Tribunal was right not to strike out claims brought against a US company and US-based individuals

In a recent case, the EAT has upheld a decision of an Employment Judge not to strike out Employment Tribunal claims brought against a US company and US-based individuals. In both cases, the claims were reasonably arguable, meaning that striking out was not justified.

What happened in this case?

Dr Armes is a research scientist. He founded a US company, TwistDx Inc, to carry out his work. He also founded a UK company, TwistDx Ltd. In 2010, TwistDx Inc and TwistDx Ltd became subsidiaries of a US company called Alere Inc. Dr Armes remained the sole Director of TwistDx Ltd and was employed as its Managing Director. His wife, Mrs Helen Kent-Armes, was employed as its COO.

In late 2017, Alere Inc was acquired by the multi-national US company, Abbott Laboratories. In May 2018, Dr Armes and his wife were both dismissed. They brought various claims in the Employment Tribunal against:

- TwistDx Ltd (the UK company);

- Abbot Laboratories (the US company);
- Mr Eppert, Mr Haas and Ms Qiu (the US-based individuals);and
- Mr Macken and Mr Muggeridge (the UK-based individuals).

(together, the Respondents).

The Respondents applied to strike out the claims against the US company and US-based individuals. The Employment Judge dismissed the strike out applications, concluding that the Respondents had failed to show that Dr Armes and Mrs Kent-Armes had no reasonable prospects of successfully establishing that the Employment Tribunal had international jurisdiction.

The Respondents appealed to the EAT.

What was decided?

The EAT began by underlining that jurisdictional issues may arise in Employment Tribunal claims in two ways. First, does the Tribunal have international jurisdiction so that the parties can be brought before it? Second, does the claim fall within the territorial scope of the relevant law? This appeal concerned the first jurisdictional issue only.

Claims against the US company

As far as the claim against the US company was concerned, the EAT had to consider the Recast Brussels Regulation (which was in force at the time the claims were brought). In short, this Regulation provided that in order for the Employment Tribunal to have international jurisdiction over the US company, either the US company would have to be the employer of Dr Armes and Mrs Kent-Armes, or the UK company must be a *"branch, agency or establishment"* of the US company.

Turning first to the question of whether the US company could have been the "employer" of Dr Armes and Mrs Kent-Armes, the EAT considered case law where individuals have been treated as employees of companies with whom they did not have a traditional contract of employment:

- In Samengo-Turner and others v J&H Marsh McLennan, employees of a UK company entered into an incentive award scheme under which they had obligations towards the US group companies. The Court of Appeal accepted the employees' contention that the incentive award documentation formed part of their individual contracts of employment. The result was that the US entities were to be treated as their employer for the purposes of the Recast Brussels Directive.

- In Petter v EMC Europe Ltd, the employee was employed by a UK company, while the ultimate parent company, EMC, was based in the US. A substantial part of the employee's remuneration arose from restricted stock unit

(RSU) agreements made between him and ECM. In these RSU agreements, he agreed to comply with a key employment agreement in the EMC employee handbook, including a 12-month non-compete restriction in favour of EMC and its subsidiaries. Relying on Samengo-Turner, the Court of Appeal held that a company which provides benefits to employees of associated companies within the same group may be regarded as an employer for the purposes of the Recast Brussels Regulation if it provides those benefits in order to reward and encourage those employees for the benefit of their immediate employer and the group as a whole.

The EAT concluded that the concept of "employment" for the purposes of the Recast Brussels Regulation could potentially include a situation where there was no contract between the "employee" and "employer".

Turning to the alternative question of whether the UK company was a branch, agency or other establishment of the US company, the Respondents sought to rely on a number of non-binding opinions of the Advocates General of the ECJ that suggested a branch, agency or other establishment cannot have a separate legal personality or authority to fix matters such as working hours (as TwistDx Ltd did). However, the EAT did not accept that these decisions established an absolute prohibition on a branch, agency or other establishment having a legal personality.

The EAT said that it was clear why the Employment Judge had concluded that the Respondents had failed to show that there

were no reasonable prospects of Dr Armes and Mrs Kent-Armes establishing that the Employment Tribunal had international jurisdiction to hear the claims against the US company. The Employment Judge had been entitled to conclude that it was arguable that the US company could be the employer for the purposes of the Recast Brussels Regulation and/or that the UK company might be a branch, agency or other establishment of the US company.

Claims against the US individuals

As to the claims against the US individuals, Dr Armes and Mrs Kent-Armes had argued that Rule 8 of the Employment Tribunal Rules 2013 conferred international jurisdiction on the Employment Tribunal on the basis that:

- at least one of the respondents to the claim resides or carries on business in England and Wales;
- one or more of the acts or omissions complained of took place in England and Wales; and/or
- the claim relates to a contract under which the work is or has been performed partly in England or Wales.

In contrast, the Respondents had argued that Rule 8 was solely concerned with the division of cases between the alternative UK jurisdictions of England, Wales or Scotland.

The EAT noted that there were case authorities supporting both sides of the argument and, therefore, concluded that there was no error of law in the Employment Judge's decision that Dr Armes and Mrs Kent-Armes' case was reasonably arguable.

Therefore, the appeal against the refusal to strike out the claims against the US company and the US individuals was dismissed.

What does this mean for employers?

It is important to remember that the EAT has *not* determined the substantive question of whether an Employment Tribunal has international jurisdiction. Instead, it was tasked with considering the narrower question of whether there was an error of law in the Employment Judge's decision not to strike out the claims against the US company and US-based individuals.

Striking out a claim is a Draconian step which should only be taken where an applicant can cross the high threshold of showing that the claim (or response) has "no reasonable prospects of success". Here, the EAT found that the Employment Judge had been entitled to conclude that it was *reasonably arguable* that the US company and US-based individuals fell within the international jurisdiction of the Employment Tribunal. This is not the same as saying that the Employment Tribunal *does have* international jurisdiction in these types of scenarios.

Frustratingly, the substantive question has yet to be answered. Indeed, the EAT Judge remarked that he

was *"troubled"* that this issue had been left undecided but said this was the inevitable result of the fact that the issue had been addressed via a strike out application. The substantive question will eventually be considered when this case returns to the Employment Tribunal. However, given that this litigation *"…has the feel of a war of attrition, the end of which seems dispiritingly far from view"*, the strike out decision may yet be appealed further to the Court of Appeal, which will delay the hearing of the substantive question.

In the meantime, international employers should be prepared to respond to Employment Tribunal claims brought against overseas entities and individuals. Given the shifting sands in this area, it would also be wise to seek legal advice should this issue arise in a claim.

TwistDx Limited and others v Dr Armes and others

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Disability discrimination:

offering a trial period in an apparently unsuitable role may be a reasonable adjustment

In Rentokil Initial UK v Miller, the EAT held that offering a trial period in a new role may constitute a reasonable adjustment for a disabled employee. This may be the case even where the employer considers that the employee is not particularly well-suited to the role.

What happened in this case?

The claimant was employed by Rentokil as a pest control technician in April 2016. The role was physically demanding and required him to work at height for a substantial part of his working time. Sadly, around a year into the role, he was diagnosed with multiple sclerosis. Various adjustments were made to his role but, by the end of 2018, Rentokil decided that no other adjustments were possible, and it was no longer safe for him to continue in his role. He was told to remain at home on full pay and efforts were made to find him an alternative role.

In February 2019 the claimant applied for a service administrator role. All candidates were asked to complete maths and spelling assessments. The claimant did not perform well in the tests and, after an interview, it was decided that he did not have the right skills or experience for the role. In particular, he was not proficient at using Excel. Rentokil did not consider offering retraining or a trial period in the role. The claimant was dismissed the

following month.

The claimant brought various claims, including a claim for failure to make reasonable adjustments. The Employment Tribunal upheld the claim, finding that it would have been a reasonable adjustment to transfer the claimant into the service administrator role for a four-week trial period. On the facts, there was a reasonable chance that he would have performed better "on the job" than he had in the tests and interview. Further, he could have been provided with training on Excel. The failure to offer the trial period meant that his dismissal was almost inevitable, whereas if he had been offered the trial period there was, in the Tribunal's view, at least a 50:50 chance that it would have succeeded, and he would have remained in work.

Rentokil appealed to the EAT.

What was decided?

Rentokil argued that the Tribunal had gone wrong by regarding a trial period as a reasonable adjustment, instead of a mere process or tool. The EAT rejected this ground of appeal, holding that where a disability means an employee cannot continue in their present job, and is at risk of dismissal, there is nothing in law that provides that it cannot be a reasonable adjustment to give them a trial period in a new role. Nor is there any legal rule that says that it must certain or likely that the employee would succeed in the trial period before it had to be offered.

This does not mean that in *every* case it will be a reasonable adjustment for an employer to offer a trial period in a new role. It will depend on all the circumstances, including the suitability of the role and prospects of the employee

succeeding in the trial period and avoiding the possibility of dismissal. In this case, the Tribunal had estimated there was a 50:50 chance that the trial period offered the *"…prospect of the axe being lifted entirely".*

Rentokil also argued it could not be a reasonable adjustment to require an employer to appoint an employee to a particular role where the employer genuinely and reasonably concludes that the employee is not qualified or suitable for it. The EAT also rejected this ground of appeal, holding that whether it would have been reasonable to offer a role on a trial basis is an *objective* question for the Tribunal to consider. This means that it will usually be relevant to consider the essential requirements of the role, and the employer's evidence for considering the employee to be ill-suited and/or ill-qualified. Having considered this, a Tribunal may come to a different view to the employer. In this case, it was not enough for Rentokil to show that the claimant did not perform well by reference to the usual standards that it required from candidates. Rather, it needed to satisfy the Tribunal that the claimant's performance was such that it would not have been reasonable to have at least given him the role on a trial basis – and it had failed to do this.

What does this mean for employers?

This decision signals that offering a trial period in a new role may constitute a reasonable adjustment. This may be the case even where, at first sight, the employee does not appear to be particularly well qualified for, or suited to, the role. Employers must grapple with the employee's experience and skill set and consider to what extent they are applicable to the new role. This will require the recruiting manager to have a good understanding of the employee's actual experience and skills in order to make a fair assessment.

Where the experience and skills are relevant, offering the role on a trial basis may be a reasonable adjustment, even if some degree of retraining is required. However, if after such an assessment it is clear that the employee is not appointable (e.g. because they fail to meet the essential criteria for the role, such as lacking a necessary professional qualification), then it may *not* be a reasonable adjustment to offer a trial period.

Where an employer is "on the fence" about the employee's ability to perform the role, the safest course of action would be to assume that it would be a reasonable adjustment to offer a trial period. During the trial, if the employee then failed to perform to an acceptable standard (even with appropriate support and training in place) then the employer will be better able to justify not offering the role to the employee on a permanent basis.

Rentokil Initial UK Ltd v Miller

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Flexible working: Acas

publishes new statutory Code of Practice and guidance for employers.

To accompany the recent changes to the flexible working legal framework, Acas has revised its statutory Code of Practice on requests for flexible working and its related non-statutory guidance. Our briefing sets out the key points for employers to note.

On 6 April 2024, the statutory right to request flexible working became a Day 1 employment right. On top of this, a number of changes were made to the flexible working process. The Government had indicated that the changes to the process would come into force later in the Summer, however, this was brought forward to coincide with the service requirement change. The statutory flexible working request process has been changed as follows:

- Employees do not have to explain what effect they think the requested change would have on their employer and how that effect might be dealt with.

- Employees are permitted to make two flexible working requests per year rather than one.

- Employers are required to consult with employees before

refusing requests.

- Employers have two months to make a decision on a flexible working request (rather than three months as used to be the case) unless an extension is agreed. This two-month window includes dealing with any appeal, if offered,

You can read our full briefing on the reforms here. We also discussed the changes in our recent webinar here.

Statutory Code of Practice on requests for flexible working (the Code)

The revised Code came into force on 6 April 2024 and replaces the previous edition of the Code issued in 2014. The Code been updated to reflect changes to ways of working since the Code was first introduced in 2014, and to reflect the legal reforms discussed above.

Although the Code is not legally binding, it should be followed where an employee makes a statutory request for flexible working. It will be taken into account by Employment Tribunals when considering relevant cases and it may count against an employer where the Code has not been followed.

Here are some of the key points from the new Code for

employers to note:

- **Keeping an open mind:** the Code includes a new foreword (which is not strictly part of the Code itself) which sets out the benefits of flexible working for both employers and employees. It urges employers to be constructive and keep an open mind and states that *"the starting point should be to consider what may be possible".* Employers are also asked to build flexibility into job roles when designing jobs and highlight flexible working options when advertising roles.

- **Having a clear policy and procedure:** a recommendation is made for employers to have a clear policy and procedure for handling statutory flexible working requests. Employers should make it clear to employees what information should be included in any statutory flexible working request. It states that this can be helpful in making everyone aware of what is expected.

- **"Live" requests:** the Code clarifies that while employees may make up to two requests in a 12-month period, they may only have one "live" request ongoing at any one time. A request will be regarded as live during any appeal process. A request will only be regarded as closed once either a decision is made by the employer,

an outcome is mutually agreed, the request is withdrawn or the two-month period for deciding the requests ends (unless an extension has been agreed).

- **Considering requests in a reasonable manner:** the Code reminds employers that they must consider requests in a "reasonable manner". This includes carefully assessing the effect of the requested change for both parties. In addition, the new non-statutory guidance (discussed further below), provides that employers should, amongst other things, consider requests in the order of the date they receive them, base decisions on facts not assumptions and make sure that managers understand the process.

- **Relationship with reasonable adjustments:** the Code reminds employers that the legal obligation to make reasonable adjustments for disabled employees is separate to the obligation to consider a flexible working request. This is important for employers to remember, since a failure to make a reasonable adjustment may give rise to a legal claim with no cap on potential damages. In addition, failing to make a reasonable adjustment may give rise to other uncapped claims including indirect disability discrimination.

- **Accepting requests:** where an employer accepts a request, it should confirm the decision in writing and offer the employee the chance for a discussion to clarify any information that may be helpful in implementing the agreed arrangements (and if such a discussion is held then a record should be kept). However, the Code recognises that the employer and employee may agree that a meeting is not necessary in these circumstances.

- **Rejecting requests and the need for consultation:** the Code provides that employers must not reject a request without first consulting the employee. The Code offers some clarity on what such consultation should look like:
    - Invite the employee to a consultation meeting and give them a reasonable period of time to prepare. The meeting should be held without unreasonable delay.

    - Allow the employee to be accompanied to the meeting, even though there is no statutory right to be accompanied. The Code recommends that employers permit an employee to be accompanied by either a colleague, a trade union representative or an official employed by a trade union.

    - Hold the meeting privately either in person or remotely via video conferencing or telephone. The meeting should be chaired by someone with sufficient authority to make a decision.

    - Conduct the meeting in a way that allows for a

reasonable discussion and consideration of the request. If the request cannot be accepted in full, discuss possible modifications or alternatives and/or whether a trial period may be appropriate (which may necessitate an extension to the two-month consideration process). A written record of the meeting should be kept.

- Confirm the final decision in writing without unreasonable delay and within the two-month period for deciding requests (unless an extension has been agreed). The decision letter should clearly explain the business reasons for rejecting the request, together with any additional information which is reasonable to help explain the decision. The eight specified business reasons for rejecting a request are unchanged.

- **Appealing a decision:** the Code encourages employers to allow an appeal process where a request is rejected, even though there is no statutory right to an appeal. Where offered, employers should set out details of any appeal process in their decision letter. The Code goes on to set out guidance on how any such appeal should be conducted.

- **Protection for employees:** the Code includes a reminder

to employers that they must not subject an employee to any detriment, or dismiss them, in connection with having made a flexible working request, or having issued legal proceedings about the same.

Non-statutory guidance (Guidance)

The new Guidance came into force on 6 April 2024, replacing all previous guidance from Acas on the subject. The Guidance is designed to accompany the Code and covers the following areas in detail:

- The benefits of flexible working for employers and employees.

- The different types of flexible working available – lots of examples are given including: staggered hours, remote working, hybrid working, flexitime, job-sharing, compressed hours, annualised hours and term-time working.

- The ways to agree flexible working – this covers both the statutory right to request flexible working and agreeing changes outside the statutory process.

- Dealing with changes related to a disability.

- Making and considering requests – both inside and outside the statutory process.

- Communicating your decision and what to do next, including how to handle an appeal.

- The benefits of having a flexible working policy and training line managers.

The Guidance also offers pointers on what to do when you receive multiple requests at the same time. It provides that employers should consider requests in the order that they receive them and apply a consistent procedure. Employers are told to look at what is possible in each case, rather than replicating decisions made in the past. Further, employers are told not to prioritise requests based on people's personal situations, save where someone is requesting a reasonable adjustment related to a disability.

However, in our view, employers would be well advised to consider an individual's personal reasons for wanting a flexible working arrangement and whether there may be other statutory rights to consider. For example, if a mother returning from maternity leave wished to work four days per

week in order to accommodate her childcare responsibilities, a refusal may give rise to an indirect sex discrimination claim. Contrast this with another employee who wished to work four days per week in order to accommodate their personal hobbies, where a refusal is less likely to give rise to a legal claim. If only one of these requests could be accommodated, the existence of statutory rights and the risk of a potential claim would indicate that a sensible employer should prefer the childcare reasons.

What are the next steps for employers?

Employers should ensure that HR teams are on top of the new Code and Guidance, and that line managers are briefed on the key points. Flexible working policies should also be updated to reflect the legal reforms that came into force on 6 April 2024. When doing so, it would be sensible to benchmark the policy against the provisions of the Code and the key points in the Guidance. In particular, the consultation process should match that set out in the Code. Employers should also give thought to introducing an appeal stage if not already offered – both the Code and Guidance stress that this is an important part of a fair process, even though there is no statutory requirement to have one.

Acas Code of Practice on requests for flexible working

Acas non-statutory guidance on flexible working requests

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contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

Two new pieces of guidance for employers on the new right to carer's leave

From 6 April 2024, employees acquired a new Day 1 right to take at least one week's unpaid carer's leave per year to provide or arrange care for a dependant who has a long-term care need. To accompany this change, two new pieces of guidance for employers have been published.

A new statutory right to carer's leave came into force on 6 April 2024. You can read more about the new right in our detailed briefing here. We also discussed carer's leave in our recent webinar here.

To coincide with the introduction of the new right, both the Government and Acas have published new guidance for employers.

The Government's guidance provides a basic introduction to how carer's leave works. It covers:

- who is entitled to take carer's leave;
- how much carer's leave employees may take;
- how much notice must be given before taking carer's leave; and
- when employer's may delay a period of carer's leave.

The Acas guidance covers the same matters, in some cases in a little more depth. For example, when discussing entitlement to carer's leave, the guidance explains who counts as a "dependant" for the purposes of the new right. It also provides some examples of what carer's leave may be used for. This is helpful as the law simply states that the leave may be taken in order to give or arrange care for a dependant but is silent on what this means in practice. Acas suggests that this may include things like:

- taking a disabled child to a hospital appointment;
- moving a parent who has dementia into a care home;
- accompanying a housebound dependant on a day trip; or
- providing meals and company for an elderly neighbour while their main carer is away.

It is important to remember that this list is not exhaustive, and other activities may qualify, for example, taking a dependant to rehabilitation or counselling sessions, or attending relevant meetings with Social Services.

The Acas guidance also addresses the question of pay for carer's leave. Although the right is to unpaid leave, the guidance highlights that some employers may elect to offer paid leave. For example, the law firm Kingsley Napley has[recently announced](#) that it would offer staff one week's fully paid carer's leave. Employees are advised to check their employment contracts or their employer's policy (where there is one) to find out what is offered in this respect. Alternatively, they should speak to their employer.

In terms of giving notice to take carer's leave, the Acas guidance encourages employers to be as flexible as possible, noting that employees might need to take time at short notice on occasion. It should also be remembered that employees who qualify for carer's leave may also qualify for emergency time off for dependants, which may be taken without advance notice in appropriate cases.

The Acas guidance also sets out employees' rights when taking carer's leave, namely the right to return to the same job on the same terms and conditions, and protection from detriment or dismissal because of something related to carer's leave. For example, if an employee had their hours reduced, or if they were overlooked for training, promotions or development opportunities because of something related to carer's leave, this would amount to an unlawful detriment.

What are the next steps for employers?

With carer's leave now in force, employers should ensure that they have considered their position on carer's leave (e.g. will the amount of leave be enhanced, and will it be paid?) and have a staff-facing policy in place. Further, line managers should be educated about the new right. A good starting point would be to ask them to read the Acas guidance, as well as any staff-facing policy. Consideration should also be given to addressing carer's leave rights in training for new line managers. As well as understanding the framework for taking the leave, it is important for managers to be aware of the protections against detriment and dismissal, and guard against any treatment which could give rise to legal claims.

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New EHRC guidance for employers on pregnancy and family leave and pay

On 6 April 2024, changes were made to the family-friendly legal framework to offer better protection for certain

employees in redundancy situations, and to relax the rules surrounding the taking of paternity leave and requesting flexible working. To accompany these reforms, the EHRC has updated its guidance in this area.

The following changes were recently made to the family-friendly legal framework:

- **Redundancies:** in a redundancy situation, pregnant employees who notify their employer of their pregnancy on or after 6 April 2024 have priority for any suitable alternative vacancy that is available. Further, employees returning to work on or after 6 April 2024 from a period of maternity or adoption leave, or a period of shared parental leave lasting at least six consecutive weeks, have priority for any suitable alternative vacancy that is available. This protection will usually end 18 months after the date of the child's birth or the day the child is placed with the employee for adoption. You can read our detailed briefing on this reform here.

- **Paternity leave:** eligible employees may take statutory paternity leave as two separate blocks of one whole week if they wish. The period within which statutory paternity leave must be taken increased from 56 days to 52 weeks from the birth or adoption placement. The notification requirements were also relaxed, so that employees only need give four weeks' notice of a proposed period of leave. These new rules apply where the expected week of childbirth or adoption placement falls on or after 6 April 2024. You can read our

detailed briefing on this reform here.

- **Flexible working:** the right to make a flexible working request became a Day 1 employment right. Various changes were also made to the flexible working request process, which make the process less onerous for employees. You can read our detailed briefing on this reform here.

The Equality and Human Rights Commission has updated its guidance for employers and employers to reflect these reforms. The updated guidance also provides worked examples of typical scenarios and highlights good practice. The three pieces of updated guidance are as follows:

Pregnancy and maternity: pregnancy

The guidance covers a wide range issues, from an employer's key obligations towards a pregnant employee, to pregnancy discrimination and dismissal and detrimental treatment during pregnancy. It also covers a variety of day-to-day HR issues including recruitment, performance management, health and safety matters and sickness absence.

As far the legal reforms affecting pregnant employees are concerned, the guidance keeps it simple. It states that pregnant employees must not be selected for redundancy based on criteria relating to their pregnancy and that pregnant

employees should be treated the same as other employees being considered for redundancy, save that they now have a right to preferential treatment when it comes to suitable alternative vacancies.

Pregnancy, adoption and maternity: return to work

The guidance covers an employer's legal obligations to new parents returning to work after taking leave due to pregnancy, adoption or maternity. It covers matters such as sickness at the end of a period of leave, breastfeeding and health and safety upon returning to work, rights upon return, flexible working, redundancy and much more.

As far as the recent legal reforms are concerned, the guidance highlights that all employees have a legal right to request flexible working from Day 1 of their employment. This guidance does not cover the flexible working process itself but, instead, links to the new non-statutory Acas guidance on flexible working (discussed in our briefing here).

On redundancy, the guidance underlines that employers are able to lawfully make employees redundant following their return from maternity, adoption or shared parental leave, provided there is a genuine redundancy situation, and a fair and non-discriminatory process is followed. Reflecting the new rules, the guidance provides that employees who are pregnant or returning from maternity, adoption or shared parental leave (in addition to those who are on maternity, adoption or shared parental leave who already had this protection) have a right to preferential treatment when it comes to suitable alternative vacancies.

Unhelpfully, the guidance does not provide any worked examples on what employers should do in situations where multiple employees entitled to preferential treatment are vying for the same alternative role. In practice, we think that in this situation, employers will need to go through another scoring exercise to decide which employee should be offered the alternative role.

Maternity, paternity, adoption or shared parental leave and pay

This guidance summarises the key obligations for employers and considers the different types of leave and pay entitlements, miscarriage, stillbirth and death, premature birth, sickness, KIT days and more.

On redundancy, the guidance reminds employers that employees who are pregnant or on maternity, adoption or shared parental leave have priority for suitable alterative vacancies. It states that if an employer fails to offer such a vacancy to such an employee, any subsequent redundancy dismissal may be automatically unfair. The guidance highlights that in this situation the employee does not have to attend interviews or selection procedures for the vacant post – this is because the employee may be disadvantaged in a competitive process due to their circumstances . However, as noted above, the guidance does not address the scenario where an employer has multiple protected employees vying for the same alternative role.

On paternity leave, the guidance summarises the right to leave as it now stands following the 6 April reforms, save that at the time of writing this article the guidance still referred to the need for the leave to be taken within 56 days of the

birth or adoption. This is an error; as stated above, the leave may be taken within 52 weeks of the birth or adoption.

EHRC Guidance – Pregnancy and maternity: pregnancy

EHRC Guidance – Pregnancy, adoption and maternity: return to work

EHRC Guidance – Maternity, paternity, adoption or shared parental leave and pay

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ABA Labor and Employment Law International Midyear Meeting

BDBF Partner **Claire Dawson** is a co-chair at the 2024 ABA Labor and Employment Law Section International Committee Midyear Meeting in Mexico City (5-9 May).

The meeting will feature presentations by panellists representing management, employee, union and government perspectives on hot topics and cutting-edge issues in

international labor and employment law.

