021, the claimant was removed from a company WhatsApp group and suspended pending a disciplinary investigation. She was not told why she had been suspended. The claimant resigned the next day giving three months' notice. The claimant was then invited to a disciplinary hearing to be held on 5 November 2021. She was not told of the allegations of misconduct that she had to answer. In the meantime, a colleague told the claimant that she had been asked to write a new HR policy stating that the making of covert recordings constituted gross misconduct. The colleague said she thought the claimant was being "set up" and that the newly created policy was going to be used to dismiss the claimant for gross misconduct.

On 28 October 2021, the claimant resigned with immediate effect. She did not have sufficient service to bring an "ordinary" unfair dismissal claim. However, she claimed that had been automatically unfair dismissed for blowing the whistle (for which no minimum period of service is required). At the hearing, the Employment Tribunal had to decide whether the claimant's disclosures about bullying amounted to protected disclosures, which would attract protection as a whistleblower.

Case 2 – Mysakowski v Broxborn Bottlers Ltd

The claimant was employed by Broxborn Bottlers Ltd between 7 November 2022 and 19 April 2023. On 13 April 2023, around five months into his employment, he raised concerns with a manager about an incident of sexual harassment he had witnessed. He said he had seen a senior male manager massaging the shoulders and neck of a junior female employee. The claimant said he understood that the female employee was uncomfortable, and that he felt that it was inappropriate conduct. When asked to name the individuals involved, he refused on the basis that the female employee involved had asked him not to. The manager told the claimant that the company could not investigate the matter unless it knew who was involved. The claimant said he did not feel he could name the individuals and asked whether, instead, the company could issue a general reminder to staff about appropriate conduct in the workplace.

The claimant's employment was terminated on 19 April 2023. He claimed that he had been automatically unfair dismissed for blowing the whistle. A Preliminary Hearing was held to determine whether the claimant had, in fact, made a protected disclosure.

What was decided?

In order for a disclosure to amount to a "protected disclosure" it must pass the following test:

1. The disclosure must be a disclosure of information,

which means it must convey facts and not just allegations.

2. The disclosure must relate to one of six defined types of malpractice/wrongdoing and the worker must reasonably believe that the information disclosed tended to show such malpractice. Included in the six types of malpractice are reports about breaches of any legal obligation or dangers to the health and safety of any individual.

3. The worker must reasonably believe that the disclosure is in the "public interest". Public interest is not defined in law, but relevant factors include the numbers of people whose interests are affected, the nature of the interests affected, the nature of the wrongdoing and the identity of the wrongdoer.

4. The disclosure must be made to one of a number of specified persons and made in the right way.

The public interest test was introduced in 2013 and was intended to prevent workers from claiming that grievances about breaches of their *own* employment contracts were breaches of a legal obligation capable of amounting to a protected disclosure. The cases discussed in this article concerned grievances about breaches of *someone else's* employment contract or rights. In both cases, the employers sought to argue that this meant the disclosures were not in the "public interest" and, therefore, were not protected disclosures.

In Cameron-Peck, the Employment Tribunal approached the disclosures about the bullying of staff not as disclosures about breaches of a legal obligation, but, rather, as disclosures that tended to show that the health or safety of individuals had been, was being or was likely to be endangered. The fact that the claimant had explained how she and other employees were upset by the bullying was sufficient to show this. The health and safety of employees is an important matter and several staff had been affected. As such, it was reasonable for the claimant to have believed the disclosures were in the public interest. The Tribunal concluded that the claimant's disclosures about Ms Alexander's bullying passed the necessary tests and were protected disclosures. The claimant went on to win her claim and was awarded compensation of £185,000.

In Mysakowski, the Employment Tribunal approached the disclosures as disclosures which tended to show a failure to comply with a legal obligation, namely, obligations under the Equality Act 2010. The Tribunal concluded that the claimant believed that the information disclosed was in the public interest and it was reasonable for him to have held that belief. It noted that he had given evidence to the effect that he had heard rumours about the senior male manager's conduct towards female employees and wanted to raise what he had witnessed to try to protect others in the workplace. Given these findings, the Tribunal concluded that the claimant made a protected disclosure, meaning his claim may now proceed to a final hearing on the merits of his claim.

What do these decisions mean for employers?

These decisions highlight that complaints about the mistreatment of others may amount to protected disclosures

attracting whistleblowing protection. Although the complaints may, on their face, concern individual employment relationships, they may still engage matters of public interest.

As far as bullying is concerned, while there is no statutory protection against bullying *per se*, it stands to reason that bullying is going to harm the wellbeing of the victim and risk their health and safety. Alternatively, it could be viewed as a "breach of a legal obligation", such as the Health and Safety at Work Act 1974, or the implied contractual duty to take reasonable care of an employee's health and safety at work. The fact that only one or two staff may have been affected will not mean the disclosure is outside the public interest. Ultimately, it will come down to what the employee reasonably believed at the time of making the disclosure, but it is not difficult to see how a disclosure aimed at protecting people from a serial bully would be enough to pass the test.

As far as harassment or other forms of discrimination are concerned, this would represent a potential breach of the Equality Act 2010. Depending on the circumstances, it could also be something which risks health and safety and/or breaches health and safety law. Again, the fact that a small number of staff are affected (even just one, as in Mysakowski) will not make a difference. It will likely be reasonable for an employee who witnesses an act of discrimination or harassment from a senior manager to say they believed that the disclosure was aimed at protecting other staff from such treatment in the future.

Practically speaking, this means that employers in this situation should consider dealing with such complaints under

internal whistleblowing procedures (where there is one) instead of, or in addition to, an individual grievance procedure. For organisations subject to the FCA's and PRA's whistleblowing framework, this will mean, amongst other things, ensuring that the confidentiality of the whistleblower is preserved, escalating the concerns appropriately both internally and to the FCA or PRA, providing appropriate feedback to the whistleblower and including information about the matter in the annual report to the Board.

It is important to identify when an employee might acquire whistleblowing protection. If a whistleblower is mistreated as a result of having made a protected disclosure, they will be entitled to bring a detriment claim seeking compensation for losses flowing from that detriment and for injury to feelings. In the event that they are dismissed, they will be entitled to claim automatic unfair dismissal from Day 1 of their employment and seek uncapped compensation for losses flowing from the dismissal. Further, an employee who has blown the whistle about discrimination or harassment could also have a separate claim for victimisation under the Equality Act 2010 if they are subjected to detrimental treatment for having raised those concerns.

Cameron-Peck v Ethical Social Group Ltd and others

Mysakowski v Broxborn Bottlers Ltd

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contact.

New guidance for employers on menopause at work

The Equality and Human Rights Commission has recently published guidance for employers on menopause and the workplace. The guidance explains what the menopause is, its symptoms, the impact it can have at work and the legal obligations that an employer has. We round up the key points to note in our briefing.

What is the background?

Back in January 2023, the Government published its response to a Women and Equalities Select Committee report which had recommended significant changes to the law on menopause in the workplace. The Government rejected the majority of the recommendations, committing only to appoint a "Menopause Employment Champion", make the right to request flexible working a Day 1 employment right and publish new workplace guidance. You can read more about the Government's response in our briefing here.

The Government appointed Helen Tomlinson as its Menopause Employment Champion on 6 March 2023 and the right to request flexible working from Day 1 of employment is due to come into force on 6 April 2024. The new guidance issued by the

Equality and Human Rights Commission (EHRC), fulfils the Government's final commitment.

What does the guidance cover?

The guidance is brief and includes addresses the following areas:

The symptoms of the menopause and perimenopause

The guidance explains what the menopause is and how it typically occurs between the ages of 45 and 55, although it may arise earlier or later. It also explains that perimenopause is the phase where a woman is experiencing menopausal symptoms but is still having periods.

The guidance highlights that the menopause may cause a range of physical and/or psychological symptoms and it links to the NHS website which sets out those symptoms in full.

The impact that menopause symptoms may have at work

The guidance explains that menopausal symptoms may have a significant impact on women at work. It cites statistics from the CIPD, including that 67% of working women who experienced menopausal symptoms said it had "mostly negative" impact on them at work. These negative effects included:

- being less able to concentrate;
- experiencing more stress;
- feeling less patient with clients and colleagues; and
- feeling physically less able to carry out work tasks.

Further, around 50% said they were able to think of times when they were unable to go to work because of their symptoms.

An employer's legal obligations

The guidance points out the menopause symptoms may be treated as a disability in law, which will trigger the duty to make reasonable adjustments and protect the worker from disability discrimination. It also highlights that menopausal workers are protected from age and sex discrimination and that risks to their health and safety should be considered in workplace risk assessments.

The guidance also links to several short "explainer videos" covering:

- menopause and the Equality Act 2010;
- making workplace adjustments and preventing

discrimination; and

- how to hold conversations with workers about the menopause.

What does this mean for employers?

The guidance is informative only – it is not statutory guidance setting out rules on how employers should and should not deal with menopausal workers. However, it would be wise for employers to consult the guidance and train members of HR and line managers accordingly. This should aid understanding, promote open conversations and allow managers to identify appropriate support for affected workers. In doing so, it should also have the added benefit of minimising exposure to legal claims.

If you would like to gain a deeper understanding about menopause at work, you can also watch **BDBF's webinar** on the subject.

Menopause in the workplace: guidance for employers

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New report on improving workplace diversity and inclusion.

On 20 March 2024, the Government-appointed "Inclusion at Work Panel" published its report on improving workplace diversity and inclusion. In our briefing, we round up the key points for employers to note.

The Inclusion at Work Panel (the **Panel**) was appointed in June 2023 to identify the interventions that increase fairness, inclusion and diversity, make the most compelling arguments in favour of good practice and, finally, develop a new "Inclusion Confident Scheme", complementing other such kitemarks such as the employers Disability Confident Scheme. The Panel concluded its work in December 2023 and published its final report on 20 March 2024. The report summarises the conclusions reached and why and sets out proposals for what the Government should do support more effective practices.

Key findings

Employers reported to the Panel that diversity and inclusion (**D&I**) was a complex and sometimes sensitive workplace agenda, with competing definitions and unclear evidence. Although

employers reported wanting to “do the right thing”, there were numerous barriers including the size of the organisation and its resources, lack of time to test new ideas and fear or saying or doing the wrong thing. In particular, employers reported concerns that issues of freedom of speech or expression affect D&I discussions in the workplace.

Non-legally trained managers and leaders reported finding it difficult to navigate the Equality Act 2010 and its duties. They also mentioned fear of legal action, conflicting or unclear HR policies and that bullying, harassment and discrimination were becoming “weaponised” in employment grievances. Some also suggested that well-intentioned actions to improve D&I were inadvertently breaking the law.

All agreed that more and better data and evidence would improve D&I strategies and interventions – noting that both quantitative data (e.g. on recruitment, retention, progression and pay rates) and qualitative data (e.g. from staff surveys) would be valuable, especially if it was in some way endorsed by the Government.

Key recommendations

The Panel concluded that a principles-based D&I framework would suit the needs of most employers, and should embed these six key guiding principles:

- meaningfully diverse workplaces are desirable and beneficial;

- visible diversity alone does not automatically make an organisation meaningfully diverse or inclusive;

- diversity and inclusion (and equity) decisions are rarely impartial – concerted efforts should be made to mitigate the impact of ideological biases;

- the impact evidence on D&I is mixed and often inconclusive – initiatives grounded in robust evidence should take primacy and employers should be open to learning and change; and

- D&I activities should be cost effective – employers have a responsibility to use money dedicated to D&I in a way that demonstrably achieves intended outcomes.

Ultimately, the Panel made three key recommendations to Government:

1. The Government should endorse a new D&I framework which sets out the criteria employers might apply to their diversity and inclusion practice to embed effectiveness and value for money. The proposed framework should be based on the six principles discussed above and focus on helping employers embed evidence-informed practices and adopt sophisticated recruitment and retainment practices.

2. The Government should fund, and work with, a research partner to develop a digital tool which allows leaders

and managers to assess the rigour, efficacy and value for money of a range of D&I practices.

3. The Equality and Human Rights Commission should explain and clarify the implications of recent legal rulings for HR policies and staff networks. In particular, guidance should make clear an employer's legal duties and responsibilities relating to the protected characteristic of belief and set out guiding principles to help employers manage situations where conflicts of belief arise. On top of this, the Panel felt the Government should promote its guidance on Positive Action in the Workplace (published in April 2023) and commit to regularly updating it, so that employers know to apply the positive action provisions in the Equality Act 2010 correctly.

However, the Panel did *not* recommend the introduction of a new Inclusion Confident Scheme at this stage for two reasons. First, it concluded that existing similar schemes already cover the concept of inclusivity in some way. The Panel was concerned that introducing another accreditation or compliance scheme would risk duplication. Second, the very broad and subjective definitions of "inclusion" make a precise and useful scheme near impossible.

The Government has yet to confirm whether these recommendations will be taken forward.

You can read the full report **here**.

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